

# 2007 BCSECCOM 574

September 11, 2007

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – National Instrument 51-102 Continuous Disclosure Obligations, s. 13.1 – BAR – An issuer requires relief from the requirement to include certain financial statements in a business acquisition report – The issuer made a significant acquisition of a private company; the necessary information to prepare the required financial statements is unavailable; the BAR will contain sufficient alternative information about the acquisition

## **Applicable British Columbia Provisions**

National Instrument 51-102, ss. 8.4 and 13.1

In the Matter of  
the Securities Legislation of  
Quebec, Ontario, Alberta and British Columbia

and

In the Matter of  
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of  
Torr Canada Inc. (“TCI”)

## **MRRS Decision Document**

## **Background**

The Canadian securities regulatory authority (the “Decision Maker”) in each of the provinces of Québec, Ontario, Alberta and British Columbia (the “Jurisdictions”) has received an application from TCI for a decision under the securities legislation of the Jurisdictions (the “Legislation”) for an exemption pursuant to section 13.1 of National Instrument 51-102- *Continuous Disclosure Obligations* (“NI 51-102”) from the requirements to provide audited financial statements of Pure Group SA (“Pure Group”) and its subsidiaries for the fiscal years ended December 31, 2004 and December 31, 2005 in accordance with Item 14.2 of *Form 51-102F5* in an information circular (the “Circular”) to be sent to all the shareholders of TCI (the “Shareholders”) for a special meeting to be held in early October 2007 (the “Special Meeting”) in connection with the acquisition by TCI of all the shares of Pure Group (the “Requested Relief”).

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Under the MRRS for Exemptive Relief Applications

- (a) the *Autorité des Marchés Financiers du Québec* is the principal regulator for TCI; and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are otherwise defined in this decision.

### **Representations**

This decision is based on the following facts represented by TCI :

1. TCI's head office is located at 1155 Wellington Montréal, Québec, H3C 1V9.
2. TCI is a reporting issuer in the Jurisdictions.
3. TCI qualifies under National Instrument 44-101 *Short Form Prospectus Distributions* to file a prospectus in the form of a short form prospectus.
4. TCI is not in default of its obligations as a reporting issuer under the legislation of any jurisdiction in which it is a reporting issuer or its equivalent.
5. On July 30, 2007, TCI has entered into a Share and Sale Purchase Agreement with Hitec Vision Private Equity III AS (“Hitec”) and Statoil Innovation AS (“Statoil”) to acquire all of the issued and outstanding shares of Pure Group, a company incorporated under the laws of Norway which is active in providing, developing and designing process engineering solutions for the upstream oil and gas industries for the removal of impurities from oil, gas and associated produced water.
6. The Share and Sale Purchase Agreement provides that as consideration for the acquisition of Pure Group, TCI will, *inter alia*, issue to Hitec and Statoil, in the aggregate, up to 16,419,545 common shares of TCI (the “Shares”).
7. The Shares are listed on the Toronto Stock Exchange (the “TSX”). TSX rules require shareholder approval before the issuance of securities if the securities to be issued in payment of the purchase price for an acquisition exceeds 25% of the number of securities of a listed issuer which are outstanding, on a non-diluted basis. The 16,419,545 Shares to be issued to Hitec and Statoil exceed the thresholds under the TSX rules and, therefore, the issuance of the Shares

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requires the approval of TCI Shareholders and the preparation of the Circular in connection with the Special Meeting.

8. At the Special Meeting, TCI will also seek shareholders approval for the issuance of up to an aggregate of 500,000 Shares as incentives to certain key employees of Pure Group, conditional upon the employees still being in the employ of Pure Group on certain specific dates to be determined by the Board of Directors of TCI.
9. TCI, Hitec and Statoil are working toward completing the transaction as quickly as possible. TCI expects that the transaction will close in early October 2007.
10. On August 16, 2007, TCI has filed its audited financial statements for its financial year ended June 30, 2007 in accordance with its continuous disclosure obligations under applicable securities legislation.
11. Pure Group is a private company.
12. Pure Group was incorporated on March 31, 2004 under the *Companies Act* (Norway). Its head office is located at Forusbeen 78, P.O. Box 236, 4066 Stavanger, Norway. Hitec and Statoil currently hold respectively 51% and 49% of the shares of Pure Group.
13. Pure Group has three subsidiaries: ProPure AS (“ProPure”), ProSep Technologies, Inc. (“ProSep”) and Pure Group Asia Pacific (“Pure Group AP”).
14. ProPure was incorporated on February 18, 1999 by Framo Engineering AS (“FE”) and Statoil, each of which held 50% of the shares of the company. In 2002, Statoil ASA took over FE's shares and the company became a 100% Statoil-owned company, organized under Statoil's Industrial Development Group I&K. In 2004, all of ProPure's shares were transferred to Pure Group, then called “Pure Process Solutions AS”. Pure Process Solutions AS changed its name to Pure Group in 2006.
15. Between March 31, 2004 and December 22, 2004, Pure Group acquired 50% of CTour Process Systems AS (“CTour”) from a Statoil-controlled entity and 2.6% from Cybernetics AS. In 2005, ProPure acquired the remaining shares of CTour. In 2006, CTour was merged into ProPure and named ProPure AS.
16. Houston-based ProSep was incorporated on May 2, 2005 and its head office is located at 5353 W. Sam Houston Parkway N., Suite 150, Houston, Texas 77041. Pure Group AP.

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17. Kuala Lumpur-based Pure Group AP was founded by Pure Group on December 22, 2006 and its head office is located at Unit 19A-10-2, Wisma UOA, No 19 Jalan Pinang, 50450 Kuala Lumpur, Malaysia.
18. Pure Group's fiscal year end is December 31.
19. The current auditors of Pure Group are Ernst & Young AS ("E&Y").
20. At the time of formation of Pure Group in March 2004, Statoil held 75% of the shares of Pure Group while Hitec held the remaining 25%. Consequently, the financial information for Pure Group and ProPure was consolidated into Statoil's financial statements until the end of 2005, such that there is no separate financial information available in respect of either CTour or ProPure for the 2004 fiscal year.
21. There exist no consolidated financial statements of Pure Group and its subsidiaries for the fiscal years ended December 31, 2004 and December 31, 2005 as there were no legal requirements to prepare such financial statements under applicable local legislation. The only audited financial statements available for the fiscal year 2004 are those of Pure Group (but not consolidated). These audited financial statements have been prepared in accordance with Norwegian GAAP. For the fiscal year 2005, separate audited financial statements have been prepared for Pure Group in accordance with Norwegian GAAP and separate audited financial statements have also been prepared for ProPure in accordance with Norwegian GAAP. All such financial information has been prepared in Norwegian Kroner ("NOK") and in the Norwegian language. No audited financial statements were prepared for ProSep for fiscal year 2005.
22. For the fiscal year ended December 31, 2006, Pure Group has commenced to prepare consolidated financial statements in accordance with the International Financial Reporting Standards ("IFRS"). These December 31, 2006 consolidated financial statements were audited by E&Y and include the unaudited consolidated numbers for the fiscal year ended December 31, 2005 for comparison purposes. The financial information in these consolidated financial statements is provided in NOK and in the Norwegian language (with an unofficial translation in the English language).
23. Prior to its merger with Propure in 2006, the auditors of CTour were KPMG. KPMG has refused to give access to E&Y to review their work papers with respect to CTour's accounts, notwithstanding numerous requests from E&Y to that effect.

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24. The current acting Chief Financial Officer (“CFO”) of Pure Group started working as a consultant for the company in December 2006 and has only been acting as CFO since February 2007.
25. The current President and CEO of Pure Group joined Pure Group as CFO in May 2006 and is acting as President and CEO only since February 2007.
26. The current board of directors of Pure Group is now composed of three directors which were all appointed in 2006. None of these directors was a director of Pure Group during the fiscal years 2004 and 2005.
27. Pure Group and their auditors have made every reasonable effort to obtain access to, or copies of, the documentation (including the appropriate representations from senior management) to prepare audited consolidated financial statements of Pure Group for the years ended December 31, 2004 and 2005, but such efforts were unsuccessful, and further considering the fact that Pure Group’s new management has been advised by E&Y that the latter are unable to audit the financial statements for the years ended December 31, 2004 and 2005 because they do not have access to the relevant books and records or to the previous senior management of Pure Group and its subsidiaries who would provide documentation and representations necessary to complete the audit of Pure Group, it is not possible to prepare the audited consolidated financial statements of Pure Group for the 2005 and 2004 fiscal years or to prepare unaudited consolidated financial statements of Pure Group for the 2004 fiscal year.
28. In accordance with the requirements of Item 14.2 of Form 51-102F5, TCI would be required to include in the Circular disclosure (including financial statements) with respect to Pure Group that is generally prescribed for a long-form prospectus.
29. Applicable securities legislation in the Jurisdictions provide that an issuer must include in a long-form prospectus audited financial statements consisting of an income statement, statement of retained earnings and cash flow statement for the three most recently completed financial years ended more than 90 days before the date of the prospectus and a balance sheet as at the last day of the most recently completed financial year, if any, ended more than 90 days before the date of the prospectus. The issuer must also provide the same financial information for the most recently completed interim period that ended more than 60 days before the date of the prospectus and for the comparable period in the preceding financial year. In order to comply with the requirements of Item 14.2 of Form 51-102F5, TCI would be required to provide all such financial information with respect to Pure Group in the Circular.

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30. Rather than providing the financial statements described in paragraph 29 above, TCI will provide in the Circular the following financial statements:
- (a) the audited consolidated financial statements of Pure Group for the year ended December 31, 2006 prepared in accordance with IFRS. Such financial statements will be reconciled to Canadian GAAP;
  - (b) the unaudited consolidated financial statements of Pure Group for the year ended December 31, 2005 prepared in accordance with IFRS. Such financial statements will be reconciled to Canadian GAAP;
  - (c) the unaudited consolidated financial statements of Pure Group for the interim 6-month periods ended June 30, 2007 and June 30, 2006 prepared in accordance with IFRS. Such financial statements will be reconciled to Canadian GAAP; and
  - (d) the pro forma financial statements of TCI for the year ended June 30, 2007 and the pro forma earnings per share based on such pro forma financial statements.
31. Concurrently with the filing of the Circular, TCI will file a certificate for translation with respect to the financial statements of Pure Group in accordance with section 3.2 of NI 51-102.

### **Decision**

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that TCI will provide in the Circular the financial statements described in paragraph 30 above and that, where applicable, such financial statements will be reconciled with Canadian GAAP.

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