

2003 BCSECCOM 120

Headnote

Mutual Reliance Review System for Exemptive Relief Application - relief from the identical consideration requirement to permit the payment of sale proceeds in lieu of common shares of the offeror to holders of the share of the offeree resident in the United States of America

Applicable British Columbia Provisions

Securities Act, R.S.B.C.1996, c. 418, s. 114(2)(c)

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA AND ONTARIO

AND

IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF TUSK ENERGY INC.

AND

IN THE MATTER OF DEL ROCA ENERGY LTD.

MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, and Ontario (the “Jurisdictions”) has received an application from TUSK Energy Inc. (“TUSK”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) exempting TUSK from the requirement contained in the Legislation to offer holders of class of securities subject to a take-over bid identical consideration (the “Identical Consideration Requirement”) in connection with an offer to purchase the common shares of Del Roca Energy Ltd (“Del Roca”);
2. AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”) the Alberta Securities Commission is the principal regulator for this application

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3. AND WHEREAS, unless otherwise defined, the terms used herein shall have the meanings set out in National Instrument 14-101 *Definitions*;
4. AND WHEREAS TUSK has represented to the Decision Makers that:
 - 4.1 TUSK is a corporation incorporated under the laws of Alberta;
 - 4.2 the head office of TUSK is in Calgary, Alberta;
 - 4.3 TUSK is a reporting issuer in each of the Jurisdictions;
 - 4.4 the authorized capital of TUSK consists of an unlimited number of common shares (the "TUSK Shares") and unlimited number of first and second preferred shares issuable in series (the "Preferred Shares");
 - 4.5 as of December 4, 2002, there were 17,607,474 TUSK Shares and no Preferred Shares outstanding;
 - 4.6 the TUSK Shares are listed and posted for trading on the Toronto Stock Exchange;
 - 4.7 TUSK is not in default of any requirement under the Legislation;
 - 4.8 Del Roca is a corporation incorporated under the laws of Alberta;
 - 4.9 the head office of Del Roca is in Calgary, Alberta;
 - 4.10 Del Roca is a reporting issuer in each of the Jurisdictions;
 - 4.11 the authorized capital of Del Roca includes an unlimited number of common shares (the "De Roca Shares") and an unlimited number of preferred shares ("Del Roca Preferred Shares");
 - 4.12 as of December 4, 2002, there were 20,306,893 Del Roca Shares issued and outstanding and no Del Roca Preferred Shares outstanding;
 - 4.13 the Del Roca Shares are listed and posted for trading on the TSX Venture Exchange Inc.;
 - 4.14 to the knowledge of TUSK, Del Roca is not in default of any requirement under the Legislation;

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- 4.15 TUSK has made a take-over bid for all of the Del Roca Shares currently outstanding or issuable upon the exercise of outstanding options or warrants (the “Bid”);
- 4.16 under the Bid, holders of Del Roca Shares may elect to receive for each Del Roca Share held:
 - 4.16.1 0.25 of one TUSK Share;
 - 4.16.2 \$0.64 cash; or
 - 4.16.3 a combination of cash and TUSK Shares;
- 4.17 a maximum of 2.8 million TUSK Shares can be issued under the Bid;
- 4.18 to the best information of TUSK, there are 6 registered holders of Del Roca Shares (the “U.S. Shareholders”) resident in the United States of America (the “United States”);
- 4.19 to the best information of TUSK, the U.S. Shareholders currently hold a total of 110,692 TUSK Shares, representing 0.55% of the total number of outstanding Del Roca Shares;
- 4.20 TUSK is not eligible to use the multi-jurisdictional disclosure system adopted by the United States;
- 4.21 any TUSK Shares that might be issued under the Bid to the U.S. Shareholders will not be registered or otherwise qualified for distribution under the *Securities Act of 1933* in the United States;
- 4.22 the delivery of TUSK Shares to the U.S. Shareholders would require the filing of a registration statement and subject TUSK to continuous disclosure requirements which would be overly burdensome to TUSK;
- 4.23 to the extent that U.S. Shareholders elect to receive TUSK Shares in exchange for their Del Roca Shares, TUSK proposes to deliver the TUSK Shares to CIBC Mellon Trust company, who will sell the TUSK Shares on behalf of the U.S. Shareholders and deliver to them their pro rata share of the proceeds of such sale, less commissions and applicable withholding taxes;

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- 4.24 any sale of TUSK Shares described in paragraph 4.23 will be completed within five trading days of the date that TUSK takes up the Del Roca Shares tendered by the applicable U.S. Shareholders under the Bid;
- 4.25 any sale of TUSK Shares described in paragraph 4.23 will be done in a manner intended to maximize the consideration to be received from the sale by the applicable U.S. Shareholder and minimize any adverse impact of the sale on the market for the TUSK shares;
- 4.26 except to the extent that relief from the Identical Consideration Requirement is granted herein, the Bid is being made in compliance with the requirements under the Legislation concerning take-over bids;
- 5. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);
- 6. AND WHEREAS 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;
- 7. THE DECISION of the Decision Makers under the Legislation is that, in connection with the Bid, TUSK is exempt from the Identical Consideration Requirement insofar as U.S. Shareholders who would otherwise receive TUSK Shares under the Bid receive instead cash proceeds from the sale of those TUSK Shares in accordance with the procedures set out in paragraph 4.23.

DATED this 24th day of January, 2003.

Eric T. Spink, Vice-Chair

Thomas G. Cooke, Q.C., Member