

2005 BCSECCOM 653

October 3, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 45-102, s. 3.1 - Resale of Securities - A control person wants relief to rely on s. 2.8 of NI 45-102 following an arrangement - As a result of the arrangement, a control person of an issuer will be acquiring securities of a new issuer; the control person cannot rely on s. 2.9(3) of NI 45-102 in calculating how long it has held the securities of the new issuer because the securities it held before the arrangement were not convertible securities, exchangeable securities or multiple convertible securities; the new securities represent the same economic interest as the securities of the predecessor issuer; the new issuer will continue the business of the predecessor issuer

Applicable British Columbia Provisions

National Instrument 45-102, ss. 2.8 and 3.1

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New
Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, the
Northwest Territories, the Yukon Territory and Nunavut (the Jurisdictions)

and

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

and

In the Matter of
Berjaya Forest Products (Luxembourg) S.À R.L. (the Filer)

MRRS Decision Document

Background

- ¶ 1 The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from the prospectus requirements in the Legislation for control distributions (as

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defined in National Instrument 45-102 (NI 45-102)) of stapled units (Stapled Units) of Taiga Building Products Ltd. (TBPL) by the Filer (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications

- (a) the British Columbia Securities Commission is the Principal Regulator for this application, and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

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

Representation

- ¶ 3 This decision is based on the following facts represented by the Filer:
1. Taiga Forest Products Ltd. (TFPL) was a publicly-traded corporation whose common shares (TFPL Shares) were listed on the Toronto Stock Exchange; before the Arrangement (described below), TFPL was (and had been for more than four months before the arrangement) a reporting issuer in each of the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia and Prince Edward Island (the Reporting Jurisdictions) and was not in default of its continuous disclosure obligations under the Legislation in the Reporting Jurisdictions;
 2. effective September 1, 2005 (the Effective Date), TFPL reorganized and recapitalized its business by way of a plan of arrangement (the Arrangement) under the *Business Corporations Act* (British Columbia) (the BCCA) by converting to an “income fund” like structure;
 3. TBPL is a corporation amalgamated under the BCCA, with headquarters and a registered office in British Columbia;
 4. under the Arrangement, shareholders of TFPL exchanged their TFPL Shares for Stapled Units of TBPL, on the basis of four Stapled Units for each TFPL Share; each Stapled Unit consists of one common share of TBPL and one 14% subordinated note of TBPL in the principal amount of \$5.32;
 5. as a result of this exchange, TFPL became a wholly-owned subsidiary of TBPL; on the Effective Date, TBPL was amalgamated with TFPL and certain

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of its wholly-owned subsidiaries, thereby transferring the business formerly carried on through TFPL to TBPL;

6. after the Arrangement, TBPL became a reporting issuer in each of the Reporting Jurisdictions where that concept exists and is not in default of its continuous disclosure requirements under the Legislation;
7. the Stapled Units are listed and posted for trading on the Toronto Stock Exchange (TSX);
8. the Filer is a corporation continued under the laws of Luxembourg with its registered office in Luxembourg; the Filer is a wholly-owned subsidiary of Berjaya Group (Cayman) Limited, which is in turn a wholly-owned subsidiary of Berjaya Group Berhad, a Malaysian public company; the Filer is a holding company;
9. before the Arrangement, the Filer beneficially owned 3,167,452 TFPL Shares, all of which it had held for more than four months; as a result of the Arrangement, the Filer beneficially owns 12,669,808 Stapled Units, representing approximately 39.3% of the 32,205,680 issued and outstanding Stapled Units, registered in the name of Scotia Nominees (Tempatan) Sdn. Bhd;
10. the Filer cannot rely on the exemption from the prospectus requirements in section 2.8 of NI 45-102 to sell certain of the Stapled Units held by it because subsection 2.8(2)2 of NI 45-102 requires that the Filer have held the Stapled Units for at least four months, and does not take into consideration the time during which the Filer held its TFPL Shares.

Decision

- ¶ 4 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:

- (a) the conditions in subsection (2) of section 2.8 of NI 45-102 are satisfied, except that when determining the time that the Filer has held the Stapled Units under paragraph 2.8(2)2 of NI 45-102, the Filer can include the time that the Filer held TFPL Shares immediately before the Effective Date; and

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- (b) the Filer satisfies the requirements of subsections (3) and (4) of section 2.8 of NI 45-102 as if the selling security holder relied on subsection (2) of section 2.8.

Martin Eady, CA
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British Columbia Securities Commission