

2006 BCSECCOM 209

March 14, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-102, s. 13.1 - Continuous Disclosure Obligations - Information circular - An issuer wants relief from the requirement to include prospectus-level disclosure in an information circular to be circulated in connection with an arrangement, reorganization, acquisition or amalgamation - The securities that are being issued will only be outstanding for a short period of time before they are redeemed for cash; the securities are being issued for tax reasons only, not so the shareholders continue to have an interest in the issuer; finances have been secured to fund the redemption of the securities - The required disclosure is not relevant to the matters to be dealt with at the meeting for which the information circular is required

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 117 and 119

National Instrument 51-102, ss. 9.1 and 13.1

Form 51-102F5, Items 8, 9, 10 and 14.1

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New
Brunswick, Nova Scotia and Newfoundland and Labrador
(the Jurisdictions)

and

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

and

In the Matter of
Hudson's Bay Company (the Filer)

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Applicant for a decision under the securities legislation of the Jurisdictions (the Legislation) exempting the Applicant from the requirement to include prospectus-level disclosure, executive compensation disclosure and disclosure as to the indebtedness of directors and

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executive officers in a management proxy circular of the Applicant (the Circular) relating to a special meeting of its shareholders to be held to approve the amalgamation of the Applicant with another company in accordance with the Legislation (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Ontario Securities Commission is the principal regulator for this application; 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 defined in this decision.

Representations

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

1. The Applicant is a corporation amalgamated under the *Canada Business Corporations Act* (the CBCA). The authorized capital of the Applicant consists of an unlimited number of common shares (Common Shares) and an unlimited number of preferred shares, issuable in series. As at the date hereof, there are issued and outstanding 69,581,956 Common Shares and there are no other shares of any class or series outstanding. The Common Shares are listed on the Toronto Stock Exchange under the symbol "HBC".
2. The Applicant is a reporting issuer or the equivalent thereof in each of the Jurisdictions. The Applicant is not, to its knowledge, in default of its reporting issuer obligations under the Legislation.
3. Pursuant to offers (the Offers) made November 10, 2005, as amended by a notice of extension and variation dated December 23, 2005, a notice of extension and variation dated February 10, 2006, a notice of variation dated February 14, 2006 and a notice of extension dated February 27, 2006, Maple Leaf Heritage Investments Acquisition Corporation (Heritage) has offered to purchase all of the issued and outstanding Common Shares at a price of \$15.25 per Common Share and all the outstanding debentures (the Debentures) at a price of \$1,020 per \$1,000 principal amount of Debentures, plus accrued and unpaid interest to the date the Debentures are taken up under the Offer therefor.

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4. Heritage is incorporated under the CBCA. The principal office of Heritage is located at 4388 Jenkins Avenue, North Charleston, South Carolina, 29405. Heritage was incorporated solely for the purpose of making the Offers and is not a reporting issuer in any Jurisdiction.
5. On February 27, 2006, Heritage acquired, pursuant to the Offers, approximately 43,802,574 Common Shares, representing approximately 63% of the issued and outstanding Common Shares, and approximately \$124,590,000 aggregate principal amount of Debentures, representing approximately 62% of the aggregate principal amount of the outstanding Debentures. After giving effect to the above acquisition of Common Shares and Debentures by Heritage, Heritage beneficially owned approximately 82% of the Common Shares and 62% of the Debentures.
6. Heritage has requested that the Applicant call a special meeting of shareholders (the Meeting) to approve the proposed amalgamation of the Applicant and Heritage (the Amalgamation). At the Meeting, the Applicant will seek the requisite approval of shareholders in respect of a special resolution to approve the Amalgamation upon the terms and conditions set forth in an amalgamation agreement between HBC and Heritage (the Amalgamation Agreement), the material terms of which will be described in the Circular.
7. In connection with the Meeting, the Applicant expects to mail on or about March 14, 2005 to each holder of Common Shares (i) a notice of the Meeting; (ii) a form of proxy; and (iii) the Circular, which will be prepared in accordance with the CBCA and applicable securities laws.
8. Pursuant to the Amalgamation:
 - (a) at the effective time of the Amalgamation, by virtue of the Amalgamation and without any further action on the part of Heritage, the Applicant or the holders of Common Shares, (A) each Common Share (other than any Common Share held by a shareholder who has not effectively withdrawn or otherwise ceased to be entitled to such dissent rights pursuant to Section 183 of the CBCA (each a Dissenting Share)) will be cancelled and converted automatically into one validly issued, fully paid and non-assessable redeemable preferred share in the capital of Amalco (each a Redeemable Preference Share) and (B) each Dissenting Common Share will be cancelled and be converted automatically into the right to receive payment from Amalco with respect thereto in accordance with section 183 of the CBCA; and

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- (b) all holders of Common Shares, including insiders of the Applicant, will receive identical consideration for their Common Shares in the Amalgamation.
9. Immediately following the effective time of the Amalgamation, each Redeemable Preference Share will be redeemed by Amalco (the Redemption) for a cash amount equal to \$15.25 per share (the Redemption Amount). No new certificates evidencing the Redeemable Preference Shares will be issued to the holders of Common Shares who will continue to hold their Common Share certificates until exchanged for the aggregate Redemption Amount represented by such certificates as provided for in the Amalgamation Agreement.
10. The Legislation in the Jurisdictions requires that, subject to the Requested Relief being granted, the Circular include the prospectus-level disclosure, executive compensation disclosure and disclosure as to the indebtedness of directors and executive officers.
11. No action is to be taken at the Meeting on any matter involving executive compensation or the indebtedness of directors or executive officers, and neither executive compensation disclosure nor disclosure as to the indebtedness of directors and executive officers would reasonably be expected to affect a shareholder's decision whether or not to vote in favour of the Amalgamation.
12. The consideration paid by Amalco on the Redemption will be funded directly or indirectly by Heritage. Heritage has advised the Applicant that it intends to ensure that Amalco will have sufficient funds to pay in full the aggregate Redemption Amount on the Redemption.

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 the Applicant complies with all other provisions of the Legislation applicable to the Circular.

Iva Vranic
Manger, Corporate Finance
Ontario Securities Commission