

# 2004 BCSECCOM 696

November 24, 2004

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 54-101, s. 9.2 - An issuer wants relief from the timing requirements in NI 54-101 relating to record dates and sending materials - The applicant has entered into a receipt subscription agreement tied to the closing of an acquisition; the applicant is in negotiations to facilitate the closing of the acquisition by the closing deadline; if the acquisition can close by the closing deadline, it will not be necessary to hold a meeting of the receipt holders; if the acquisition must be delayed, the applicant must hold a meeting of its receipt holders to extend both the closing deadline and the termination of the receipt subscription agreement; the meeting will be held in accordance with the terms of the receipt subscription agreement; the applicant will publish an advertisement announcing the meeting and advising when and where materials relating to the meeting can be obtained; the date of the meeting is the latest date that the applicant can hold the meeting to facilitate the extension of the closing deadline

## **Applicable British Columbia Provisions**

National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*, ss. 2.1, 2.2(1), 2.5(1), 2.20(a) and 9.2

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

and

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

and

In the Matter of  
West Fraser Timber Co. Ltd. (the Filer)

MRRS Decision Document

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### **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 following requirements in the Legislation (the Requested Relief):
- (a) to establish a record date for a meeting (the Meeting) of the holders of subscription receipts (the Receiptholders) at least 30 days before the Meeting,
  - (b) to send notification of the Meeting and record dates at least 25 days before the record date,
  - (c) to request beneficial ownership information at least 20 days before the record date for the notice of Meeting, and
  - (d) to send materials to the Receiptholders at least 21 days before the Meeting.

### 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 NI 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

### In this decision,

- (a) *Acquisition* means the purchase by the Filer of the only issued and outstanding share of Weldwood of Canada Limited for a purchase price of approximately CDN\$1.26 billion,
- (b) *Closing Deadline* means January 4, 2005,
- (c) *Proceeds* means the gross proceeds of \$275,044,000 received by the Filer on the closing on August 24, 2004 of the Filer's offering of 5,852,000 subscription receipts, and

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(d) *Termination Date* means December 16, 2004 or such later date agreed to by the Filer and International Paper Company.

### **Representations**

¶ 3 This decision is based on the following facts represented by the Filer:

1. the Filer was amalgamated under the *Company Act* (British Columbia);
2. the Filer's head office is located at Suite 1000, 1100 Melville Street, Vancouver, British Columbia, V6E 4A6;
3. the Filer is a reporting issuer, or the equivalent, in each of the Jurisdictions and, to the best of its knowledge, is currently not in default of any applicable requirements under the Legislation;
4. the Filer signed an acquisition agreement on July 21, 2004 with International Paper Company which provided for the Acquisition;
5. the Proceeds which are currently being held in escrow and will be released to the Filer upon satisfaction of certain release conditions, including receipt of necessary regulatory approvals, satisfaction of other closing conditions and notice that the parties are prepared to close the Acquisition;
6. the Proceeds are an essential part of the funds required to close the Acquisition;
7. the subscription receipt agreement provides that the Proceeds will be returned to Receiptholders if the Acquisition does not close on or before the Closing Deadline or if the acquisition agreement is terminated before the Closing Deadline;
8. the Filer may terminate the acquisition agreement at any time on or before the Termination Date if it does not receive certain regulatory clearances or assurances;
9. there is some uncertainty as to when outstanding matters will be resolved and discussions with various regulators are planned for the next two to three weeks;
10. the Filer is contemplating seeking an extension of the Closing Deadline to a date in March, 2005, to provide the Filer with additional time to resolve outstanding regulatory matters if needed;

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11. since the Proceeds are a critical part of the funds the Filer requires to complete the Acquisition, if the Filer is to seek an extension of the Closing Deadline, it will also need to amend the subscription receipt agreement to take into account the extended Closing Deadline;
12. since the Filer is permitted, under certain conditions, to terminate the acquisition agreement up to the Termination Date, and if it does not do so it is committed to closing the Acquisition on or before the Closing Deadline, it is important for the Filer to know whether the Receiptholders are prepared to accept the extended Closing Deadline;
13. because discussions with certain regulators are ongoing, the Filer expects to have more and better information for Receiptholders if it holds the Meeting as late as possible;
14. the Filer wishes to schedule the Meeting for December 16, 2004, or, based on the status of the discussions with the regulators, on or about December 22, 2004;
15. under the subscription receipt agreement the Receiptholders are entitled to 15 days' notice of any meeting of Receiptholders, and there are no restrictions as to when the record date may be fixed;
16. the Filer proposes to fix a record date at least 21 days before the Meeting and to arrange to send materials to registered and beneficial Receiptholders at least 15 days before the Meeting;
17. materials would be delivered to intermediaries in order to ensure they have sufficient time to forward materials on to beneficial holders;
18. the Filer will ensure that notice of the Meeting is given to Receiptholders by
  - (a) issuing a press release before the record date fixed for the meeting, and
  - (b) placing an advertisement in the English language in an English language newspaper of general circulation in Canada and in the French language in a French language newspaper of general circulation in Québec alerting Receiptholders to the Meeting and indicating that materials will be available on SEDAR.

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### **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 the Filer:

- (a) establishes a record date of at least 21 days before the Meeting,
- (b) sends materials to the Receiptholders at least 15 days before the Meeting,  
and
- (c) complies with paragraph 18.

Martin Eady, CA  
Director, Corporate Finance  
British Columbia Securities Commission