

2005 BCSECCOM 256

April 1, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 114(2) Issuer Bids - Exemption from the formal issuer bid requirements in Part 13 of the Act - An issuer wants to complete an issuer bid that meets some, but not all, of the conditions of the exemption set out in s. 99(e) of the Act (exemption for a bid through the facilities of a recognized exchange) - The bid will be made through both an exchange recognized for the purposes of s. 99(e) of the Securities Act and another exchange that is not recognized for this purpose; the bid will comply with the normal course issuer bid requirements of the exchange recognized for this purpose and will be permitted under the rules of the other exchange

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 99(e), 114(2)

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 EnCana Corporation (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) that the requirements contained in the Legislation relating to issuer bids (the Issuer Bid Requirements) shall not apply to purchases of the Filer's common shares (the Common Shares) made by the Filer through the facilities of the New York Stock Exchange (NYSE) pursuant to the Amended Bid (as defined below) or any Future Bids (as defined below)(the Requested Relief).

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2. Under the Mutual Reliance Review System for Exemptive Relief Applications (the MRRS):
 - 2.1 the Alberta Securities Commission is the principal regulator for this application; and
 - 2.2 this MRRS Decision Document evidences the decision of each Decision Maker.

Interpretation

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

Representations

4. This decision is based on the following facts represented by the Filer:
 - 4.1 The Filer is a corporation amalgamated under the *Canada Business Corporations Act*.
 - 4.2 The Filer's head office is located in Calgary, Alberta.
 - 4.3 The Filer is a reporting issuer in all of the jurisdictions of Canada that incorporate such a concept in their legislation and the Filer is not in default of any requirements of the applicable securities legislation in any of the jurisdictions of Canada in which it is a reporting issuer.
 - 4.4 The Filer has securities registered under the 1934 Act.
 - 4.5 As at October 22, 2004, the Filer had approximately 462 million Common Shares issued and outstanding.
 - 4.6 The Common Shares are listed and posted for trading on the Toronto Stock Exchange (the TSX) and the NYSE.
 - 4.7 On October 22, 2004, the Filer filed a notice of intention with the TSX (the Original Notice) in order to effect a renewal of the Filer's normal course issuer bid (the Issuer Bid) that has been in place for several years. Pursuant to the Original Notice, during the twelve (12) months ending October 28, 2005, the Filer was entitled to purchase up to 5% of the issued and outstanding Common Shares or 23,114,500 Common Shares through the facilities of the TSX or the NYSE, subject to a maximum of 2% of the Common Shares estimated to be then outstanding in a given 30 day period.

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- 4.8 On February 4, 2005, the Filer filed the necessary documents with the TSX in order to obtain approval of an amendment to the Issuer Bid (the Amended Bid) which, in accordance with the rules of the TSX related to normal course issuer bids (the TSX NCIB Rules), provided that during the twelve months ending October 28, 2005, the Filer may purchase up to 46,090,802 Common Shares, being 10% of the public float of Common Shares estimated to be outstanding as at October 22, 2004, subject to a maximum of 2% of the Common Shares estimated to be then outstanding in a given thirty (30) day period.
- 4.9 Purchases of Common Shares made through the facilities of the TSX pursuant to the Amended Bid are exempt from the Issuer Bid Requirements pursuant to the “recognized stock exchange exemption” contained in the Legislation (the Recognized Stock Exchange Exemption) while such purchases through the facilities of the NYSE are not exempt pursuant to such exemption because the Decision Makers recognize the TSX as a “recognized stock exchange” for the purpose of the Recognized Stock Exchange Exemption but not the NYSE.
- 4.10 No other exemptions exist under the Legislation that would otherwise permit the Filer to make purchases through the NYSE where the purchases exceed the 5% limitation in the “normal course issuer bid” exemption contained in the Legislation (the NCIB Exemption).
- 4.11 Purchases of the Common Shares by the Filer of up to 10% of the public float on the TSX and the NYSE would be permitted under the rules of the NYSE and under U.S. federal securities law.
- 4.12 The Filer may from time to time, in the future, file a new notice of intention with the TSX to make purchases of Common Shares through the facilities of both the TSX and the NYSE pursuant to the TSX NCIB Rules where the purchases exceed the 5% limitation in the NCIB Exemption (the Future Bids).

Decision

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

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6. The decision of the Decision Makers pursuant to the Legislation is that the Requested Relief is granted provided that the purchases of Common Shares made through the facilities of the NYSE are part of a normal course issuer bid that complies with the TSX NCIB Rules.

Stephen R. Murison, Vice-Chair
Alberta Securities Commission

Roderick J. McLeod, Q.C., Member
Alberta Securities Commission