

2005 BCSECCOM 288

April 13, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 114(2) Takeover Bids - Exemption from the formal take over bid requirements in Part 13 of the Act - An issuer wants to complete a take over bid that meets some, but not all of the conditions set out in s. 98 (1)(e) of the Act required for an exempt take over bid - the bid is being done in compliance with the laws of a foreign jurisdiction that has not been recognized for the purposes of s. 98(1)(e); the bid will satisfy all other conditions required for an exempt take over bid

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 105-110, 114(2)

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Manitoba, Ontario 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 BHP Billiton Lonsdale Investments Pty Ltd. (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 take-over bids (the Take-over Bid Requirements) shall not apply to the proposed offer by the Filer (the Offer) to acquire all of the issued and outstanding ordinary shares (the Ordinary Shares) of WMC Resources Limited (WMC)(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 incorporated under the laws of Australia, and is a member of the BHP Billiton Group (BHP).
 - 4.2 The Filer's registered office and headquarters are located at Melbourne, Australia.
 - 4.3 The Filer is not a reporting issuer or the equivalent in any of the Jurisdictions.
 - 4.4 The Filer's securities are not listed or quoted for trading on any Canadian stock exchange or market.
 - 4.5 BHP is a dual listed company comprising BHP Billiton Limited and BHP Billiton Plc. The two entities exist as separate companies, but operate as a combined group. BHP is listed on the Australian Stock Exchange (ASE) (through BHP Billiton Limited) and London Stock Exchange (through BHP Billiton Plc), along with a secondary listing on the Johannesburg Stock Exchange (through BHP Billiton Plc) and American Depositary Receipts listings on the New York Stock Exchange (NYSE).
 - 4.6 WMC is a corporation incorporated under the laws of Australia.
 - 4.7 WMC's registered office and headquarters are located at Melbourne, Australia.

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- 4.8 WMC is not a reporting issuer or the equivalent in any of the Jurisdictions.
- 4.9 WMC's securities are not listed or quoted for trading on any Canadian stock exchange or market.
- 4.10 The list of holders of Ordinary Shares (Ordinary Shareholders) and other information provided by WMC to the Filer (the WMC Information) indicates that, as at March 21, 2005, there were 62 Ordinary Shareholders resident in Canada (the Canadian Ordinary Shareholders) out of a total of 90,117 Ordinary Shareholders worldwide holding a total of 103,871 Ordinary Shares representing approximately 0.009% of the total issued and outstanding Ordinary Shares.
- 4.11 Based on the WMC Information, the following table sets out the Jurisdictions in which the Canadian Ordinary Shareholders reside:

Province:	# of Canadian Ordinary Shareholders	# of Ordinary Shares held	Approximate % of all issued and outstanding Ordinary Shares
Alberta	5	3,233	0.0002%
British Columbia	24	42,952	0.003%
Manitoba	1	206	0.00001%
Newfoundland	1	182	0.00001%
Ontario	31	57,298	0.004%
TOTAL	62	103,871	0.009%

- 4.12 The Offer is being made, and the offer document reflecting the terms of the Offer (the Offer Document) is being prepared, in accordance with the corporate and securities laws of Australia.
- 4.13 If the Offer is completed and the Filer acquires 90% or more of the Ordinary Shares, the Filer intends to compulsorily acquire the remaining outstanding Ordinary Shares pursuant to Australian corporate law.
- 4.14 The Offer will be made to Canadian Ordinary Shareholders on the same terms and conditions as it is being made to the Ordinary Shareholders resident in Australia (the Australian Ordinary

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Shareholders), including extending to the Canadian Ordinary Shareholders identical rights and consideration.

- 4.15 The Offering Document and all other materials relating to the Offer that will be sent by or on behalf of the Filer to the Australian Ordinary Shareholders will be concurrently sent to the Canadian Ordinary Shareholders whose addresses are known to the Filer and copies thereof will be concurrently filed with the Decision Maker in each Jurisdiction.
- 4.16 The Filer cannot rely on the “de minimis” exemption from the Take-Over Bid Requirements in the Legislation because Australia is not a recognized jurisdiction for the purposes of this exemption.

Decision

- 5. 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.
- 6. The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that:
 - 6.1 the Offer, and any amendments thereto, is made in compliance with applicable Australian laws, and
 - 6.2 all materials relating to the Offer and any amendments thereto which are sent by or on behalf of the Filer to Australia Ordinary Shareholders are concurrently sent to Canadian Ordinary Shareholders whose addresses are known to the Filer and copies thereof are concurrently filed with the Decision Maker in each Jurisdiction.

Glenda A. Campbell, Q.C., Vice-Chair
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