

2005 BCSECCOM 135

February 9, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Application

Securities Act s. 91 Insiders - Continuous Disclosure (Insider Reports) - An issuer wants relief from the requirement to file insider reports for its insiders - The requirement to file insider reports may be triggered without any action by the shareholder or the issuer; shareholders will not be able to determine if the requirement to file the insider report has been triggered until the issuer issues quarterly information that updates its issued and outstanding share capital information; shareholders will file insider reports, as necessary, after the quarterly information is provided by the issuer; shareholders will file insider reports within the time set out in the Act if they take any action that triggers the requirement to file an insider report

Securities Act s. 114(2) Takeover Bids - Exemption from the formal take over bid requirements in Part 13 of the Act - Issuer wants relief from the early warning requirement in s. 111 of the Act for its shareholders - The requirement to file early warning reports may be triggered without any action by the shareholder or the issuer; shareholders will not be able to determine if the requirement to file the early warning report has been triggered; shareholders will file early warning reports, as necessary, if they take any action that triggers the requirement to file an early warning report

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 87, 91, 111 and 114

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

and

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

and

In the Matter of
ACE Aviation Holdings Inc.

MRRS Decision Document

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Background

The local securities regulatory authority or regulator (the “Decision Maker”) in each of the Jurisdictions has received an application (the “Application”) from ACE Aviation Holdings Inc. (“ACE”) (the “Applicant”) for a decision (the “Decision”) under the securities legislation of the Jurisdictions (the “Legislation”) that:

- (a) each ACE Shareholder be exempted from the Early Warning Requirements (as hereinafter defined) contained in the Legislation in connection with a change in its Per Class Securityholding Percentage that arises without any action being taken by the ACE Shareholder and resulting solely from the Automatic Conversion, until the ACE Shareholder undertakes a transaction that changes its Per Class Securityholding Percentage; and
- (b) each ACE Shareholder be exempted from the Insider Reporting Requirements (as hereinafter defined) contained in the Legislation in connection with a change in its direct or indirect beneficial ownership of, control of, or direction over ACE Shares that arises without any action being taken by the ACE Shareholder and resulting solely from the Automatic Conversion, provided that each ACE Shareholder shall file reports, in the form prescribed under the Legislation, disclosing all changes in its holding resulting from the Automatic Conversion, within the time required by the Legislation, based on the Quarterly Disclosure of Outstanding Share Data.

Under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”),

- (a) the Autorité des marchés financiers 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 section. For the purposes of this decision, the following terms have the meaning ascribed to them hereinafter:

- (i) “ACE Shareholder” shall mean a person who holds, owns or controls ACE Shares or ACE Preferred Shares (when treated on an as-converted basis);

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- (ii) “ACE Shares” shall mean collectively the Variable Voting Shares and Voting Shares;
- (iii) “Air Canada Parties” shall mean Air Canada and the following of its wholly-owned subsidiaries: 3838722 Canada Inc., Air Canada Capital Ltd., Jazz Air Inc., Manoir International Finance Inc., Simco Leasing Ltd., Wingco Leasing Inc. and ZIP Air Inc.;
- (iv) “Automatic Conversion” shall mean the fact that upon a transfer of Variable Voting Shares to a Canadian (as defined in the CTA), such Variable Voting Shares will automatically be converted into Voting Shares and upon a transfer of Voting Shares to a non-Canadian, such Voting Shares will automatically be converted into Variable Voting Shares;
- (v) “CBCA” shall mean the *Canada Business Corporations Act*;
- (vi) “CCAA” shall mean the *Companies' Creditors Arrangement Act* (Canada);
- (vii) “CTA” shall mean the *Canada Transportation Act*;
- (viii) “Global Voting Percentage” shall mean the percentage of voting rights attaching to the Voting Shares or the Variable Voting Shares (as the case may be) held by a person out of voting rights attaching to all issued and outstanding voting shares of ACE (including the 12,500,000 ACE preferred shares on an as converted basis) at that time;
- (ix) “Per Class Securityholding Percentage” shall mean the percentage of Voting Shares or Variable Voting Shares (as the case may be) as a class held by a person;
- (x) “Per Class Voting Percentage” shall mean the percentage of aggregate voting rights attached to the Voting Shares or Variable Voting Shares (as the case may be) as a class held by a person;
- (xi) “Plan” shall mean the consolidated plan of reorganization, compromise and arrangement of the Air Canada Parties under the CCAA;
- (xii) “Quarterly Disclosure of Outstanding Share Data” shall mean the quarterly disclosure of the number of issued and outstanding shares in each class of ACE Shares made by ACE in accordance with National Instrument 51 - 102 - *Continuous Disclosure Obligations*;

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(xiii) “Variable Voting Shares” shall mean the Class A Variable Voting Shares of ACE;

(xiv) “Voting Shares” shall mean the Class B Voting Shares of ACE.

Representations

The Decision is based on the following facts represented to the Decision Makers by ACE:

1. ACE was originally incorporated under the CBCA for purposes of, among other things, issuing ACE Shares to the creditors of the Air Canada Parties (as above defined) (the “Creditors”) and proceeding with a rights offering, the whole in accordance with the Plan;
2. Further to the implementation of the Plan, Air Canada is the main operating company in a consolidated group of which ACE is the parent holding company;
3. Further to the implementation of the Plan, ACE's authorized share capital consists of three classes of shares: (i) an unlimited number of Variable Voting Shares, (ii) an unlimited number of Voting Shares, and (iii) 12,500,000 preferred shares;

Description of Share Capital

4. Pursuant to the terms of the Plan, Voting Shares were effectively distributed to Creditors who were Canadians (as defined in the CTA). Variable Voting Shares were effectively distributed to Creditors who were not Canadians (as defined in the CTA);
5. The share capital of ACE contains provisions to ensure compliance with the foreign ownership restrictions of the CTA. The Variable Voting Shares are entitled to one vote per Variable Voting Share unless the number of Variable Voting Shares outstanding (including the ACE Preferred Shares, calculated on an as converted basis, if held, beneficially owned or controlled by a person who is not Canadian), as a percentage of the total number of voting shares of ACE outstanding exceeds 25%. In such case, the vote attached to each Variable Voting Share will decrease automatically and proportionately so that the Variable Voting Shares as a class (including the ACE Preferred Shares, calculated on an as converted basis, if held, beneficially owned or controlled by a person who is not Canadian) do not carry more than 25% of the aggregate votes attached to all issued and outstanding voting shares of ACE;

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6. The Variable Voting Shares may only be held, beneficially owned or controlled, directly or indirectly, by persons who are not Canadians (as defined in the CTA). An issued and outstanding Variable Voting Share shall be converted into one Voting Share, automatically and without any further act of ACE or of the holder, if (i) such Variable Voting Share becomes held, beneficially owned and controlled, directly or indirectly, otherwise than by way of security only, by a Canadian; or (ii) the provisions contained in the CTA relating to foreign ownership restrictions are repealed and not replaced with other similar provisions;
7. The Voting Shares may only be held, beneficially owned and controlled by Canadian (as defined in the CTA). Unless the foreign ownership restrictions of the CTA are repealed and not replaced with other similar restrictions, an issued and outstanding Voting Share shall be converted into one Variable Voting Share, automatically and without any further act of ACE or the holder, if such Voting Share becomes held, beneficially owned or controlled, directly or indirectly, otherwise than by way of security only, by a Person who is not a Canadian;
8. Pursuant to the Legislation, every offeror that acquires beneficial ownership of, or the power to exercise control or direction over voting or equity securities of any class of shares of a reporting issuer that, together with such offeror's securities of that class, would constitute 10% or more of the outstanding securities of that class must, inter alia, (i) issue and file with the securities regulatory authorities of the Jurisdictions a press release containing the information prescribed by the Legislation; and (ii) within two business days, file a report with the securities regulatory authorities of the Jurisdictions, in the form and containing the information prescribed by the Legislation (the "Early Warning Requirements"); and
9. Pursuant to the Legislation, every person exercising control over more than 10% of a class of shares of a reporting issuer to which are attached equity rights and any insider, as defined in the Legislation, shall disclose to the securities regulatory authorities of the Jurisdictions, its/his control over the securities of the issuer, by filing reports containing the information prescribed by the Legislation and within the time prescribed by Legislation (the "Insider Reporting Requirements").

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;

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The decision of the Decision Makers under the Legislation is that:

- (a) each ACE Shareholder be exempted from the Early Warning Requirements in connection with a change in its Per Class Securityholding Percentage that arises without any action being taken by the ACE Shareholder and resulting solely from the Automatic Conversion until the ACE Shareholder takes an action that changes its Per Class Securityholding Percentage in which case it shall observe the Early Warning Requirements and shall make the necessary disclosure based on the most recent Quarterly Disclosure of Outstanding Share Data available at the time of the change; and
- (b) each ACE Shareholder be exempted from the Insider Reporting Requirements in connection with a change in its direct or indirect beneficial ownership of, control of, or direction over, ACE Shares, either in its Per Class Securityholding Percentage, ACE Shareholder Per Class Voting Percentage or Global Voting Percentage that arises without any action being taken by the ACE Shareholder and resulting solely from the Automatic Conversion, provided that the ACE Shareholder shall observe the Insider Reporting Requirements, disclose all changes in its direct or indirect beneficial ownership of, control of, or direction over ACE Shares resulting from the Automatic Conversion, based on the most recent Quarterly Disclosure of Outstanding Share Data available and within the time period prescribed by the Legislation to do so, which period shall start on the date of the release by ACE of the Quarterly Disclosure of Outstanding Share Data by ACE.

Dated February 9, 2005

Daniel Laurion
Surintendant de la Direction de l'encadrement
des marchés de valeurs