

2006 BCSECCOM 725

November 22, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-102, s.13.1 – Continuous Disclosure Obligations - *Prospectus-level disclosure relief*: 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 - *Executive compensation disclosure relief*: Information circular - An issuer wants relief from the requirement to include disclosure in its information circular regarding executive compensation and indebtedness of directors - 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

National Instrument 51-102, s.13.1
Form 51-102F5, Items 8, 10 and 14.2
Securities Act, ss. 117 and 119

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
NBS Technologies Inc.
(the “Applicant”)

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 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 executive officers in a management information circular of the Applicant relating to a special meeting of its shareholders to be held to approve the amalgamation (the “Amalgamation”) of the Applicant and an indirect wholly-owned subsidiary (“Subco”) of Brookfield Asset Management Inc. (“Brookfield”) 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 factual information below as provided by the Applicant and confirmed by Brookfield where applicable.

1. The Applicant is a provider of smart card manufacturing and personalization equipment, secure identity solutions and point of sale transaction services for financial institutions, governments and corporations worldwide. The Applicant is a global company with locations in Canada, China, France, the U.S. and the United Kingdom, along with a worldwide dealer network.
2. The authorized capital of the Applicant consists of an unlimited number of common shares (“Common Shares”), an unlimited number of preferred shares (“Preferred Shares”) and 2,500,000 special shares. As at the date hereof, there are issued and outstanding 43,151,922 Common Shares and 1,200,000 Preferred Shares. No special shares are issued and outstanding. The Common Shares are listed on the Toronto Stock Exchange under the symbol “NBS”.

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3. 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 securities legislation of the Jurisdictions.
4. The Applicant is incorporated under the *Business Corporations Act* (Ontario) (the “OBCA”). The principal office of the Applicant is located at 703 Evans Avenue, Suite 400, Toronto, M9C 5E9.
5. Brookfield, a corporation incorporated under the OBCA is focused on property, power and infrastructure assets, has over \$50 billion of assets under management and is co-listed on the New York and Toronto Stock Exchanges under the symbol “BAM”.
6. Brookfield is a reporting issuer or equivalent thereof in each of the Jurisdictions.
7. As of the date hereof, Brookfield and its affiliates beneficially own 39,526,226 Common Shares, representing approximately 91.6% of the issued and outstanding Common Shares, and all of the issued and outstanding Preferred Shares.
8. Subco is incorporated under the OBCA and was incorporated solely for the purpose of completing the Amalgamation. Subco is an indirect wholly-owned subsidiary of Brookfield.
9. On November 6, 2006, the Corporation and Brookfield announced that the Corporation had entered into an agreement with Brookfield to effect a going private transaction whereby Brookfield will acquire all of the outstanding Common Shares not already owned by Brookfield or its affiliates.
10. The Applicant has called a special meeting (the “Meeting”) of holders of Common Shares to be held on or about December 18, 2006 to approve 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 the Applicant and Subco (the “Amalgamation Agreement”), the material terms of which will be described in the management information circular (the “Circular”) to be sent to all holders of Common Shares.
11. In connection with the Meeting, the Applicant expects to mail on or about November 24, 2006 to each holder of Common Shares (i) a notice of the

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Meeting; (ii) a form of proxy; (iii) a letter of transmittal; and (iv) the Circular, which will be prepared in accordance with the OBCA and applicable securities laws.

12. 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 the Applicant, Subco or the holders of Common Shares, (A) each Common Share (other than any Common Share held by Brookfield or its affiliates or a shareholder who has not effectively withdrawn or otherwise ceased to be entitled to such dissent rights pursuant to Section 176 of the OBCA (each a “Dissenting Common 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”), (B) each Common Share held by Brookfield or its affiliates will be cancelled and converted automatically into one validly issued, fully paid and non-assessable common share in the capital of Amalco, (C) each issued and outstanding Preferred Share will be exchanged for one preferred share in the capital of Amalco, and (D) each Dissenting Common Share will be cancelled and converted automatically into the right to receive payment from Amalco with respect thereto in accordance with section 176 of the OBCA; and
- (b) all holders of Common Shares (other than Brookfield and its affiliates), including insiders of the Applicant, will receive identical consideration for their Common Shares in the Amalgamation.

13. 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 \$1.00 per share (the “Redemption Amount”) and a non-transferable contingent entitlement to share in the net proceeds received by the Applicant from any final adjudication or final settlement of all matters related to the claims and counterclaims of the Card Technology v. DataCard litigation involving the Applicant and the related proceedings in the United States Department of Justice. No 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.

14. The Applicant’s directors are not being elected at the Meeting, and no action is to be taken at the Meeting on any matter involving executive compensation

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or the indebtedness of directors or executive officers of the Applicant, and neither executive compensation disclosure nor disclosure as to the indebtedness of directors and executive officers of the Applicant would reasonably be expected to affect a shareholder's decision whether or not to vote in favour of the Amalgamation.

15. The consideration paid by Amalco on the Redemption will be funded directly or indirectly by Brookfield. Brookfield 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
Manager, Corporate Finance
Ontario Securities Commission