

2008 BCSECCOM 50

December 3, 2007

Headnote

Mutual Reliance Review System for Exemptive Relief Applications

Securities Act, s. 171 – revocation of a previous decision - An issuer wants a previous decision revoked - Since the previous relief was granted the issuer's circumstances have changed; certain conditions to the relief are no longer appropriate; alternative conditions can be structured that address the issuer's new circumstances

National Instrument 51-102 *Continuous Disclosure Obligations*, s. 13.1 – all continuous disclosure requirements - General - An issuer wants an exemption from having to file continuous disclosure documents to permit it to rely on the continuous disclosure documents of its parent issuer - The issuer issues both exchangeable securities and credit support securities and, as a result, cannot rely on either the exchangeable security issuer exemption or credit support issuer exemption in NI 51-102; the issuer also issues certain other securities that do not comply with the conditions for these exemptions, but these securities are ultimately convertible into securities of the parent company; the issuer will otherwise comply with the exchangeable security issuer and credit support issuer exemptions in NI 51-102

Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*, s. 4.5 – certification requirements - An issuer wants relief from the requirements in Parts 2 and 3 of MI 52-109 to file annual and interim certificates - The issuer has applied for and received an exemption from filing interim and annual financial statements

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 171

National Instrument 51-102, ss. 13.1, 13.3 and 13.4

Multilateral Instrument 52-109, s. 4.5

In the Matter of
the Securities Legislation of
Alberta, British Columbia, Manitoba and Ontario

and

2008 BCSECCOM 50

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

and

In the Matter of
Pet Valu Canada Inc.
and
Pet Valu, Inc.

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Provinces of Alberta, British Columbia, Manitoba and Ontario (the Jurisdictions) have received an application from Pet Valu Canada Inc. (Pet Valu Canada) and Pet Valu, Inc. (PVUS and, together with Pet Valu Canada, the Filers) for a decision under the securities legislation of the Jurisdictions (the Legislation) that:

1. Pet Valu Canada is exempt from the requirements set out in National Instrument 51-102 – *Continuous Disclosure Obligations* (NI 51-102) and is exempt from any comparable continuous disclosure requirements under the Legislation that have not yet been repealed or otherwise rendered ineffective as a consequence of the adoption of NI 51-102 (together with NI 51-102, the Continuous Disclosure Requirements), subject to certain conditions;
2. Pet Valu Canada is exempt from the requirements (the Certification Requirements) set out in Multilateral Instrument 52-109 – *Certification of Disclosure in Issuer's Annual and Interim Filings* (MI 52-109), subject to certain conditions;
3. The Orders (as defined below) be revoked;
4. Under the Mutual Reliance Review System for Exemptive Relief Applications:
 - (a) the Ontario Securities Commission (the OSC) is the principal regulator for this Application; and

2008 BCSECCOM 50

(b) this MRRS Decision Document evidences the decisions of each Decision Maker.

Interpretation

Unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 – *Definitions*.

Representations

The decisions are based on the following facts presented by the Filers:

Pet Valu Canada

1. Pet Valu Canada is a specialty retailer of food and supplies for dogs, cats, birds, fish, and small animals and a franchisor of pet food and pet-related supply outlets. Pet Valu Canada and its subsidiaries represent approximately 84% of the consolidated assets and approximately 76% of the consolidated revenues of the consolidated Pet Valu corporate entity, comprised of PVUS, Pet Valu Canada and their subsidiaries (the Pet Valu Group).
2. Pet Valu Canada was continued in its current form under the laws of the Province of Ontario by certificate and articles of arrangement dated April 23, 1996, is a reporting issuer in each of the Jurisdictions and, to the best of its knowledge, information and belief, is not in default of any requirement of the Legislation of the Jurisdictions. Pet Valu Canada's head office is located in Markham, Ontario.
3. Pursuant to a corporate reorganization of Pet Valu Canada and its subsidiaries by way of a plan of arrangement under section 182 of the *Business Corporations Act* (Ontario) effective on April 23, 1996, each holder of Pet Valu Canada's common shares received, in exchange for such common shares, an equal number of exchangeable non-voting shares of Pet Valu Canada (the Exchangeable Shares). The Exchangeable Shares are exchangeable on a one-for-one basis into shares of common stock of PVUS. The Exchangeable Shares are "designated exchangeable securities" (as defined in subsection 13.3(1) of NI 51-102).

PVUS

4. Pet Valu Canada's parent corporation is PVUS, a Delaware corporation. PVUS is a reporting issuer in each of the Jurisdictions. PVUS became a reporting issuer in each of the Jurisdictions as a result of the Decision Makers issuing a final receipt for a non-offering prospectus of PVUS on April 27, 2007. PVUS is not currently a registrant with the United States Securities and

2008 BCSECCOM 50

Exchange Commission under the *United States Securities Exchange Act of 1934*, as amended. To the best of its knowledge, information and belief, PVUS is not in default of any requirements under the Legislation.

Share Capital of Pet Valu Canada

5. The authorized share capital of Pet Valu Canada consists of an unlimited number of common shares, an unlimited number of Exchangeable Shares, 7,000,000 Class A convertible preferred shares (Class A Shares), 176,845 Class B convertible preferred shares (Class B Shares) and one Class C preferred share (Class C Share). None of the Class A Shares, Class B Shares or the Class C Share is currently outstanding. There are currently one common share (held by PVUS) and 8,977,416 Exchangeable Shares issued and outstanding as at September 30, 2007.
6. Holders of the Exchangeable Shares have voting rights in PVUS, pursuant to a voting and exchange trust agreement among Pet Valu Canada, PVUS and CIBC Mellon Trust Company (the Trustee). Under the terms of this agreement, PVUS has issued to the Trustee and the Trustee currently holds 9,626,274 Special Voting Shares (as defined below) for the benefit of the holders of the Exchangeable Shares (other than PVUS or any entity controlled by PVUS). The Special Voting Shares carry, in the aggregate, that number of votes, exercisable at any meeting of stockholders of PVUS at which holders of PVUS common stock are or would be entitled to vote, equal to the number of Exchangeable Shares outstanding at such time (excluding those owned by PVUS and any entity controlled by PVUS). Each holder of an Exchangeable Share is entitled to instruct the Trustee as to the manner in which the votes attached to the Special Voting Shares and corresponding to the Exchangeable Shares held by such holder are to be voted. The voting rights attached to the Special Voting Shares are exercisable by the Trustee only upon receipt of instructions from the relevant holders of the Exchangeable Shares (other than PVUS or any entity controlled by PVUS).
7. Holders of Exchangeable Shares are entitled to receive dividends equivalent to the dividends paid from time to time on shares of the common stock of PVUS. The declaration date, record date and payment date for dividends on the Exchangeable Shares will be the same as that for the corresponding dividends on the common stock of PVUS.
8. In the event of the liquidation, dissolution or winding up of Pet Valu Canada, or any other distribution of the assets of Pet Valu Canada for the purpose of winding up its affairs, a holder of Exchangeable Shares is entitled to receive, subject to the prior rights of the holders of any shares ranking senior to the

2008 BCSECCOM 50

Exchangeable Shares with respect to priority in the distribution of assets upon dissolution, liquidation or winding up and subject to compliance with applicable securities laws, for each Exchangeable Share an amount to be satisfied by the issuance of one share of common stock of PVUS, together with a cash amount equivalent to the full amount of any dividends declared and unpaid on each such Exchangeable Share.

9. The Exchangeable Shares are listed and posted for trading on The Toronto Stock Exchange (the TSX) under the symbol "PVC". The warrants issued by Pet Valu Canada in connection with the rights offering in 1996 (described below) were listed on the TSX, under the symbol "PVC.WT", but were delisted in July 2006 upon their expiry in accordance with their terms. Other than the Exchangeable Shares, no other securities of Pet Valu Canada or PVUS are traded on a "marketplace", as that term is defined under National Instrument 21-101 – *Marketplace Operation*.

Debentures and Warrants of Pet Valu Canada

10. In 1999, Pet Valu Canada issued 8.5% convertible unsecured debentures (the 1999 Debentures) in the amount of C\$6,327,934, C\$2,627,934 of which was due in 2004 and C\$3,700,000 of which is due in 2009. The 1999 Debentures are convertible, at any time, into Exchangeable Shares at a conversion price of C\$5.50 per share and are repayable by Pet Valu Canada on the terms specified in the applicable debenture holder agreement. 1999 Debentures totalling C\$2,627,934, along with accrued interest thereon, were repaid in 2005. C\$3,700,000 of 1999 Debentures remain outstanding and are held by one registered holder. Interest on the 1999 Debentures is paid quarterly.
11. In 2004, Pet Valu Canada issued to Penfund Mezzanine Limited Partnership II (Penfund) a C\$15,000,000 secured subordinated debenture (the 2004 Debentures), as well as share purchase warrants entitling Penfund to purchase up to 924,200 Exchangeable Shares. The share purchase warrants (Warrants) were issued in three tranches, as follows: (1) 810,411 warrants exercisable at C\$2.00 at the option of the holder (Tranche A Warrants); (2) 66,533 warrants exercisable at C\$5.50 at the option of the holder (Tranche B Warrants); and (3) 47,256 warrants exercisable at C\$5.50 (Tranche C Warrants). Each Warrant entitles the holder to purchase one Exchangeable Share. All Warrants expire on September 30, 2009. The Tranche C Warrants were cancelled on March 31, 2005 in accordance with their terms. Penfund exercised 25,000 of the Tranche A Warrants on or about June 27, 2006. The 2004 Debentures were prepaid in their entirety, in accordance with their terms, on October 31, 2006 using cash flow from current operations and availability under Pet Valu Canada's current bank operating line. 785,411 Tranche A Warrants and

2008 BCSECCOM 50

66,533 Tranche B warrants remain outstanding. In December 2006, the Tranche A Warrants and Tranche B Warrants were sold to various funds managed by Goodwood Inc.

12. On July 24, 2006, Pet Valu Canada closed a private placement in which it issued 10% non-convertible unsecured subordinated debentures. The debentures are fully and unconditionally guaranteed by PVUS. Subscriptions of C\$8,820,000 were received under the private placement.

Stock Options of Pet Valu Canada

13. Pet Valu Canada has an Executive Stock Option Plan and a Board Stock Option Plan (collectively, the Plans) that provide for the granting of options (Options) to purchase Exchangeable Shares to certain full-time employees of Pet Valu Canada, any subsidiary thereof, and Pet Valu International Inc., and to members of the board of directors of Pet Valu Canada. 877,610 Exchangeable Shares have been reserved for issuance pursuant to the Plans. As of September 30, 2007, there were 479,950 Options outstanding.
14. Other than the securities described in representations 5 through 13, Pet Valu Canada has no securities, including debt securities, outstanding.

Share Capital of PVUS

15. The authorized share capital of PVUS consists of 20,000,000 shares of common stock having a par value of US\$0.0001 per share, one share of special non-participating voting stock having a par value of US\$1.00, 9,626,274 shares of additional special non-participating voting stock having a par value of US\$0.0001 per share (the Special Voting Shares) and 100,000,000 shares of preferred stock having a par value of US\$0.0624 per share (Preferred Stock), of which 100 shares of PVUS common stock (held indirectly by a director of PVUS and Pet Valu Canada), 9,626,274 Special Voting Shares (held by CIBC Mellon Trust Company, as trustee), and 100,000,000 shares of Preferred Stock (held by PVUS Holdings Inc., a subsidiary of Pet Valu Canada) are issued and outstanding as of September 30, 2007.
16. Each holder of record of PVUS common stock has one vote in respect of each share held by him or her. Each holder is entitled to dividends when, as and if declared by the Board of Directors of PVUS out of the assets of PVUS which are by law available therefor. Each holder is further entitled, in the event of any liquidation, dissolution or winding up of PVUS, to the remaining assets of

2008 BCSECCOM 50

PVUS legally available for distribution, subject to prior rights of holders of Preferred Stock.

17. As indicated above, each Special Voting Share has the number of votes as is equal to the number obtained by dividing the number of Exchangeable Shares outstanding from time to time which are not owned by PVUS or any of its subsidiaries by 9,626,274. No dividend rights or rights upon dissolution or winding up of PVUS are attached to the Special Voting Shares.
18. The holders of Preferred Stock are not entitled to vote, except in the following limited circumstances: (i) when the provisions of the certificate of incorporation affecting the Preferred Stock are proposed to be changed or deleted; (ii) when dividends payable under the Preferred Stock have not been paid; (iii) when the meeting is for the purpose of authorizing the dissolution of PVUS or the sale of all or a substantial part of its assets; and (iv) where otherwise required by law. Each holder of Preferred Stock is entitled to cumulative dividends at the rate of 8% per annum, payable annually on May 26 of each year. Upon the dissolution or winding up of PVUS, holders of Preferred Stock are entitled to be paid out of the assets of PVUS in an amount equal to US\$0.0624 per share before any distribution or payment to any holder of any other class of stock ranking junior to the Preferred Stock. The Preferred Stock is redeemable, in accordance with certain specified terms, at the option of both PVUS and the holder. As indicated above, all of the Preferred Stock is owned by a subsidiary of Pet Valu Canada.

The Filers' Current Continuous Disclosure Regime

19. Pursuant to an order of the OSC dated February 18, 1998 (the Order), Pet Valu Canada is exempt from the requirements of sections 77, 78 and 79 of the *Securities Act* (Ontario), which relate to certain continuous disclosure obligations, provided that: (1) PVUS prepares, files and sends consolidated financial statements of PVUS; (2) PVUS complies with the requirements in respect of material changes in the affairs of PVUS; and (3) PVUS remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities of Pet Valu Canada other than the Exchangeable Shares.
20. Pursuant to the Order, Pet Valu Canada has also obtained a ruling from the OSC exempting it from the requirements of subsection 81(2) of the *Securities Act* (Ontario), relating to the provision of an information circular, provided that either (1) PVUS files consolidated reports in compliance with subsection 81(2) of the *Securities Act* (Ontario), or (2) PVUS files a form of information circular prepared and filed in accordance with Part XIX of the *Securities Act* (Ontario).

2008 BCSECCOM 50

21. Similar orders were granted by the British Columbia Securities Commission and the Alberta Securities Commission (together with the Order, the Orders).
22. The requirement to file an annual information form (AIF) is not covered by the Orders. In the past, Pet Valu Canada has filed its own AIF, which includes information about both Pet Valu Canada and PVUS. The AIFs for the fiscal years ended December 31, 2005 and December 30, 2006 were filed in the name of both Pet Valu Canada and PVUS and, as before, contained information about both Pet Valu Canada and PVUS.
23. PVUS currently files, and intends to continue to file following the grant of the requested relief, annual and interim financial statements prepared in U.S. dollars using Canadian GAAP and, with respect to its annual financial statements, audited in accordance with Canadian generally accepted auditing standards, as well as annual and interim financial statements prepared in U.S. dollars using U.S. GAAP and, with respect to its annual financial statements, audited in accordance with Canadian generally accepted auditing standards.

The Requested Relief

24. The requested relief will simplify PVUS and Pet Valu Canada's continuous disclosure obligations. Preparing and, where applicable, printing and distributing continuous disclosure materials of both PVUS and Pet Valu Canada is costly and time consuming.
25. The requested relief from the Continuous Disclosure Requirements is substantially similar to the exemptions available to "exchangeable security issuers" and "credit support issuers" under sections 13.3 and 13.4 of NI 51-102. However, the exemption in section 13.3 of NI 51-102 is not available because Pet Valu Canada has securities issued and outstanding other than those specified in paragraph 13.3(2)(c). The exemption in section 13.4 of NI 51-102 is not available because Pet Valu Canada has securities issued and outstanding other than those specified in paragraph 13.4(2)(c).
26. The requested relief from the Certification Requirements is substantially similar to the exemptions available under sections 4.3 and 4.4 of MI 52-109. However, the exemption in section 4.3 of MI 52-109 is not available because Pet Valu Canada is not qualified for the relief contemplated by, and is not in compliance with the requirements and conditions set out in, section 13.3 of NI 51-102. The exemption in section 4.4 of MI 52-109 is not available because Pet Valu Canada is not qualified for the relief contemplated by, and is not in

2008 BCSECCOM 50

compliance with the requirements and conditions set out in, section 13.4 of NI 51-102.

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 decisions has been met;

THE DECISION of the Decision Makers pursuant to the Legislation is:

27. Pet Valu Canada is exempt from the Continuous Disclosure Requirements, provided that:

- (a) PVUS continues to be the direct or indirect beneficial owner of all the issued and outstanding voting securities of Pet Valu Canada (currently being the common share of Pet Valu Canada);
- (b) PVUS remains a reporting issuer in each of the Jurisdictions that has filed all of the documents it is required to file under NI 51-102 as if PVUS is a non-venture issuer;
- (c) From the date of this Decision, Pet Valu Canada does not issue any securities, other than:
 - (i) “designated exchangeable securities” (as defined in subsection 13.3(1) of NI 51-102) for which PVUS is the parent issuer (as defined in subsection 13.3(1) of NI 51-102);
 - (ii) “designated credit support securities” (as defined in subsection 13.4(1) of NI 51-102) for which PVUS is the credit supporter (as defined in subsection 13.4(1) of NI 51-102);
 - (iii) warrants and board and employee stock options under new or existing plans that are solely convertible into, or solely exchangeable for, Exchangeable Shares, which for greater certainty includes Options and Warrants;
 - (iv) convertible debt and convertible preferred shares that are solely convertible into Exchangeable Shares, provided that PVUS has provided alternative credit support or a full and unconditional guarantee in respect of such debt or preferred shares, as further described under the definition of “designated credit support securities” in Section 13.4 of NI 51-102;

2008 BCSECCOM 50

- (v) securities issued to and held by PVUS or an affiliate (as defined in NI 51-102) of PVUS;
 - (vi) debt securities issued to and held by banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches, savings or credit unions, financial services cooperatives, insurance companies or other financial institutions; and
 - (vii) securities issued under exemptions from the registration requirement and prospectus requirement in section 2.35 of National Instrument 45-106 *Prospectus and Registration Exemptions*;
- (d) Pet Valu Canada does not have any securities outstanding other than securities that fall within the categories described in clauses 27(c)(i) through (vii), above, and the 1999 Debentures.
- (e) Pet Valu Canada files in electronic format a notice indicating that it is relying on the continuous disclosure documents filed by PVUS and indicating that such documents can be found for viewing in electronic format on the SEDAR profile for PVUS;
- (f) all holders of Pet Valu Canada's Exchangeable Shares are sent all disclosure materials that would be required to be sent to holders of the common shares of PVUS in the manner and at the time required by the Legislation;
- (g) all holders of Pet Valu Canada's designated credit support securities that include debt are concurrently sent all disclosure materials that are sent to holders of similar debt of PVUS, if any, in the manner and at the time required by the Legislation;
- (h) all holders of Pet Valu Canada's designated credit support securities that include preferred shares are concurrently sent all disclosure materials that are sent to holders of similar preferred shares of PVUS in the manner and at the time required by the Legislation;
- (i) PVUS complies with the Legislation in respect of making public disclosure of material information on a timely basis and immediately issues in Canada and files any news release that discloses a material change in its affairs;

2008 BCSECCOM 50

- (j) Pet Valu Canada issues in Canada a news release and files a material change report in accordance with Part 7 of NI 51-102 for all material changes in respect of the affairs of Pet Valu Canada that are not also material changes in the affairs of PVUS;
- (k) PVUS includes in all mailings of proxy solicitation materials to holders of Pet Valu Canada's designated exchangeable securities a clear and concise statement that:
 - (i) explains the reason the mailed material relates to PVUS;
 - (ii) indicates that the designated exchangeable securities are, as nearly as practicable, the economic equivalent to the underlying securities; and
 - (iii) describes the voting rights associated with the designated exchangeable securities;
- (l) PVUS files, as a separate document, with each copy of its interim and annual financial statements, consolidating summary financial information for PVUS presented with a separate column for each of the following: (i) PVUS; (ii) Pet Valu Canada; (iii) any other subsidiary of PVUS on a combined basis; (iv) consolidating adjustments; and (v) the total consolidated amounts, and prepared on the basis set out in section 13.4(2)(g)(ii) of NI 51-102;
- (m) such exemption from the Continuous Disclosure Requirements will cease to apply on November 15, 2012.

THE FURTHER DECISION of the Decision Makers pursuant to the Legislation is:

28. Pet Valu Canada is exempt from the Certification Requirements, provided that

- (a) Pet Valu Canada qualifies for the relief contemplated by, and PVUS and Pet Valu Canada are in compliance with the requirements and conditions set out in, the exemptive relief from the Continuous Disclosure Requirements set out in paragraph 27 above;
- (b) PVUS satisfies and continues to satisfy the requirements set out in MI 52-109; and
- (c) such exemption from the Certification Requirements will cease to apply on November 15, 2012.

2008 BCSECCOM 50

Jo-Anne Matear
Assistant Manager, Corporate Finance
Ontario Securities Commission

THE FURTHER DECISION of the Decision Makers, other than the Decision Maker in Manitoba, pursuant to the Legislation is:

29. The Orders are hereby revoked.

Robert L. Shirriff
Ontario Securities Commission

Suresh Thakrar
Ontario Securities Commission