

2003 BCSECCOM 716

Headnote

Relief from take over bid requirements in connection with the purchase of all of the outstanding common shares of a reporting issuer from a single B.C. located seller – seller unable to rely on statutory exemptions because the offer being made to all security holders of common shares

Exemption Order

Fortis Inc. and Aquila Networks British Columbia Ltd.
Section 114(2)(c) of the *Securities Act*, R.S.B.C. 1996, c. 418

Background

- ¶ 1 Fortis and Aquila have applied for an exemption from the take over bid requirements of sections 105 to 110 of the Act in connection with Fortis' offer to acquire all of the outstanding common shares of Aquila Networks Canada (British Columbia) Ltd. (ANCBC) from Aquila;

Representations

- ¶ 2 Fortis and Aquila represent that:
1. Fortis was incorporated under the laws of Newfoundland and Labrador and has its head office in St. John's, Newfoundland and Labrador;
 2. Fortis is a reporting issuer in all provinces and territories in Canada and is not in default of any requirement of the Act or the *Securities Rules*, B.C. Reg. 194/97;
 3. Aquila was incorporated on September 11, 1986 under the *Company Act* (British Columbia);
 4. Aquila is an indirect, wholly-owned subsidiary of Aquila, Inc., a Delaware company listed on the New York Stock Exchange;

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5. ANCBC is a wholly-owned subsidiary of Aquila that was incorporated by private act of the British Columbia Legislature on May 8, 1897;
6. Aquila and ANCBC are in the business of electricity generation, transmission and distribution in British Columbia;
7. executive offices of Aquila and ANCBC are located in Trail, British Columbia and a majority of the ANCBC directors reside in British Columbia;
8. ANCBC is a reporting issuer under the Act and in Ontario;
9. ANCBC is not in default of any requirement of the Act or the Rules;
10. ANCBC's authorized capital consists of 500,000,000 common shares with a par value of \$100 of which 765,000 common shares are outstanding and 500,000,000 preference shares with a par value of \$25 of which no preference shares are outstanding;
11. ANCBC has six series of outstanding, non-convertible debt securities held by approximately six institutional investors;
12. there is no published market for the securities of ANCBC;
13. Fortis' offer to acquire the ANCBC shares from Aquila has been negotiated as part of a larger transaction;
14. Aquila does not need the protection of the take over bid requirements of sections 105 to 110 of the Act in connection with this transaction;
15. the purchase of the ANCBC shares by Fortis constitutes a take over bid within the meaning of the Act because the offer is being made to a person in British Columbia;
16. Fortis cannot rely on the exemption available in section 164 of the Rules because it cannot state that the bid is not made generally to the class of security holders that is subject to the take over bid, as required by that section;

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Order

¶ 3 Because it is not prejudicial to the public interest, the Commission orders under section 114(2)(c) of the Act that Fortis is exempt from the requirements of sections 105 to 110 of the Act in connection with its purchase of the shares of ANCBC from Aquila.

¶ 4 October 23, 2003

Brenda Leong
Director