

2007 BCSECCOM 659

October 17, 2007

Headnote

Mutual Reliance Review System for Exemptive Relief Applications

Securities Act s. 48, 76 Employees & Consultants - Exemption from s. 34(1)(a) requirement to be registered as a dealer in connection with a trade and s. 61 requirement to file a prospectus in connection with a distribution involving employees, consultants, past employees and similar persons - Trades by an issuer of its securities to employees and senior management by way of a plan trust that is connected to the issuer, but is not technically a “related entity” (as defined in NI 45-106), of the issuer - The issuer is not reporting; the issuer’s securities are not quoted or listed on any recognized exchange or public market; plan participants voluntarily enter into the issuer’s employee investment plan; plan participants can only sell the securities of the issuer to a trust established by the issuer for tax efficiency reasons; the trust will have no other activities aside from purchasing securities that were issued under the employee investment plan and transferring those shares back to the issuer; if the trust is terminated, the issuer is obliged to assume all repurchase obligations under the employee investment plan; the trustees of the trust will be members of the board of directors or senior management of the issuer; no one trustee exercises control over the issuer and are therefore not related entities of the issuer

Securities Act s. 114(2) Issuer Bids - Exemption from the formal issuer bid requirements in Part 13 of the Act - General - An issuer requires an exemption from all issuer bid requirements in order to acquire its own common shares from its employees and senior management through a trust established for tax efficiency reasons that is connected to the issuer - The issuer is not reporting; the issuer’s securities are not quoted or listed on any recognized exchange or public market; the issuer will enter into share compensation arrangements with employees and senior management pursuant to an exemption; if the issuer acquired the shares issued under the share compensation arrangements directly, it would be exempt from the registration, prospectus and issuer bid requirements; the shares will be acquired by a trust established for tax efficiency and immediately transferred to the issuer at the same value, for cancellation by the issuer; if employees and senior management resell their shares to any entity other than the trust or the issuer, registration, prospectus and issuer bid requirements apply; any trade of common shares acquired by the trust are subject to resale restrictions

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61, 76, 114(2)

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In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Ontario and Québec
(the Jurisdictions)

and

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

and

In the Matter of
Lilydale Inc.
(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:
 - (a) the prospectus and registration requirements of the Legislation (the Prospectus and Registration Requirements) do not apply to acquisitions of the Filer's common shares (the Common Shares) by the Plan Trust (as defined below) from Plan Participants (as defined below);
 - (b) in respect of the Jurisdictions other than Québec, the issuer bid requirements in the Legislation (the Issuer Bid Requirements) do not apply to acquisitions of Common Shares by the Plan Trust from Plan Participants; and
 - (c) in Alberta only, the Issuer Bid Requirements do not apply to acquisitions of Common Shares by the Filer from the Plan Trust.(collectively, the Requested Relief).
2. Under the Mutual Reliance Review System for Exemptive Relief Applications (the MRRS):

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- (a) the Alberta Securities Commission (the Commission) is the principal regulator for this application; and
- (b) 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 presented by the Filer:
 - (a) The Filer is a corporation continued and amalgamated under the *Canada Business Corporations Act* with a registered office in Edmonton, Alberta.
 - (b) The authorized capital of the Filer consists of an unlimited number of Common Shares issuable in series. At June 15, 2007, there were 4,627,979 Common Shares issued and outstanding held by 1175 security holders.
 - (c) The Filer is not a reporting issuer or the equivalent thereof in any jurisdiction of Canada and its securities are not quoted or traded on any published market or stock exchange.
 - (d) The Filer is in compliance in all material respects with the applicable requirements of the Legislation.
 - (e) The Filer intends to implement both a long-term management incentive plan (LTIP) and an employee share ownership plan (ESOP, and together with the LTIP, the Plans) in order to provide an additional incentive to management and eligible employees (the Plan Participants).
 - (f) Participation in the LTIP is only available to senior management of the Filer (including the chief executive officer, vice presidents and directors who report to vice presidents). Participation in the ESOP is available to all employees of the Filer who have been employed (either on a full time or regular part time basis) for at least three calendar months.
 - (g) The LTIP involves an annual grant of Common Shares and options to acquire Common Shares to senior management as part of management's overall compensation.

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- (h) The ESOP involves a right on the part of employees to purchase Common Shares through regular payroll deductions or contributions.
- (i) Each of the Plans requires that when Plan Participants wish to sell Common Shares they must sell them to a trust (the Plan Trust) established by the Filer for this purpose, or in the event the Plan Trust is unable to purchase the shares for any reason, to the Filer. Plan Participants will be required to sell their Common Shares in certain circumstances, including death, disability and termination of employment. All sales of Common Shares are specified to occur at the full value per share (as established pursuant to the Plans).
- (j) Participation in the Plans by employees is voluntary and such persons are not induced to participate in the Plans by expectation of employment or continued employment with the Filer.
- (k) The administration of the Plans, including amendment and termination of the Plans, will at all times remain within the discretion of the Filer's board of directors. In addition, a plan committee consisting of management employees of the Filer will be established to administer the requirements of the ESOP.
- (l) The Common Shares to be issued under the LTIP will be a new series of existing Common Shares designated for such purpose. The Common Shares to be issued under the ESOP will either be a new series of Common Shares designated for such purpose or a new class of Common Shares created for such purpose.
- (m) The Plan Trust is being established to acquire Common Shares from Plan Participants rather than having the Common Shares repurchased directly by the Filer in order to permit Plan Participants to dispose of their Common Shares in a tax-efficient manner. After acquiring Common Shares from a Plan Participant, the Plan Trust will immediately transfer the Common Shares back to the Filer at the same value as the Plan Trust acquired the shares from the Plan Participant.
- (n) The Plan Trust will be settled by the Filer as a new inter-vivos trust that is resident in Canada with nominal capital. The trustees of the Plan Trust will be various members of the board of directors or senior management of the Filer. The Plan Trust will be established with the specific purpose of purchasing Common Shares from Plan Participants who wish to or are required to sell their Common Shares. The only beneficiary of the Plan Trust will be the Filer and it will not conduct any other activities.

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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:
 - (a) the Common Shares are acquired by a Plan Participant in compliance with Section 2.24 of National Instrument 45-106 *Prospectus and Registration Exemptions*; and
 - (b) the first trade of the Common Shares acquired by the Plan Trust pursuant to this decision will be subject to Section 2.6 of National Instrument 45-102 *Resale of Securities*.

William S. Rice, QC
Alberta Securities Commission

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Alberta Securities Commission