

2007 BCSECCOM 307

May 30, 2007

Headnote

Mutual Reliance Review System for Exemptive Relief Applications -

Securities Act s. 114(2) Issuer Bids - Exemption from Issuer Bid Requirements - The issuer is making an issuer bid under a modified Dutch auction - It cannot disclose that it will take up and pay for shares deposited on a pro rata basis - The issuer is disclosing the maximum number of shares it will acquire under the bid, and the minimum and maximum amount it will pay for shares tendered; as a result, the potential for confusion is minimal

Securities Rules s. 162(3) - Exemption from the Valuation Requirements - An issuer wants relief from the requirement to obtain a formal valuation in connection with an issuer bid for its outstanding securities - A liquid market for the issuer's securities exists prior to the bid; after the bid, there will be a market for the issuer's securities that is not materially less liquid than before the bid; the issuer can rely on exemptions from the requirement to obtain a valuation and disclose prior valuations in OSC Rule 61-501 or Québec Policy Q-27

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 105(g), 114(2)

Securities Rules, B.C. Reg. 194/97, ss. 162(2) and 162(3)

Form 62-903F, Item 9

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

and

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

and

In the Matter of
High Income Principal and Yield Securities Corporation
(the Filer)

MRRS Decision Document

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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, in connection with the proposed purchase by the Filer of a portion of its outstanding preferred shares (Shares) pursuant to an issuer bid (the Offer), the Filer be exempt from the requirements in the Legislation:

- (a) to take up and pay for securities proportionately according to the number of securities deposited by each security holder;
- (b) to provide disclosure in the issuer bid circular dated April 18, 2007 and filed on SEDAR (the Circular) of the proportionate take-up and payment; and
- (c) except in Ontario and Quebec, obtain a valuation of the Shares and provide disclosure in the Circular of such valuation, or a summary thereof (the Valuation Requirement)

(collectively, the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications

- (a) the British Columbia Securities Commission is the principal regulator for this application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

¶ 2 Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

¶ 3 This decision is based on the following facts represented by the Filer:

1. the Filer is a reporting issuer or the equivalent in each of the Jurisdictions;
2. the Filer is not in default of any requirement of the Legislation and is not on the list of defaulting reporting issuers maintained pursuant to such Legislation, where applicable;

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3. the Filer is a mutual fund corporation incorporated under the *Business Corporations Act* (Ontario) by articles of incorporation dated December 7, 2001;
4. the authorized capital of the Filer consists of:
 - (a) an unlimited number of Shares of which approximately 2,104,996 Shares were issued and outstanding as at April 17, 2007;
 - (b) an unlimited number of equity shares (the Equity Shares), of which approximately 1,631,981 equity shares were issued and outstanding as at April 17, 2007;
 - (c) an unlimited number of subordinate shares, of which approximately 228,433 subordinate shares were issued and outstanding as at April 17, 2007; and
 - (d) an unlimited number of class A shares, of which approximately 1000 class A shares were issued and outstanding as at April 17, 2007;
5. the Shares and the Equity Shares are listed and posted for trading on the Toronto Stock Exchange (the TSX);
6. to the best of the Filer's knowledge, no person or company holds more than 10% of the Shares;
7. on April 17, 2007, the closing price of the Shares on the TSX was \$25.80;
8. as specified in the Circular, the Filer is conducting the Offer pursuant to a modified Dutch auction procedure, as follows:
 - (a) the maximum number of Shares (less than all of the outstanding Shares) to be purchased pursuant to the Offer (the Specified Number of Shares) is 300,000 Shares;
 - (b) the range of prices within which the Filer is prepared to purchase such Shares (the Price Range) is not less than \$25.50 per Share or more than \$25.90 per Share;
 - (c) each holder of Shares (collectively, the Shareholders) wishing to tender to the Offer has the right either to:

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- (i) specify the lowest price within the Price Range at which such Shareholder is willing to sell its tendered Shares (an Auction Tender), or
 - (ii) not specify a price but elect to be deemed to have tendered the Shares purchased at the Purchase Price (determined according to subparagraph 8(e) below) (a Purchase Price Tender);
- (d) the aggregate amount the Filer will pay for Shares tendered to the Offer will not be determined until the Purchase Price is determined and the pro-rating is calculated in accordance with the procedures outlined in subparagraph 8(i) below;
- (e) the price per Share (Purchase Price) for the Shares tendered to the Offer and not withdrawn will be the lowest price that will enable the Filer to purchase up to the Specified Number of Shares, subject to additional Shares being taken up due to rounding as described in subparagraph 8(f) below, and it will be determined based upon the number of Shares tendered and not withdrawn pursuant to an Auction Tender at each price within the Price Range and tendered and not withdrawn pursuant to a Purchase Price Tender, with each Purchase Price Tender being considered a tender at the lowest price within the Price Range for the purpose of calculating the Purchase Price;
- (f) all Shares tendered at or below the Purchase Price will be taken up and paid for at the Purchase Price, calculated to the nearest whole Share so as to avoid the creation of fractional Shares, and subject to pro ration as described in subparagraph 8(i) below if the aggregate number of Shares tendered at or below the Purchase Price exceeds the Specified Number of Shares;
- (g) all Shares tendered at prices above the Purchase Price will be returned to the appropriate Shareholders;
- (h) all Shares tendered and not withdrawn by Shareholders who fail to specify any tender price for such tendered Shares or fail to indicate that they have tendered their Shares pursuant to a Purchase Price Tender will be considered to have been tendered pursuant to a Purchase Price Tender;
- (i) if the aggregate number of Shares validly tendered to the Offer and not withdrawn exceeds the Specified Number of Shares, the Filer will purchase Shares tendered at or below the Purchase Price on a *pro rata* basis;

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- (j) if the Offer is under-subscribed by the initial expiration date but all the terms and conditions thereof have been complied with except those waived by the Filer, the Filer may extend the Offer for at least 10 days, but the Legislation would require the Filer to first take up and pay for all Shares deposited and not withdrawn; all Shares tendered at that time and not withdrawn will be taken up and paid for at the Purchase Price, which would also be the price applicable for the Offer during the extended bid period; and
 - (k) by the time any extended bid period is over, the Offer may be over-subscribed, in which case the Filer intends to pro-rate only among the tendered Shares received during the extension and after the original expiration date;
9. prior to the expiry of the Offer, all information regarding the number of Shares tendered and the prices at which such Shares are tendered will be kept confidential by the depositary under the Offer, and the depositary will be directed by the Filer to maintain such confidentiality until the Purchase Price has been determined;
10. since the Offer is for less than all the Shares, if the number of Shares tendered to the Offer exceeds the Specified Number of Shares, the Legislation would require the Filer to:
- (a) take up and pay for deposited Shares proportionately, according to the number of Shares deposited by each Shareholder; and
 - (b) disclose in the Circular that the Filer would, if Shares tendered to the Offer exceeded the Specified Number of Shares, take up the Shares proportionately according to the number of Shares tendered by each Shareholder;
11. prior to the commencement of the Offer, there were 2,104,996 Shares issued and outstanding and, accordingly, the Offer is for approximately 14.25% of the total number of issued and outstanding Shares;
12. the Shares do not carry any residual right to participate in the earnings of the Filer and, upon the liquidation or winding-up of the Filer in its assets and consequently are not “equity securities” for the purposes of the Legislation; the Shares are also not, directly or indirectly, convertible into equity securities;

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13. the Filer intends to rely upon the exemptions from the Valuation Requirement in section 3.4(2) of Ontario Securities Commission Rule 61-501 and Regulation Q-27 (the Non-Equity Security Exemptions); and

14. the Circular:

- (a) specifies that the aggregate number of Shares that the Filer intends to purchase under the Offer will be up to the Specified Number of Shares;
- (b) discloses the mechanics for the take-up of and payment for, or the return of, Shares as described in paragraph 8 above;
- (c) explains that, by tendering Shares at the lowest price in the Price Range or under a Purchase Price Tender, a Shareholder can reasonably expect that the Shares so tendered will be purchased at the Purchase Price, subject to pro ration as described in paragraph 8 above;
- (d) discloses the facts supporting the Filer's reliance on the Non-Equity Security Exemptions;
- (e) contains the disclosure prescribed by the Legislation for issuer bids, except to the extent exemptive relief is granted by this decision; and
- (f) describes the review and approval process adopted by the board of directors of the Filer for the Offer, including any materially contrary view or abstention by a director.

Decision

- ¶ 4 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:

- (a) Shares deposited under the Offer and not withdrawn are taken up and paid for, or returned to Shareholders, in the manner described in paragraph 8; and

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(b) for the Valuation Requirement, the Filer can rely on the Non-Equity Security Exemptions.

Martin Eady, CA
Director, Corporate Finance
British Columbia Securities Commission