

# 2004 BCSECCOM 267

## Headnote

Mutual Reliance Review System for Exemptive Relief Application – relief from the requirement to take up and pay for securities proportionately to the number of securities deposited, the associated disclosure requirement, the requirement to state the number of securities sought under the offer, and the valuation requirement in connection with an issuer bid by modified Dutch auction

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C.1996, c. 418, ss. 105(g), 108(7) and 114(2)(c)

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

BC Form 62-903F, Items 2 and 9

## IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUÉBEC, NOVA SCOTIA, AND NEWFOUNDLAND AND LABRADOR

AND

## IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS

AND

## IN THE MATTER OF PETROKAZAKHSTAN INC.

## MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (collectively, the “Decision Makers”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador (collectively, the “Jurisdictions”) has received an application (the “Application”) from PetroKazakhstan Inc. (the “Corporation”) for a decision pursuant to the securities legislation of each of the Jurisdictions (collectively, the “Legislation”) that in connection with the proposed purchase by the Corporation of a portion of its outstanding common shares (the “Shares”) pursuant to an issuer bid (the “Offer”) the Corporation be exempt from the following:

- 1.1 the requirements in the Legislation to:

## 2004 BCSECCOM 267

- 1.1.1 take up and pay for securities proportionately according to the number of securities deposited by each securityholder (the “Proportionate Take Up and Payment Requirement”);
  - 1.1.2 provide disclosure in the issuer bid circular (the “Circular”) of such proportionate take up and payment (the “Associated Disclosure Requirement”);
  - 1.1.3 state the number of securities sought under the Offer (the “Number of Securities Requirement”); and
- 1.2 the requirement in the Legislation of each of the Jurisdictions, except for Ontario and Québec, to provide a formal valuation of the Shares (the “Valuation Requirement”);
2. AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Alberta Securities Commission is the principal regulator for this application;
3. AND WHEREAS unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions* or in Agence nationale d’encadrement du secteur financier notice 14-101;
4. AND WHEREAS the Corporation has represented to the Decision Makers that:
  - 4.1 the Corporation is incorporated under the *Business Corporations Act* (Alberta);
  - 4.2 the corporate head office of the Corporation is located at Suite 1460 Sun Life Plaza, North Tower, 140 – 4th Avenue S.W., Calgary, Alberta;
  - 4.3 the authorized capital of the Corporation consists of:
    - 4.3.1 an unlimited number of Shares; and
    - 4.3.2 an unlimited number of Class B redeemable preferred shares (the “Preferred Shares”);
  - 4.4 as of April 16, 2004, there were 80,567,509 Shares and no Preferred Shares issued and outstanding;

## 2004 BCSECCOM 267

- 4.5 the Shares are listed and posted for trading on the Toronto Stock Exchange (the “TSX”), the New York Stock Exchange, the London Stock Exchange and the Frankfurt Stock Exchange under the trading symbol “PKZ”. On April 27, 2004 the closing price of the Shares on the TSX was \$38.91 per Share and, on such date, the Shares had an aggregate market value of approximately \$3,134,881,445, based on such closing price;
- 4.6 the Corporation is a reporting issuer or the equivalent in each of the provinces of Canada and is not on the list of reporting issuers in default maintained by the securities regulatory authority of any such jurisdiction;
- 4.7 to the Corporation’s knowledge, no person or company holds more than 10% of the issued and outstanding Shares other than FMR Corp., which beneficially owns or exercises control or direction over approximately 8,232,110 Shares, representing approximately 10.2% of the Shares. FMR Corp.’s intentions with respect to the Offer are not yet known to the Corporation;
- 4.8 pursuant to the Offer, the Corporation proposes to acquire the Shares in accordance with the following modified “Dutch auction” procedure, as disclosed in the Circular to be sent by the Corporation to any holder of Shares (each, a “Shareholder”):
  - 4.8.1 the maximum amount of \$160,000,000 (the “Specified Amount”) that the Corporation intends to spend under the Offer will be specified in the Circular;
  - 4.8.2 the minimum price of \$40 (the “Minimum Price”) per Share at which the Corporation is willing to purchase its Shares under the Offer will be specified in the Circular;
  - 4.8.3 the maximum number of 4,000,000 Shares (the “Maximum Number of Shares”) that the Corporation will take up under the Offer (being the Specified Amount divided by the Minimum Price) will be specified in the Circular;
  - 4.8.4 any Shareholder wishing to deposit Shares pursuant to the Offer will have the right either to:
    - 4.8.4.1 specify the lowest price, such price not being less than the Minimum Price, at which the Shareholder is willing to sell

## 2004 BCSECCOM 267

all or a portion of its Shares in increments of \$0.10 per Share (an “Auction Tender”); or

- 4.8.4.2 elect to be deemed to have tendered at the Purchase Price determined in accordance with 4.8.5 below (a “Purchase Price Tender”);
- 4.8.5 the purchase price (the “Purchase Price”) will be the lowest price at or above the Minimum Price that will enable the Corporation to purchase the maximum number of deposited Shares having an aggregate purchase price not exceeding the Specified Amount. The Purchase Price will be determined based upon the number of Shares deposited pursuant to Auction Tenders and Purchase Price Tenders, the prices specified by Shareholders making Auction Tenders and the price at which the Shares deposited pursuant to Purchase Price Tenders are deemed to have been deposited, with each Purchase Price Tender being considered to have been deposited at the Minimum Price for the purpose of calculating the Purchase Price;
- 4.8.6 if more Shares are deposited for purchase at or below the Purchase Price than can be purchased for the Specified Amount, the deposited Shares will be purchased on a *pro rata* basis according to the number of Shares deposited (or deemed to be deposited) by the depositing Shareholders (with adjustments to avoid the purchase of fractional Shares), except that deposits by Shareholders who own less than 100 Shares will not be subject to pro ration. The Corporation will accept for purchase without pro ration all Shares deposited by any Shareholder owning fewer than 100 Shares, provided such Shareholder deposits all such Shares at or below the Purchase Price;
- 4.8.7 all Shares deposited at prices above the Purchase Price will be returned to the appropriate Shareholders;
- 4.8.8 all Shares deposited at prices below the Minimum Price will be considered to have been improperly deposited, will be excluded from the determination of the Purchase Price, will not be purchased by the Corporation and will be returned to the appropriate Shareholder;
- 4.8.9 all Shares deposited by Shareholders who fail to specify any tender price for such deposited Shares and fail to indicate that they

## 2004 BCSECCOM 267

have deposited their Shares pursuant to an Auction Tender will be deemed to have made a Purchase Price Tender; and

4.8.10 depositing Shareholders who make either an Auction Tender or a Purchase Price Tender but fail to specify the number of Shares that they wish to deposit will be considered to have deposited all Shares held by such Shareholder;

4.9 since the Offer is for fewer than all the Shares, if the number of Shares deposited to the Offer at or below the Purchase Price and not withdrawn exceeds the Maximum Number of Shares that may be purchased for an amount not exceeding the Specified Amount, the Proportionate Take Up Requirement requires the Corporation to take up and pay for deposited Shares proportionately according to the number of Shares deposited by each Shareholder. In addition, the Associated Disclosure Requirement mandates disclosure in the Circular that the Corporation would, if Shares deposited to the Offer and not withdrawn exceeded the Specified Number, take up such Shares proportionately according to the number of Shares deposited and not withdrawn by each Shareholder;

4.10 prior to the commencement of the Offer, there will be approximately 80,567,509 Shares outstanding, of which approximately 66,606,759 Shares will comprise the public float;

4.11 there is a published market for the Shares, namely the TSX;

4.12 during the 12 months ended April 28, 2004:

4.12.1 the number of outstanding Shares was at all times not less than 77,479,475 excluding securities beneficially owned, directly or indirectly, or over which control or direction was exercised, by related parties and Shares that were not freely tradeable;

4.12.2 the aggregate trading volume of the class of securities on the TSX was 65,646,180 Shares;

4.12.3 there were approximately 100,812 trades of Shares on the TSX; and

4.12.4 the aggregate trading value based on the price of the trades referred to in clause (c) was approximately \$1,880,191,293.07 (being the aggregate trading volume of the Shares on the TSX multiplied by the average price per Share);

## 2004 BCSECCOM 267

- 4.13 the market value of the Shares on the TSX, as determined in accordance with Ontario Securities Commission Rule 61-501 and Québec Local Policy Statement Q-27, was at least \$2,955,823,926 for the calendar month of March, 2004;
- 4.14 the Corporation will disclose in the Circular the figures set out in 4.12 and 4.13 above calculated with reference to the period of twelve months before the date of the announcement of the Offer and that it is reasonable to conclude that, following the completion of the Offer, there will be a market for beneficial owners of the Shares who do not deposit to the Offer that is not materially less liquid than the market that existed at the time the Offer was made;
- 4.15 prior to the expiry of the Offer, all information regarding the number of Shares deposited and the prices at which such Shares are deposited will be kept confidential, and the depositary will be directed by the Corporation to maintain such confidentiality until the Purchase Price is determined;
- 4.16 the Circular will:
  - 4.16.1 disclose the mechanics for the take up and payment for, or the return of, Shares as described in 4.8 above;
  - 4.16.2 make it clear that, by depositing shares at the Minimum Price, a Shareholder can reasonably expect that the Shares so tendered will be purchased at the Purchase Price, subject to pro ration as described in 4.8 above;
  - 4.16.3 describe the background to the Offer;
  - 4.16.4 describe the review and approval process adopted by the board of directors of the Corporation for the Offer, including any materially contrary view or abstention by a director; and
  - 4.16.5 except to the extent exemptive relief is granted by this decision, contain the disclosure prescribed by the Legislation for issuer bids;
- 5. AND WHEREAS pursuant to the System this MRRS Decision Document evidences the decision of each of the Decision Makers (collectively, the “Decision”);

## **2004 BCSECCOM 267**

6. AND WHEREAS 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 and is of the opinion that it would not be prejudicial to the public interest to grant this decision;
7. THE DECISION of the Decision Makers pursuant to the Legislation is that, in connection with the Offer, the Corporation is exempt from the Proportionate Take Up and Payment Requirement, the Associated Disclosure Requirement, the Number of Securities Requirement and the Valuation Requirement, provided that Shares deposited to the Offer are taken up and paid for, or returned to the Shareholders, in the manner and circumstances described in 4.8 above.

DATED this 12th day of May, 2004.

Glenda A. Campbell, Q.C., Vice-Chair

Stephen R. Murison, Vice-Chair