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February 3, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 114(2) Take over Bids - Exemption from the take over bid requirements - An offeror wants relief from all take over bid requirements so it can treat exchangeable securities as having been exchanged into the underlying securities - The key elements that satisfy the policy reasons are: target has, through a subsidiary, exchangeable securities outstanding that are exchangeable for securities of the target at the option of the holders; the exchangeable securities are the voting equivalent of the target's securities; the exchangeable securities are exchangeable at an increased ratio in certain circumstances; however, the holders of the exchangeable securities have not objected to the application and the fact that, as a result of the relief being granted, the increased ratio will not be triggered; the offeror will comply with the take over bid requirements if it offers to acquire 20% or more of the target's outstanding securities, treating the exchangeable securities as having been exchanged; the target issuer was provided with a copy of the application

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 105-108, 110 and 114(2)

In the Matter of
the Securities Legislation of
of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New
Brunswick, Nova Scotia, Newfoundland and Labrador, Northwest Territories,
Yukon and Nunavut (the Jurisdictions)

and

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

and

In the Matter of
Deans Knight Capital Management Ltd. (the Filer)

MRRS Decision Document

Background

- ¶ 1 The local securities regulatory authority or regulator (collectively, the Decision Makers) in each of the Jurisdictions has received an application (the Application)

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from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the requirements relating to take-over bids, other than the early warning requirements (as defined in National Instrument 62-103), (the Take-Over Bid Rules) in the Legislation not apply to the purchase of units (Units) of Menu Foods Income Fund (Menu Foods) by the Filer on behalf of accounts managed by it that, together with the securities of Menu Foods already held in those accounts, would constitute 20% of the outstanding Units (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 The decision is based on the following facts represented by the Filer:
- 1. the Filer is a portfolio management firm whose registered office is in Vancouver, British Columbia;
 - 2. the Filer is registered as a portfolio manager (securities) in British Columbia and the Filer, or at least one of its employees, is registered as
 - (a) a portfolio manager and investment counsel in Alberta,
 - (b) a portfolio manager in Manitoba,
 - (c) an extra-provincial limited market dealer and investment counsel and portfolio manager in Ontario, and
 - (d) an advisor with an unrestricted practice (restricted customer) in Québec;
 - 3. the Filer provides portfolio and money management services to institutional, private wealth and mutual fund clients and focuses on investments in corporate bonds, income trusts and other equity securities;

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4. Menu Foods is an unincorporated, open-ended trust whose Units trade on the Toronto Stock Exchange;
5. under its initial public offering, Menu Foods distributed
 - (a) Units to the public, and
 - (b) units of a limited partnership (Exchangeable Units) that are exchangeable for Units to its founders and the former shareholders of the businesses acquired by Menu Foods (the Subordinated Persons);
6. the Subordinated Persons received Exchangeable Units rather than Units so, among other things, they would only be entitled to receive distributions from Menu Foods after the public Unitholders received a certain level of distributions;
7. the Subordinated Persons also received special trust units of Menu Foods so they have the same number of voting rights in Menu Foods as they would have if they held the Units that underlie their Exchangeable Units;
8. once Menu Foods' achieves a certain level of distributions for a particular period, the Exchangeable Units become exchangeable into Units;
9. according to the annual report of Menu Foods for its fiscal year ended December 31, 2004, Menu Foods has achieved the required level of distributions to the public Unitholders and, accordingly,
 - (a) the Exchangeable Units are no longer subordinated in respect of distributions to the Units,
 - (b) monthly distributions could be made to the holders of Units and Exchangeable Units, and
 - (c) the Exchangeable Units became exchangeable into Units;
10. to the Filer's knowledge, the Subordinated Persons have not exchanged most of the Exchangeable Units for Units;
11. the Declaration of Trust of Menu Foods provides that, if
 - (a) a person acting at arm's length with the Subordinated Persons makes a take-over bid for Units, and

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(b) not less than 25% of the Units are taken up under that bid,

the Exchangeable Units will become immediately exchangeable at a ratio equal to 110% of the exchange ratio then in effect (the Exchange Ratio) which, at the time of the initial public offering of Menu Foods, was one Unit for every Exchangeable Unit;

12. the Filer made the Subordinated Persons aware of the Application, including that the increase in the Exchange Ratio described in paragraph 11 will not be triggered by the Filer purchasing Units once this decision is issued, and none of the Subordinated Persons have objected to the Application.

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.
- ¶ 5 The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that the securities purchased on behalf of accounts managed by the Filer, together with securities of Menu Foods already held in those accounts, would not constitute 20% of the outstanding Units if all of the outstanding Exchangeable Units were exchanged for Units at the Exchange Ratio.

Robin E. Ford
Commissioner
British Columbia Securities Commission