

2005 BCSECCOM 425

June 6, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 114(2) Takeover Bids - Exemption from the take over bid requirements - Issuer requires relief from prohibition against certain collateral agreements in s. 107(2) of the Act - The offeror issuer has entered into a collateral agreement with a shareholder of the offeree issuer; the agreement is entered into for valid business reasons, and not for the purpose of providing the shareholder with a benefit beyond what other shareholders of the offeree issuer will receive under the offer

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 107(2) and 114(2)(a)

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

and

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

and

In the Matter of
Dover Corporation (Canada) Limited (Dover Canada) and
Dover Corporation (Canada) Acquisition I Limited (the Offeror)
(collectively, the Filers)

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 Filers for a decision under the securities legislation of the Jurisdictions (the Legislation) that, in connection with the offer (the Offer) by the Offeror to purchase all of the issued and outstanding common shares (the C-Tech Shares) of C-Tech Energy Services Inc. (C-Tech), the Employment Agreements (as defined below) and the Non-Competition Agreements (as defined below) are being made for reasons other than to increase the value of the consideration paid for those C-Tech Shares that are owned or controlled by the Management Shareholders (as defined below) and may be entered into notwithstanding the requirements contained in the

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Legislation which prohibit, in the context of a take-over bid, the entering into of any collateral agreement, commitment or understanding with any holder or beneficial owner of securities of the offeree issuer that has the effect of providing to the holder or owner a consideration of greater value than that offered to holders of the same class of securities (the Requested Relief).

2. Under the Mutual Reliance Review System for Exemptive Relief (the MRRS):
 - 2.1 the Alberta Securities Commission is the principal regulator for this application, and
 - 2.2 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 represented by the Filers:
 - 4.1 Dover Canada was amalgamated pursuant to the *Canada Business Corporations Act* on January 1, 1979.
 - 4.2 The head office and registered office of Dover Canada are each located in Toronto, Ontario.
 - 4.3 Dover Canada is not a reporting issuer in any of the Jurisdictions and its securities are not listed on any Canadian marketplace or exchange.
 - 4.4 The Offeror was incorporated under the *Business Corporations Act* (Alberta)(the ABCA) on April 25, 2005.
 - 4.5 The head office and registered office of the Offeror are each located in Edmonton, Alberta.
 - 4.6 The Offeror is not a reporting issuer in any of the Jurisdictions and its securities are not listed on any Canadian marketplace or exchange.

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- 4.7 The Offeror is a wholly-owned subsidiary of Dover Canada.
- 4.8 C-Tech was incorporated under the ABCA on August 28, 1997.
- 4.9 The head office and registered office of C-Tech are each located in Edmonton, Alberta.
- 4.10 C-Tech is a reporting issuer in Alberta and British Columbia.
- 4.11 The authorized share capital of C-Tech consists of an unlimited number of C-Tech Shares, an unlimited number of first preferred shares and an unlimited number of second preferred shares.
- 4.12 As at April 21, 2005, C-Tech had the following securities issued and outstanding:
 - 4.12.1 45,985,021 C-Tech Shares, and
 - 4.12.2 1,100,000 options (the C-Tech Options) issued under the C-Tech stock option plan with each C-Tech Option being exercisable into one C-Tech Share.
- 4.13 The C-Tech Shares are listed on the TSX Venture Exchange and trade under the symbol "CEE".
- 4.14 Pursuant to the terms of a pre-acquisition agreement dated April 13, 2005 between Dover Canada and C-Tech (the Pre-Acquisition Agreement), Dover Canada agreed with C-Tech that either Dover Canada itself or one or more of its direct or indirect subsidiaries would make the Offer for \$0.44 cash per C-Tech Share.
- 4.15 The Offer was made by way of a take-over bid circular prepared in accordance with the Legislation (the TOB Circular) and mailed to all holders of C-Tech Shares and C-Tech Options (collectively, the C-Tech Shareholders) on May 2, 2005. The expiry date of the Offer is June 7, 2005.
- 4.16 The Offer is conditional on, among other things, there being validly deposited under the Offer and not withdrawn at the expiry time of the Offer at least 66 2/3% of the C-Tech Shares on a fully diluted basis.

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- 4.17 Dover Canada has entered into lock-up agreements with 768899 Alberta Ltd., Andre Hebert, J. Blair Goertzen, 768885 Alberta Ltd., Per Angman, ARC Capital Ltd., ARC Canadian Energy Venture Fund 2 and ARC Canadian Energy Venture Fund (collectively, the Locked-Up Shareholders), pursuant to which the Locked-Up Shareholders have agreed to unconditionally and irrevocably deposit all of their C-Tech Shares under the Offer.
- 4.18 C-Tech has entered into employment agreements (the Employment Agreements) with each of the following employees of C-Tech (collectively, the Management Shareholders):
 - 4.18.1 André Hebert, Chief Financial Officer,
 - 4.18.2 Wilson Grant, Plant Manager,
 - 4.18.3 Alex Perri, Pro-Rod Manager,
 - 4.18.4 Harvey Verstraete, Field Services Manager, and
 - 4.18.5 Charles Strong, Manufacturing Manager.
- 4.19 Dover Canada and C-Tech have entered into non-competition agreements with each of the Management Shareholders (the Non-Competition Agreements).
- 4.20 Pursuant to the terms of the Pre-Acquisition Agreement, the obligation of the Offeror to make the Offer and to take up and pay for C-Tech Shares is conditional on the Employment Agreements and the Non-Competition Agreements with the Management Shareholders being in full force and effect.
- 4.21 The Employment Agreements will commence on the date the Offeror takes up any C-Tech Shares in accordance with the Offer (the Effective Date).
- 4.22 The Employment Agreements set out in writing and continue the employment arrangements that existed between C-Tech and each of the Management Shareholders prior to the execution of the Pre-Acquisition Agreement that had not been previously reduced to writing.

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- 4.23 The Employment Agreements provide that each of the Management Shareholders will remain employed by C-Tech for a period of three years from the Effective Date at the following compensation levels, which compensation levels are equivalent to those currently enjoyed by the Management Shareholders:

	<u>Salary</u>
André Hebert	\$72,000
Wilson Grant	\$77,000
Alex Perri	\$70,000
Harvey Verstraete	\$78,000
Charles Strong	\$79,600

- 4.24 The Employment Agreements also provide for commercially reasonable severance payments.
- 4.25 As consideration for entering into the Employment Agreements, each Management Shareholder will be paid \$2,000, payable on the Effective Date.
- 4.26 The Non-Competition Agreements will commence on the Effective Date and provide for certain non-competition and non-solicitation covenants in favour of C-Tech and Dover Canada for a period of three years from and after the Effective Date.
- 4.27 As consideration for entering into the Non-Competition Agreements, each Management Shareholder will be paid \$18,000, payable on the Effective Date.
- 4.28 The Management Shareholders collectively hold an aggregate of 1,070,725 C-Tech Shares and 680,000 C-Tech Options, representing 3.72% of the issued and outstanding C-Tech Shares (on a diluted basis). The Management Shareholders each individually hold the following numbers of C-Tech Shares and C-Tech Options:

	<u>C-Tech Shares</u>	<u>C-Tech Options</u>
André Hebert	142,895	150,000
Wilson Grant	256,350	100,000
Alex Perri	-	100,000
Harvey Verstraete	225,800	150,000
Charles Strong	445,680	180,000

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- 4.29 Dover Canada required C-Tech to secure the Employment Agreements because of the integral role of the Management Shareholders in developing C-Tech's business and their substantial and valuable experience and expertise in the oil field technology, manufacturing and services business.
- 4.30 Dover Canada believes that the Management Shareholders' role with C-Tech following the Effective Date is critical to C-Tech in ensuring a successful transition of C-Tech following completion of the Offer.
- 4.31 Dover Canada required C-Tech to secure the Non-Competition Agreements with the Management Shareholders because of the significant value of C-Tech's intellectual property, client lists and goodwill. Dover Canada would not have made the Offer if the Management Shareholders had the ability to compete with C-Tech or otherwise exploit such intellectual property, client lists or goodwill.
- 4.32 The Employment Agreements are consistent with current industry practice and are intended to provide an incentive for the Management Shareholders to continue in the employment of C-Tech following completion of the Offer.
- 4.33 Dover Canada would not have entered into the Pre-Acquisition Agreement if the Management Shareholders had not agreed to enter into the Employment Agreements and Non-Competition Agreements.
- 4.34 The terms of the Employment Agreements and the Non-Competition Agreements have been negotiated with the applicable parties at arm's length and are on terms and conditions that are commercially reasonable.
- 4.35 Dover Canada believes that it is a prudent and commercially reasonable business decision on its part to insist on the Non-Competition Agreements. In other transactions in which Dover Canada has acquired businesses, it has been Dover Canada's practice to obtain non-competition covenants from key employees of the business, and Dover Canada believes that other purchasers of businesses in this industry would similarly require such non-competition covenants.

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- 4.36 The Employment Agreements and the Non-Competition Agreements have been made for valid business reasons unrelated to the Management Shareholder's holdings of C-Tech Shares or C-Tech Options and not for the purpose of conferring an economic or collateral benefit that the other C-Tech Shareholders do not enjoy or to increase the value of the consideration to be paid to the Management Shareholders for their C-Tech Shares tendered under the Offer.
- 4.37 The receipt by the Management Shareholders of compensation pursuant to the Employment Agreements and the Non-Competition Agreements is not conditional upon their support of the Offer.
- 4.38 Full particulars of the material terms of the Employment Agreements and Non-Competition Agreements were disclosed in the TOB Circular and the directors' circular of C-Tech dated May 2, 2005.

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.

Glenda A. Campbell, Q.C., Vice-Chair
Alberta Securities Commission

Stephen R. Murison, Vice-Chair
Alberta Securities Commission