

2006 BCSECCOM 717

November 10, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 114(2) Takeover Bids - Exemption from the formal take over bid requirements in Part 13 of the Act - An issuer wants to complete a take over bid that meets some, but not all of the conditions set out in s. 98 (1)(e) of the Act required for an exempt take over bid - The offeror is making the bid complying with the law of a jurisdiction that the Commission has not recognized for the purposes of s. 98(1)(e); the target does not maintain a share register, but the offeror believes the number of the target's shareholders in B.C. is de minimis; the bid will satisfy all other conditions required for an exempt take over bid

Applicable British Columbia Provisions

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

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

and

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

and

In the Matter of UCB SA (the "Parent Filer")
and UCB SP GmbH (The "Co-Filer")

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the "Decision Maker") in each of the Jurisdictions has received an application from the Parent Filer and the Co-Filer (collectively, the "Filers") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the formal take-over bid requirements contained in the Legislation, including the provisions relating to delivery of an offer and take-over bid circular and any notices of change or variation thereto, delivery of a directors' circular and any notices of change or variation thereto, minimum deposit periods and withdrawal rights, take-up of and payment for

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securities tendered to a take-over bid, disclosure, financing, restrictions upon purchases of securities, identical consideration and collateral benefits (collectively, the “Take-Over Bid Requirements”) shall not apply to trades made in connection with the proposed offer (the “Offer”) by the Filers for the acquisition of all outstanding common shares (the “Target Shares”) in the capital of Schwarz Pharma Aktiengesellschaft with registered office in Monheim, Germany (the “Target”) (the “Requested Relief”).

Under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”):

- (a) the *Autorité des marchés financiers* is the principal regulator for this application, and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

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

Representations

This decision is based on the following facts presented by the Filers:

1. The Parent Filer is a public limited liability company organized under the laws of Belgium. The Parent Filer’s registered office is located at 60 Allée de la Recherche, 1070 Brussels, Belgium. Under its articles of association, the main purpose of the Parent Filer is the research, manufacture, purchase, sale and processing of all products associated with cellulose and its derivatives, of plastics, of pure, simple and compound chemical and pharmaceutical products, of textile materials and products, and of similar or complimentary materials and products. The Parent Filer’s existing common shares are admitted for listing and trading on Eurolist by Euronext Brussels.
2. The Co-Filer is a German limited liability company organized under the laws of the Federal Republic of Germany. The Co-Filer’s registered office is located at Georg-Glock-Str. 8, 40474 Düsseldorf, Germany. The Co-Filer is an indirect wholly-owned subsidiary of the Parent Filer. Since its formation earlier in 2006, the Co-Filer has not engaged in any business activity.
3. As of October 27, 2006, approximately 42.04% of the outstanding shares of the Parent Filer were held by Financière de Tubize SA (“Tubize”), a public limited liability company organized under the laws of Belgium. Tubize’s

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registered office is located at 60 Allée de la Recherche, 1070 Brussels, Belgium. The shares of Tubize are admitted for listing and trading on Eurolist by Euronext Brussels. Approximately 51.81% of the outstanding shares of Tubize are held by members of the Janssen family of Belgium who act in concert with respect to such shareholding.

4. Neither of the Filers is a reporting issuer or the equivalent in any of the Jurisdictions. In addition, none of the Filers' securities are listed or quoted for trading on any stock exchange, organized market or automated quotation system in Canada.
5. The Target is incorporated as a stock corporation (*Aktiengesellschaft*) under the laws of the Federal Republic of Germany. Its registered office is located in Monheim, Germany and is registered with the Lower Court (*Amtsgericht*) in Düsseldorf, Germany under HRB 54649. Under its articles of association, the object and purpose of the Target is the production and distribution of drugs and other pharmaceutical-chemical or cosmetic products. The Target's existing common shares are admitted for listing and trading on the Frankfurt Stock Exchange and the Düsseldorf Stock Exchange.
6. As of October 27, 2006, the Target Shares registered in the commercial register amounted to €60,926,326.50 and was divided into 47,227,250 common shares without par value in bearer form only, each representing a proportionate amount of the share capital of €1.29.
7. As of October 27, 2006, the Schwarz family of Germany (the "Schwarz Family") held 28,244,114 Target Shares, representing approximately 59.80% of all outstanding Target Shares.
8. The Target Shares constitute both "equity securities" and "voting securities" for the purposes of the Legislation and the Take-Over Bid Requirements.
9. The Target is not a reporting issuer or equivalent in any of the Jurisdictions. In addition, neither the Target Shares nor any other of the Target's securities are listed or quoted for trading on any stock exchange, organized market or quotation system in Canada.
10. The Offer is structured as a joint bid under the relevant provisions of German securities legislation such that, upon consummation of the Offer, the Parent Filer will acquire four-ninths (4/9) of the Target Shares for which the Offer has been validly accepted and the Co-Filer will acquire five-ninths (5/9) of the Target Shares for which the Offer has been validly accepted.

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11. The consideration under the Offer is comprised of (i) €50.00 in cash and (ii) 0.8735 of a new common share of the capital of the Parent Filer, for each outstanding Target Share.
12. On September 25, 2006, each of the Parent Filer and the Target issued a press release and announced that the Parent Filer and the Target had entered into a business combination agreement dated September 25, 2006 (the “Business Combination Agreement”), pursuant to which the parties had agreed on the combination of the respective businesses carried out by the Parent Filer and the Target. Each of the Parent Filer and the Target also announced that the Management Board (*Vorstand*) and the Supervisory Board (*Aufsichtsrat*) of the Target unanimously intends to recommend that shareholders of the Target accept the Offer, which intentions are subject to a review of the final offer document and to applicable laws, in particular to the fiduciary duties of the Target’s Management Board and Supervisory Board.
13. The Schwarz Family has irrevocably undertaken in favour of the Filers that it will tender all of the Target Shares held by it during the initial acceptance period of the Offer and the tender of such Target Shares by the Schwarz Family constitutes one of the conditions of the Offer. The Schwarz Family may terminate the foregoing undertaking only if the Target is entitled to terminate the Business Combination Agreement.
14. It is currently anticipated that the initial period during which the Offer will be open for acceptance by the Target’s shareholders will be from November 10, 2006 until December 8, 2006. In addition, under German securities law, there will automatically be an additional acceptance period during which the Target’s shareholders may accept the Offer, provided the Schwarz Family will have tendered all of the Target Shares held by it during the initial acceptance period of the Offer. The additional Offer Period is currently expected to commence on December 14, 2006 and to end on December 28, 2006.
15. All of the principal documents of the Filers relating to and setting forth the Offer, including the offer document (the “Offer Document”) and the “declaration of acceptance” (the nearest equivalent to a letter of acceptance and transmittal), are also being prepared in the English language.
16. The Offer is being made and the Offer Document reflecting the terms of the Offer is being prepared exclusively in accordance with the laws of the Federal Republic of Germany, in particular, in compliance with the German Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und*

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Übernahmegesetz) and statutory regulations promulgated or enacted thereunder.

17. As indicated above, the Parent Filer announced its intention to proceed with the Offer on September 25, 2006 by way of joint press release with the Target. The Offer Document has been submitted for review to the German federal securities regulatory authority in Germany, the *Bundesanstalt für Finanzdienstleistungsaufsicht* (the “BaFin”). It is expected that the Offer Document will be published and made available to holders of the Target Shares immediately after approval by the BaFin, which is currently expected to occur on or about November 10, 2006. In accordance with German law, the Offer will be commenced on the same day on which the BaFin will have approved the Offer Document and, as of such date, the Offer Document, including the English-language version thereof, will be available on the Internet at www.ucb-group.com throughout the Offer Period and the additional Offer Period, and a notification regarding the publication of the Offer Document will be published in a national German newspaper also specifying where and how the Target’s shareholders may obtain a copy of the Offer Document free of charge.
18. If either or both of the Filers send any material(s) relating to the Offer generally to holders of Target Shares in Germany, they will also send an English-language version of such material(s) to holders of Target Shares residing in the Jurisdictions (if addresses are shown).
19. A public announcement in a national Canadian newspaper and in a French language newspaper widely distributed in Québec, to be made substantially at the same time as the public announcement in the national German newspaper or as soon as practicable after issuance of this decision, will specify where and how the shareholders of the Target may obtain a copy of the Offer Document. As soon as practicable after such date, the Filers will also file a copy of the Offer Document free of charge with the Decision Makers.
20. The *de minimis* take-over bid exemption as provided for in the Legislation is not available to the Filers or applicable to the Offer since the Offer is not being made in compliance with the laws of a jurisdiction that is recognized by the applicable Decision Makers for this purpose. In addition, because the Target does not maintain a share register as all the Target Shares are bearer securities, the Filers are unable to conclusively determine the number of holders of the Target Shares resident in each of the Jurisdictions or the number of Target Shares held by any such persons.

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21. As permitted by German law, the Target has issued bearer securities and does not maintain a share register. Accordingly, any information about the Target Shares held by shareholders in Canada can only be determined on a limited inquiry basis and cannot be determined on a definitive basis. Based on such inquiry, the Filers believe that as of October 25, 2006, there were ten holders of Target Shares resident in Canada, holding in total 155,926 Target Shares representing approximately 0.33% of the entire issued share capital of the Target. The Filers are not able to ascertain in which Jurisdictions such Canadian holders reside.
22. In accordance with German law, which is the “home” jurisdiction of the Target, the Offer treats all shareholders (including Canadian holders) equally.

Decision

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:

- (i) the Offer and all amendments to the Offer are made in compliance with the laws of the Federal Republic of Germany;
- (ii) any material relating to the Offer that is sent by the Filers generally to the holders of the Target Shares in Germany will be sent by the Filers to the holders of the Target Shares resident in the Jurisdictions in English (if addresses are known) and copies thereof filed with the Decision Maker in each Jurisdiction; and
- (iii) the Filers make a public announcement in English in a national Canadian newspaper and in French in a newspaper that is widely circulated in Québec specifying where and how holders of the Target Shares in the Jurisdictions may obtain a copy of the Offer Document (in English) free of charge and file copies thereof with the Decision Maker in each Jurisdiction.

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