

2003 BCSECCOM 626

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Relief granted from the requirement to include certain financial statements in a joint information circular regarding a business combination

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 111 and 119(2)(b)

Securities Rules, B.C. Reg. 194/97, ss. 112 and 114

BC Form 54-901

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ONTARIO AND QUÉBEC

AND

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

AND

IN THE MATTER OF KYRGOIL HOLDING CORPORATION

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Ontario and Québec (collectively, the “Jurisdictions”) has received an application from Kyrgoil Holding Corporation (“Kyrgoil” or the “Filer”) for a decision pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that the requirements in the Legislation to include in the joint information circular (the “Information Circular”) of Kyrgoil and Asia Petroleum Development Limited (“Asia-PD”), Petroleum Development Associates (Asia) LLC (“PDA-Asia”), Petroleum Development Associates LLC (“PDA”) and Petroleum Development Associates Spain LLC (“PDA Spain”) (collectively, the “PDA Group”) audited annual financial statements for the companies in the PDA Group for the three financial years preceding the date of closing of the proposed business combination (the “Business Combination”) between Kyrgoil and the PDA Group, or for completed financial years preceding the date of closing of the Business Combination for such companies if they have not completed three financial years, shall not apply, subject to certain conditions;

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or in Québec Commission Notice 14-101;

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AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS the Filer has represented to the Decision Makers that:

1. Kyrgoil was originally incorporated under the *Business Corporations Act* (Ontario), but was continued as an international business company under the *International Business Companies Act* (“IBCA”) of the British Virgin Islands (“BVI”) effective November 20, 2000.
2. Kyrgoil is a reporting issuer in the Provinces of British Columbia, Alberta and Ontario.
3. The authorized capital of Kyrgoil consists of an unlimited number of common shares (“Kyrgoil Shares”). As of the date hereof, 132,444,141 Kyrgoil Shares and 3,690,000 options to acquire Kyrgoil Shares are issued and outstanding.
4. Kyrgoil’s primary asset is the ownership of 50% of the outstanding common shares (“KPC Shares”) of the Kyrgyz Petroleum Company (“KPC”), which owns and operates an oil refinery in the Kyrgyz Republic. A company controlled by the government of the Kyrgyz Republic owns the other 50% of the outstanding KPC Shares. Petrofac Resources International Limited (“Petrofac”) manages the refinery pursuant to a management agreement with Kyrgoil.
5. Petrofac also currently owns 85,302,104 Kyrgoil Shares, or approximately 64.4% of the outstanding Kyrgoil Shares.
6. Kyrgoil is proposing to complete the Business Combination with the PDA Group, a group of companies that is engaged in the exploration for and extraction of oil and natural gas in Indonesia, Malaysia, Spain and the United Kingdom.
7. The PDA Group consists of the following companies:
 - (a) Asia-PD, a corporation incorporated under the laws of BVI on September 2, 2002;
 - (b) PDA-Asia, a corporation incorporated under the laws of Delaware on December 4, 2001;

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- (c) PDA, a corporation incorporated under the laws of Delaware on June 22, 2000; and
 - (d) PDA-Spain, a corporation incorporated under the laws of Delaware on October 11, 2001;
- 8. None of the PDA Group of companies is a reporting issuer in any of the Jurisdictions.
- 9. The Business Combination will include the following steps:
 - (a) the shareholders of Asia-PD, PDA-Asia, PDA and PDA-Spain will transfer their shares in those companies to a new holding company (“PDA Holdco”) incorporated in the BVI under the IBCA; and
 - (b) PDA Holdco will amalgamate with Kyrgoil under the IBCA to form an amalgamated corporation (“Amalco”) on the following basis:
 - (i) the shares of PDA Holdco will be exchanged for an aggregate of 36,422,635 common shares of Amalco (“Amalco Shares”);
 - (ii) outstanding Kyrgoil Shares will be exchanged on a one-for-ten basis for Amalco Shares (13,244,414 Amalco Shares);
 - (iii) outstanding options to acquire Kyrgoil Shares will be exchanged on a one-for-ten basis for options to acquire Amalco Shares; and
 - (iv) the exact number of Amalco Shares to be issued will be adjusted based on the financial position of the PDA Group and Kyrgoil as at or immediately prior to the closing of the Business Combination.
- 10. Prior to completing the Business Combination, Kyrgoil and the PDA Group will use their reasonable best efforts to complete a private placement of common shares of PDA Holdco to raise gross proceeds expected to be not less than US\$3,000,000.
- 11. Kyrgoil and the PDA Group will prepare the Information Circular to be delivered to the shareholders of Kyrgoil and PDA Holdco in respect of shareholders’ meetings to be held in October, 2003 by those companies to consider and to vote on approving the Business Combination.

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12. The Information Circular is proposed to contain the following financial statement disclosure with reconciliations, as necessary, to Canadian generally accepted accounting principles (collectively, the “Included Financial Statements”):
- (a) Asia-PD: (i) audited financial statements for the period between September 2, 2002 and December 31, 2002 and (ii) unaudited financial statements for the six months ended June 30, 2003;
 - (b) PDA-Asia: (i) audited financial statements for the year ended December 31, 2002 and (ii) unaudited comparative financial statements for the six months ended June 30, 2003;
 - (c) PDA: (i) audited financial statements for the period between June 22, 2000 and December 31, 2000, (ii) audited financial statements for the year ended December 31, 2001, (iii) audited financial statements for the year ended December 31, 2002, and (iv) unaudited comparative financial statements for the six months ended June 30, 2003;
 - (d) PDA-Spain: (i) audited financial statements for the year ended December 31, 2002 and (ii) unaudited comparative financial statements for the six months ended June 30, 2003;
 - (e) PDA Holdco: audited financial statements for the newly incorporated holding company;
 - (f) Kyrgoil: audited financial statements for the three most recently completed financial years and unaudited comparative financial statements for the six months ended June 30, 2003; and
 - (g) Amalco: pro forma balance sheet as at June 30, 2003, pro forma income statements for the twelve months ended December 31, 2002 and six months ended June 30, 2003, with a compilation report prepared by the auditors of Amalco.
13. The Legislation also requires the following financial statements to be included in the Information Circular (collectively, the “Stub Period Financial Statements”):
- (a) audited financial statements for the period between December 4, 2001 (date of incorporation) and December 31, 2001 for PDA-Asia; and

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- (b) audited financial statements for the period between October 11, 2001 (date of incorporation) and December 31, 2001 for PDA-Spain.
14. Kyrgoil proposes not to include the Stub Period Financial Statements in the Information Circular as Kyrgoil has been advised that neither PDA-Asia nor PDA-Spain engaged in any material transactions between the date of their respective incorporations and December 31, 2001 and that the audited financial statements for each of PDA-Asia and PDA-Spain for the year ended December 31, 2002 will contain a note to such effect.
15. With the exception of the disclosure of the Stub Period Financial Statements, the Information Circular will contain prospectus-level disclosure about Kyrgoil, PDA Holdco, the PDA Group and the securities to be issued in connection with the Business Combination.
16. The closing date of the Business Combination is anticipated to be in October, 2003.
17. Representatives of Kyrgoil and the PDA Group have met with representatives of the Toronto Stock Exchange (the "TSX") to discuss the Business Combination. It is anticipated that, upon completion of the Business Combination, the Amalco Shares will be listed and posted for trading on the TSX.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

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;

THE DECISION of the Decision Makers under the Legislation is that the requirements in the Legislation to include in the Information Circular the Stub Period Financial Statements shall not apply, provided that the Information Circular contains the Included Financial Statements.

DATED September 5, 2003.

Iva Vranic