

2005 BCSECCOM 264

April 14, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act, s. 91 - Insider reporting requirements - An issuer wants relief from the requirement to file insider reports for certain employees in relation to trades of securities of the issuer and/or in respect of trades of securities of reporting issuers of which the issuer is an insider - The employees are vice-presidents, or persons acting in a similar capacity, but are not in charge of a principal business unit or 'major subsidiary' of the issuer; they do not in the ordinary course receive or have access to undisclosed material information about the issuer and are not insiders of the issuer in any other capacity; the issuer will comply with all the requirements contained in CSA Staff Notice 55-306

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 91

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
SEAMARK Asset Management Ltd. (the 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 Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) exempting insiders of the Filer who satisfy the Exempted Officer Criteria (as defined below) from the insider reporting requirements of the Legislation, subject to certain conditions (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

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- (a) the Nova Scotia Securities Commission 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 represented by the Filer:

1. The Filer's head office is located in Halifax, Nova Scotia.
2. The Filer was incorporated under the *Canada Business Corporations Act* on November 4, 1982. On October 1, 1990, articles of amendment were filed to change the Filer's name from "Elliot and Page Atlantic Limited" to "SEAMARK Asset Management Ltd." under which name the Filer continues to carry on business.
3. The Filer is an investment counsel and portfolio management firm.
4. The Filer is a reporting issuer or the equivalent, as applicable, in all provinces and territories of Canada.
5. The Filer's common shares are listed and posted for trading on the Toronto Stock Exchange under the symbol "SM".
6. To the best of its knowledge, information and belief, the Filer is not in default of its reporting requirements under the Legislation.
7. Currently, 16 persons are insiders of the Filer by reason of being a senior officer or director of the Filer and are not otherwise exempt from the insider reporting requirements of the Legislation by reason of an existing exemption under National Instrument 55-101 *Exemption From Certain Insider Reporting Requirements* (NI 55-101) or an existing decision or order.
8. The Filer has filed with the Decision Makers copies of its Code of Ethics & Business Conduct (the Code) and Disclosure & Insider Trading Policies (the Disclosure Policy) containing the Filer's policies related to trading in securities of the Filer by directors, officers and employees of the Filer as well as policies relating to reporting on such trading activities (collectively, the Filer's Disclosure Policies).

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9. The Filer's Disclosure Policies have been developed to ensure that all employees, officers and directors of the Filer comply with all applicable securities legislation with respect to trading in shares of the Filer. Among other things, the Filer's Disclosure Policies are intended to assist employees, officers and directors of the Filer in identifying and meeting their personal obligations under the Legislation in connection with:
 - (a) when they are deemed to have certain material non-public information relating to the Filer;
 - (b) their duty not to disclose material non-public information to others; and
 - (c) restrictions on their ability to trade shares of the Filer.
10. Under the Filer's Disclosure Policies, employees, directors and officers are required to pre-clear and obtain the approval of the Filer's Compliance Officer in respect of any personal trades in shares of the Filer. In addition, the Filer's Disclosure Policies contain restrictions such as “quiet times” and “black out periods” designed to prevent the appearance or possibility of conflicts between personal trading and the interests of other public shareholders.
11. The Filer's Manager of Compliance is responsible for the administration of the Filer's Disclosure Policies. All employees, officers and directors of the Filer are required to acknowledge the Code annually and to agree to abide by it.
12. The Filer is seeking the Requested Relief in respect of insiders who, in the opinion of the Filer, satisfy the following criteria (the Exempted Officer Criteria):
 - (a) the individual is an officer of the Filer who holds a nominal title of “vice-president”, or another nominal title inferring a similar level of seniority, authority or responsibility as a nominal “vice-president” title (a Nominal Title);
 - (b) the individual is not in charge of a principal business unit, division or function of the Filer or a major subsidiary of the Filer;
 - (c) the individual does not in the ordinary course receive or have access to information as to material facts or material changes concerning the Filer before the material facts or material changes are generally disclosed; and
 - (d) the individual is not an insider of the Filer in any capacity other than by virtue of holding a Nominal Title.

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13. Existing and future insiders of the Filer who meet the Exempted Officer Criteria are collectively referred to as the Exempted Officers.
14. Management of the Filer considered the job requirements and principal functions of the existing insiders of the Filer to determine which of them meet the Exempted Officer Criteria.
15. Currently, there are four individuals who, in the opinion of the management of the Filer, meet the Exempted Officer Criteria.
16. Management of the Filer will apply the analysis set out above each time a new officer of the Filer or of any major subsidiary of the Filer is appointed, or an existing Exempted Officer is promoted or experiences a change in his or her job requirements or functions and it will review and update the Filer's Exempted Officers analysis annually.
17. If an individual who is designated as an Exempted Officer no longer satisfies the Exempted Officer Criteria as a result of which the individual is subject to a renewed obligation to file insider reports, certain designated staff of the Filer will immediately inform such individual of his or her renewed obligation to file insider reports on trades in shares of the Filer.

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:

- (a) the Filer agrees to make available to the Decision Makers, upon request, a list of all individuals who are relying on the exemption granted by this decision as at the time of the request; and
- (b) the relief granted by this decision will cease to be effective on the date when NI 55-101 is amended.

H. Leslie O'Brien
Chairman
Nova Scotia Securities Commission

R. Daren Baxter
Vice-Chairman
Nova Scotia Securities Commission