

2004 BCSECCOM 561

Headnote

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 bid is being done in compliance with Australian law; Australia is not a jurisdiction that is recognized for the purposes of s. 98(1)(e); the bid will satisfy all other conditions required for an exempt take over bid.

Exemption Order

Anglo Coal (VPLP) Holdings Pty Ltd

Section 114(2)(c) of the *Securities Act*, R.S.B.C. 1996, c. 418

Background

- ¶ 1 Anglo Coal applied for an exemption from the take over bid requirements in sections 105 to 110 of the Act (the Take Over Bid Requirements) in connection with a cash offer (the Offer) to be made by Anglo Coal to acquire all of the issued ordinary shares (Shares) of Australian Power & Energy Limited (APEL).

Representations

- ¶ 2 Anglo Coal represents that:
1. it was incorporated on March 7, 2003 as a wholly owned subsidiary of Anglo American plc, a public company incorporated in England and Wales with a primary listing on the London Stock Exchange;
 2. it is not a reporting issuer in British Columbia or any other jurisdiction in Canada and does not intend to become a reporting issuer in any jurisdiction in Canada;
 3. APEL is an unlisted public Australian company with a head office in Melbourne, Australia;
 4. to its knowledge, APEL is not a reporting issuer in British Columbia or any other jurisdiction in Canada and does not intend to become a reporting issuer in any jurisdiction in Canada;
 5. it lodged its bidder's statement (which contains the Offer) with the Australian Securities and Investments Commission (the ASIC) on September 21, 2004;

2004 BCSECCOM 561

6. to its knowledge, as of September 17, 2004, the number of Shares issued by APEL was 181,013,270 of which 94,158,435 Shares, or 52.02% of the issued Shares, are owned by Anglo Coal;
7. to its knowledge, based on the last register of shareholders received by it, as of August 25, 2004 there was one person whose last address was in British Columbia holding 20,000 Shares representing approximately 0.011% of the issued Shares of APEL;
8. it plans to mail the Offer to the holders of Shares on or about October 5, 2004, and the Offer will be scheduled to close at 5:00 pm (Melbourne time) one month after the Offer is mailed;
9. it will make the Offer on the same terms and conditions to any holder of Shares resident in British Columbia as those applicable to holders of Shares resident outside Canada;
10. in respect of the Offer, it will comply with applicable corporate and federal securities laws of Australia, which include the requirement that a bidder's statement be prepared by the offeror and lodged with the ASIC, and the requirement that an offeror send its bidder's statement and other materials relating to an offer to all shareholders of a target company;
11. the Offer constitutes a take over bid under the Act and as such must comply with the Take Over Bid Requirements;
12. it cannot rely on the de minimis exemption set out in section 98(1)(e) of the Act because the Commission has not recognized Australia for the purposes of that exemption; and
13. its bidder's statement and other materials relating to the Offer, including any amendments, (collectively, the Offer Materials) sent by or on behalf of it to holders of Shares resident outside Canada will concurrently be sent to any holder of Shares resident in British Columbia and filed with the Commission.

Order

¶ 3 Because it is not prejudicial to the public interest, the Commission orders, under section 114(2)(c) of the Act, that Anglo Coal is exempt from the Take Over Bid Requirements in connection with the Offer, provided that:

- (a) there are less than 50 holders in British Columbia of Shares holding less than 2% of the outstanding Shares;

2004 BCSECCOM 561

- (b) the Offer and any amendments to the Offer are made in compliance with applicable corporate and federal securities laws of Australia; and
- (c) the Offer Materials sent by or on behalf of Anglo Coal to holders of Shares resident outside Canada are concurrently sent to any holder of Shares resident in British Columbia and filed with the Commission.

September 27, 2004

Martin Eady, CA
Director