

ALBERTA SECURITIES COMMISSION

ORAL DECISION: TEXT

Citation: HSE Integrated Ltd., Re, 2009 ABASC 446

Date: 20090902

HSE Integrated Ltd.

Applicant

and

Forum National Investments Ltd.

Respondent

Panel: Stephen Murison
Beverley Brennan

Appearing: Taryn Montgomery and Tracy Clark
for Commission Staff

Scott Clarke and Mark Morrison
for the Applicant

David Wood
for the Respondent

Date of Hearing: 25 August 2009

Date of Decision: 25 August 2009

The following text is taken from the transcript of the 25 August 2009 hearing into this application, edited and approved by the chair of the panel for the purpose of providing a public record.

[1] HSE Integrated Ltd. ("HSE") seeks certain orders relating to a securities-exchange take-over bid (the "Bid") that had been launched by Forum National Investments Ltd. ("Forum"). The orders sought would bar the further distribution of disclosure relating to the Bid, and permanently bar trading in any securities purchased or issued under or in connection with the Bid. (HSE did not pursue an initial request for a third type of order.)

[2] In view of the nature of HSE's application (which was dated 18 August 2009 and which we refer to as the "Application"), an expedited hearing was convened and held today [25 August 2009]. We heard submissions from counsel for HSE, Forum and Commission staff.

Background

[3] On 20 August 2009 Forum announced by news release that it had terminated the Bid and that no HSE shares had been tendered to or would be taken up under the Bid.

[4] Forum, through apparently newly-retained counsel, contended that the hearing would therefore be unnecessary. HSE, though, maintained its position that the orders it sought were still appropriate.

[5] At the hearing, HSE suggested that the Forum news release was insufficient to correct material misinformation that Forum had disseminated in connection with the Bid, and that Commission orders were necessary.

[6] Also at the hearing, Forum indicated that it was not opposing the granting of orders in the nature comparable to some of those sought by HSE and similar to those issued by the Commission in a 2007 decision involving a different take-over bid. (That decision, cited as *Re Pulse Data Inc.*, 2007 ABASC 513, we refer to as the "Pulse Decision".)

[7] HSE argued that any orders we make should be accompanied by a public expression of strong findings of serious contraventions or material misconduct. Forum had its own, quite specific, and noticeably milder suggestions for the recitations that might, in its submission, properly accompany such orders: namely, that the Bid had been made, an objection was lodged, the Application was made, that Forum by news release withdrew the Bid and gave its reasons, and that the orders were being issued with Forum's consent.

Analysis

[8] There is a distinction between a take-over proceeding and an enforcement proceeding. The former typically (as in this instance) is conducted in the face of time constraints due to some urgency in determining whether intervention is required to protect capital market participants. The latter almost invariably is commenced by Commission staff, and conducted in an environment affording the luxury of more time for all parties to investigate and to present thoroughly developed positions. We indicated that this proceeding falls into the former category

– a take-over proceeding. This was not the occasion for the sort of broad and profound inquiry perhaps contemplated by HSE.

[9] Accordingly, the merits of the Application – the validity or otherwise of HSE's numerous allegations of contraventions by Forum of Alberta securities laws – were not fully argued or, more especially, defended. No evidence was adduced and no witnesses testified.

[10] That said, there was information before us, primarily in the form of copies of disclosure – notably, Forum's 12 August 2009 offer to purchase and Bid circular, which we will refer to as the "Circular" – issued by Forum in connection with the Bid.

[11] The nature and relatively narrow scope of the take-over proceeding did not preclude us from observing, in the Circular, numerous statements that, on their face, appeared supportive of HSE's complaints. To cite but one set of examples, the Circular was replete with statements to the effect that Forum – whose securities were not listed on an exchange – "intends to" or "will" apply to have its shares (of the class offered in exchange for HSE shares under the Bid) listed on an exchange, suggesting at least that HSE shareholders tendering to the Bid might, with the Forum shares received in consideration, enjoy the enhanced liquidity that an exchange listing can bring. Such representations are prohibited under section 92(3)(b) of the Act, unless the Commission's Executive Director has consented. There was no suggestion that such consent had been given. On its face, therefore, there was ground for us to consider that the Circular did contravene Alberta securities laws and, therefore, that Forum has not complied with the requirements under Part 14 of the Act (or associated regulations) in respect of take-over bids.

[12] Given the strong appearance of serious flaws in the Bid and related disclosure, Forum's decision to terminate the Bid would seem to have been both wise and correct.

[13] The first issue before us now is whether the termination of the Bid and Forum's announcement thereof end the matter, or whether it is appropriate for us to make any orders. If we determine to make orders, the second issue is what findings should accompany them.

[14] For essentially the reasons set out in the Pulse Decision at paras. 23-26, we believe that it is appropriate for us to make the orders sought by HSE.

[15] Our purpose in so doing is not to belabour any flaws in the now-terminated Bid. The purpose, rather, is to eliminate uncertainty and to bolster awareness – and thereby avert or minimize any possible confusion among investors or in the capital market generally – that the Bid is no more.

[16] The first point mentioned – uncertainty – refers simply to the fact that it is not entirely obvious under Alberta securities laws that a take-over bid, once launched, can definitively be withdrawn unilaterally by the offeror absent, for example, a clear failure of a disclosed condition. The orders mentioned would clarify that the Bid is over.

[17] The second point – heightened awareness – reflects our expectation that, whether or not Forum's announcement garners attention through the news media, our orders barring trading

should come to the attention of registrants such as brokers who can be alerted, and in turn alert clients, such that secondary-market trading in Forum and HSE securities will be informed trading.

[18] As indicated, Forum did not oppose the granting of such orders. These would, in fact, be consent orders. However, HSE and Forum did differ as to the findings that we should announce in connection with such orders.

[19] The correct approach, in our view, lies between the parties' competing suggestions. As stated, the nature and circumstances of this proceeding are not conducive to the sort of findings that might follow from a full enforcement hearing; nor are such findings essential in the public interest in this case. Conversely, the recitals suggested by Forum – although not on their face inaccurate – would certainly understate the extent of the flaws in and relating to the Bid.

[20] We consider that Forum, in and through its Bid and related disclosure, did not comply – in important respects – with applicable Alberta securities laws. We acknowledge that, after the Bid was challenged in this Application, Forum announced its termination of the Bid and consented to the orders being made today.

Conclusion: Order Issued

[21] For the reasons given, we are ordering:

- in the public interest, under section 198(1)(a) of the Act, that trading in and purchasing of any securities of Forum or of HSE pursuant to or in connection with the Bid must cease, permanently; and
- under section 179(1)(a) of the Act, that the distribution on and after this date of any document, record or materials used or issued in connection with the Bid is restrained, permanently.

[22] We have signed an order to this effect, which we now provide to Madam Clerk, with copies for distribution to the parties.

[23] This proceeding is concluded.

This Text Approved: 2 September 2009

"original signed by"

Stephen Murison