

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*- offeror granted exemption from Part 2 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* in connection with the offeror's bid for the outstanding securities of a holding company, the value of which is comprised entirely of securities of a non-reporting Alberta unlimited corporation.

Applicable Legislative Provisions

Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*

Citation: McJunkin Red Man Canada Ltd., 2008 ABASC 459

Date: 20080725

In the Matter of
the Securities Legislation of
the Province of Alberta (the **Jurisdiction**)

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
McJunkin Red Man Canada Ltd. (the **Filer**)

Decision

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the requirements of Part 2 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* (the **Instrument**) in connection with a take-over bid by the Filer for the outstanding securities of Midfield Holdings (Alberta) Ltd. (**Holdings**) (the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

- (a) the Alberta Securities Commission is the principal regulator for this application; and
- (b) the Filer has provided notice that Section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Saskatchewan and Manitoba.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is a corporation incorporated under the laws of Alberta.
2. Holdings is a corporation incorporated under the laws of Alberta.
3. Midfield Supply ULC (**Midfield ULC**) is an unlimited liability corporation incorporated under the laws of Alberta.
4. The Filer owns a 51% voting interest and a slightly less than 50% equity interest in Midfield ULC. The remainder of the voting interest is held by Holdings. Holdings also owns slightly in excess of 50% of the total equity of Midfield ULC.
5. Holdings has approximately 280 shareholders. All of these shareholders are employees or former employees of Midfield ULC or its predecessor (the **Employees**).
6. The Employees use Holdings as a holding company for their securities in Midfield ULC because this allows them to avoid direct ownership of shares in Midfield ULC and, as such, they are protected from the statutory joint and several liability for the liabilities and obligations of Midfield ULC that is associated with the direct ownership of shares of an unlimited liability corporation.
7. In June 2005, a unanimous shareholders agreement was entered into among the Filer, Holdings and Midfield ULC (the **USA**).
8. One of the features of the USA is a call right (the **Call Right**), which gives the Filer the right to acquire the securities of Midfield ULC held by Holdings. The Call Right is exercisable during a six-month period that commenced on June 15, 2008. Pursuant to the Call Right, the Filer has the option to provide a purchase notice to Holdings, and is entitled to acquire the shares of Midfield ULC held by Holdings at a price determined by formula.
9. The Filer and Holdings have recently been in discussions with respect to the amendment of the Call Right, primarily to provide for a fixed exercise price that would increase the consideration payable to Holdings.
10. The Filer had intended to exercise the Call Right as soon as the amendment to the Call Right was finalized. However, management of Holdings has recently advised the Filer that the tax ramifications of the exercise of the Call Right are disadvantageous to Holdings and the Employees. As a result, Holdings has proposed that the acquisition be structured as a purchase by the Filer of all of the outstanding securities of Holdings from the Employees (the **Proposed Transaction**).

11. None of the Filer, Holdings or Midfield ULC is a “reporting issuer” under applicable securities legislation.
12. The acquisition of all of the outstanding securities of Holdings is a “take-over bid” under the Instrument.
13. Section 4.3 of the Instrument (the **NRI Exemption**), which exempts certain transactions from the formal take-over bid requirements, is available if:
 - (a) the offeree issuer is not a reporting issuer;
 - (b) there is no published market for the securities that are the subject of the bid; and
 - (c) the number of holders of that class of securities at the commencement of the bid is not more than 50, excluding employees and former employees of the offeree issuer and its “affiliates”.
14. The Instrument states that an issuer is an “affiliate” of another issuer if one of them is a subsidiary of the other or each of them is controlled by the same person.
15. Holdings and Midfield ULC are not affiliates.
16. Because there is no affiliate relationship between Midfield ULC and Holdings the Employees must be included for the purpose of calculating the number of security holders necessary to access the NRI Exemption. Therefore, the NRI Exemption is not available because the number of security holders of Holdings, holding voting or equity securities, exceeds the 50 security holder limit.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that:

- (a) Holdings is not a reporting issuer;
- (b) there is no published market for the securities that are the subject of the Proposed Transaction; and
- (c) the number of security holders of a class of voting or equity securities that is the subject of the Proposed Transaction at the commencement of the Proposed Transaction is not more than 50, exclusive of holders who:
 - (i) are in the employment of Holdings, an affiliate of Holdings, or Midfield ULC; or

- (ii) were formerly in the employment of Holdings, formerly in the employment of an entity that was an affiliate of Holdings at the time of that employment, or formerly in the employment of Midfield ULC or a predecessor of Midfield ULC.

“original signed by”

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