

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Dutch auction issuer bid - With respect to securities tendered at or below the clearing price - Offeror exempt from the requirement in the legislation to take up and pay for securities proportionately according to the number of securities deposited by each securityholder, the associated disclosure requirement, and the valuation requirement on the basis that there is a liquid market for the securities.

Ontario Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am, ss. 95(7) and 104(2)(c)

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,
MANITOBA, ONTARIO, QUEBEC, NOVA SCOTIA, NEWFOUNDLAND & LABRADOR**

AND

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

AND

**IN THE MATTER OF
DUNDEE REALTY CORPORATION**

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, Newfoundland and Labrador (the “Jurisdictions”) has received an application (the “Application”) from Dundee Realty Corporation (“Dundee”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that, in connection with the proposed purchase by Dundee of a portion of its outstanding common shares (the “Shares”) pursuant to an issuer bid (the “Offer”), Dundee be exempt from the requirements in the Legislation to:

- (i) take-up and pay for securities proportionately according to the number of securities deposited and not withdrawn by each securityholder (the “Proportionate Take-up and Payment Requirement”);
- (ii) provide disclosure in the issuer bid circular (the “Circular”) of such proportionate take-up and payment (the “Associated Disclosure Requirement”); and
- (iii) obtain a valuation of the Shares and provide disclosure in the Circular of such valuation, or a summary thereof (the “Valuation Requirement”).

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 Dundee has represented to the Decision Makers that:

1. Dundee is a reporting issuer or the equivalent in each of the Jurisdictions.
2. Dundee is not in default of any requirement of the Legislation and is not on the list of defaulting reporting issuers maintained pursuant to such Legislation, where applicable.
3. The authorized capital of Dundee includes an unlimited number of Shares, of which approximately 16,687,408 were issued and outstanding as of August 7, 2002.
4. The Shares are listed and posted for trading on The Toronto Stock Exchange (the “TSX”). On August 7, 2002, the closing price of the Shares on the TSX was \$15.65 per Share. Based upon such closing price, the Shares had an aggregate market value of approximately \$261,157,935 on such date.

5. To the knowledge of management of Dundee, the only person or company that owns, directly or indirectly, or exercises control or direction over, more than 10% of the outstanding Shares is Dundee Bancorp Inc. (“Bancorp”), which owns approximately 6,909,245 Shares, representing approximately 41.4% of the outstanding Shares. Bancorp has advised Dundee that Bancorp does not intend to tender any Shares to the Offer.
6. Pursuant to the Offer, Dundee proposes to acquire 1,500,000 Shares, representing approximately 9% of the outstanding Shares.
7. The Offer will be made pursuant to a modified Dutch auction procedure (the “Procedure”) as follows:
 - (a) the Circular will specify that the aggregate number of Shares (the “Specified Number”) that Dundee intends to purchase under the Offer will be 1,500,000;
 - (b) the Circular will also specify that the range of prices (the “Range”) within which Dundee is prepared to purchase Shares under the Offer is from \$15.50 to \$17.00 per Share;
 - (c) holders of Shares (collectively, the “Shareholders”) wishing to tender to the Offer will have the right to either: (i) specify the lowest price within the Range at which the Shareholder is willing to sell some or all of their Shares (an “Auction Tender”); or (ii) elect to be deemed to have tendered some or all of their Shares at the Clearing Price determined in accordance with subparagraph 7(e) below (a “Purchase Price Tender”);
 - (d) all Shares tendered by Shareholders who fail to specify any tender price for such tendered Shares and fail to indicate that they have tendered such Shares pursuant to a Purchase Price Tender will be considered to have been tendered pursuant to a Purchase Price Tender;
 - (e) the purchase price (the “Clearing Price”) of the Shares tendered to the Offer will be the lowest price that will enable Dundee to purchase the Specified Number and will be determined based upon the number of Shares tendered and not withdrawn pursuant to an Auction Tender at each price within the Range and tendered and not withdrawn pursuant to a Purchase Price Tender, with each Purchase Price Tender being considered a tender at the lowest price within the Range for the purpose of calculating the Clearing Price;
 - (f) the aggregate amount that Dundee will expend pursuant to the Offer will not be ascertained until the Clearing Price is determined;
 - (g) all Shares tendered and not withdrawn at or below the Clearing Price pursuant to an Auction Tender and all Shares tendered and not withdrawn pursuant to a Purchase Price Tender will be taken up and paid for at the Clearing Price, subject to pro ration if the aggregate number of Shares tendered and not withdrawn at or below the Clearing Price pursuant to Auction Tenders and the number of Shares tendered and not withdrawn pursuant to Purchase Price Tenders exceeds the Specified Number;
 - (h) all Shares tendered and not withdrawn at prices above the Clearing Price will be returned to the tendering Shareholders;
 - (i) in the event more than the Specified Number of Shares are tendered at or below the Clearing Price (an “Over-Subscription”), the Shares to be purchased by Dundee will be pro rated from the Shares so tendered;

- (j) all Shares tendered and not withdrawn by Shareholders who specify a tender price for such tendered Shares that falls outside the Range will be considered to have been improperly tendered, will be excluded from the determination of the Clearing Price, will not be purchased by Dundee and will be returned to the tendering Shareholders;
 - (k) tendering Shareholders who make either an Auction Tender or a Purchase Price Tender but fail to specify the number of Shares that they may wish to tender to the Offer will be considered to have tendered all Shares held by such Shareholder; and
 - (l) if the aggregate number of Shares validly tendered, or deemed to have been tendered, to the Offer at or below the Clearing Price and not withdrawn is less than or equal to the Specified Number, Dundee will purchase all Shares so deposited.
8. Prior to the expiry of the Offer, all information regarding the number of Shares tendered and the prices at which such Shares are tendered will be kept confidential, and the depository under the Offer will be directed by Dundee to maintain such confidentiality until the Clearing Price is determined.
9. Since the Offer is for less than all the Shares, if the number of Shares tendered to the Offer at or below the Clearing Price and not withdrawn exceeds the Specified Number, the Proportionate Take-Up and Payment Requirement would require Dundee to take-up and pay for deposited Shares proportionately, according to the number of Shares deposited by each Shareholder. In addition, the Associated Disclosure Requirement would require disclosure in the Circular that Dundee would, if Shares tendered to the Offer and not withdrawn exceeded the Specified Number, take-up such Shares proportionately according to the number of Shares tendered and not withdrawn by each Shareholder.
10. During the 12 months ended July 31, 2002:
- (a) the number of outstanding Shares was at all times at least 5,000,000, excluding Shares that either were beneficially owned, directly or indirectly, or over which control or direction was exercised, by related parties to Dundee or were not freely tradeable;
 - (b) the aggregate trading volume of the Shares on the TSX was at least 1,000,000, Shares;
 - (c) there were at least 1,000 trades in Shares on the TSX; and
 - (d) the aggregate trading value based on the price of the trades referred to in paragraph (c) above was at least \$15,000,000.
11. The market value of the Shares on the TSX was at least \$75,000,000 for the month of July 2002.
12. As a result of the information contained in paragraphs 10 and 11 above and because it is reasonable to conclude that, following completion of the Offer, there will be a market for the beneficial owners of Shares who do not tender to the Offer that is not materially less liquid than the market that exists at the time the Offer is made, Dundee intends to rely upon the exemptions from the Valuation Requirement contained in Sections 3.4(3) of

Ontario Securities Commission Rule 61-501 and Quebec Local Policy Statement Q-27 (the “Presumption of Liquid Market Exemptions”).

13. The Circular will:

- (a) disclose the mechanics for the take-up and payment for, or return of, Shares as described in paragraph 7 above;
- (b) explain that, by tendering Shares at the lowest price in the Range or pursuant to a Purchase Price Tender, a Shareholder can reasonably expect that Shares so tendered will be purchased at the Clearing Price, subject to pro ration as described in paragraph 7 above;
- (c) describe the effect that the Offer, if successful, will have on the direct or indirect voting interest of Bancorp;
- (d) disclose the facts supporting Dundee’s reliance on the Presumption of Liquid Market Exemptions, calculated with reference to the date of the announcement of the Offer; and
- (e) except to the extent exemptive relief is granted by this decision, contain the disclosure prescribed by the Legislation for issuer bids.

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, in connection with the Offer, Dundee is exempt from the Proportionate Take-up and Payment Requirement, the Associated Disclosure Requirement, and the Valuation Requirement, provided that Shares tendered to the Offer and not withdrawn are taken up and paid for, or returned to the Shareholders, in accordance with the Procedure.

Dated September 4 , 2002

“Robert W. Korthals”

“Robert L. Shirriff”
