

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Application under Section 104(2)(c) of the Securities Act (Ontario) – Exemption from Sections 95-100 of Securities Act (Ontario) – Take-over bid in Ontario by German limited liability company that is not a reporting issuer in any Canadian jurisdiction – Filer acquiring stock corporation incorporated under the laws of Germany – de minimis exemption not available – Filer cannot conclusively determine how many Canadian shareholders there are because target issued bearer securities and does not maintain a share register – Evidence suggests the number of Canadian shareholders less than the de minimis threshold – Germany is not recognized by the Commission for the purposes of de minimis exemption – Commission granted relief as take-over bid conducted in accordance with the laws of Germany providing protections to target shareholders – All material provided to foreign shareholders to be provided to Ontario shareholders – All shareholders treated equally

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c.S.5, as amended, ss. 93(1)(e), 95-100 and 104(2)(c).

June 29, 2006

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,
MANITOBA, ONTARIO, QUÉBEC, NOVA SCOTIA,
NEW BRUNSWICK 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
BANDAI GMBH (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") that the formal take-over bid requirements contained in the Legislation, including the provisions relating to delivery of an offer and take-over bid circular and any notices of change or variation thereto, delivery of a directors' circular

and any notices of change or variation thereto, minimum deposit periods and withdrawal rights, take-up of and payment for securities tendered to a take-over bid, disclosure, financing, restrictions upon purchases of securities, identical consideration and collateral benefits (collectively, the "Take-over Bid Requirements") shall not apply to trades made in connection with the proposed offer (the "Offer") by the Filer for the acquisition of all ordinary non-par value bearer shares of Zapf Creation AG (the "Target") which have been issued, including treasury stock held by the Target (the "Shares") (the "Requested Relief"). The Target's registered office is in Rödental, Germany.

Under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"):

(a) the Ontario 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 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 is a private limited liability company under the laws of the Federal Republic of Germany. The sole managing director of the Filer is Mr. Masayuki Matsuo. The Filer is a wholly-owned subsidiary of Bandai S.A. ("BSA"), an unlisted stock corporation under French law. Bandai S.A. is a wholly-owned subsidiary of Namco Bandai Holdings Inc. ("NBH"), a listed stock corporation under Japanese law. NBH and all its subsidiaries, including the Filer, are referred to as Namco Bandai Group.
2. The Filer's registered office is located at Mülheimer Str. 15, 90451 Nürnberg, Germany. BSA's registered office is 4, Rue de l'Industrie, 95310 St.-Ouen L'Aumône, Cergy Pontoise, France. NBH's registered office is 9F Taiyo Life Shinagawa Building 2-16-2, Konan, Minato-ku, Tokyo, 108-0075, Japan. BSA is the head office of Namco Bandai Group's European operations.
3. Neither the Filer nor BSA or NBH is a reporting issuer or the equivalent in any of the Jurisdictions. Neither the Filer's nor BSA's securities are listed or quoted for trading on any Canadian stock exchange or market or anywhere else. NBH's securities are not listed or quoted for trading on any Canadian stock exchange or market.
4. The Target is a stock corporation under the laws of the Federal Republic of Germany, with its Shares traded on the official market of the Stock Exchange in Frankfurt am Main and furthermore on the open market of other German stock exchanges in Hamburg, Stuttgart, Düsseldorf, Munich and Berlin-Bremen. The Target is the German top group company of various foreign and German subsidiaries (the "Target Group") whose focus is on marketing

branded play concepts including dolls and a wide range of accessories that are developed with great attention to quality, design and play value.

5. The Target's registered office is located at Mönchrödener Straße 13, 96472 Rödental, Germany.

6. The Target's issued share capital registered in the commercial register amounts to €8,000,000 and is divided into 8,000,000 ordinary non-par value bearer shares, each share representing a proportionate amount of the registered share capital of Target of €1. The Shares constitute "equity securities" for the purposes of the definition of "take-over bid" in the Legislation as applicable.

7. The Target is not a reporting issuer or equivalent in any of the Jurisdictions. The Target's securities are not listed or quoted for trading on any Canadian stock exchange or market.

8. The Filer does not currently hold any of the Shares either directly or indirectly.

9. On June 13, 2006, the Filer announced its intention to make a voluntary public tender offer for the acquisition of the Shares. The Filer intends to offer €10.50 per Share in cash, implying a total offer consideration of up to €84 million. The implementation of the Offer and the purchase and ownership transfer agreements resulting from acceptance of the Offer are subject to satisfaction of certain conditions precedent including, but not limited to, approval by the German Federal Cartel Office and the Filer acquiring more than 75% of the Shares.

10. The Offer is being made and the Offer Document reflecting the terms of the Offer is being prepared exclusively in accordance with the laws of the Federal Republic of Germany (in particular, the *German Securities Acquisition and Takeover Act (Wertpapiererwerbs- und Übernahmegesetz*, or the "WpÜG")). It is made in compliance with the provisions of the statutory regulations based on the WpÜG and in compliance with any applicable provisions of US securities law.

11. The Offer Document has been submitted for review to the applicable securities regulatory authority in Germany. It is expected that the Offer Document will be made available to the holders of Shares immediately after approval by the German regulator, expected to be granted on June 27, 2006. In accordance with German law, the Offer Document (and an English convenience translation) will be available on the Internet at <http://www.bandaigmbh.de>, and a notification regarding the publication of the Offer Document will be published in a national German newspaper also specifying where and how the shareholders may obtain a copy of the Offer Document free of charge. For further details on the publication see paragraph 13 below.

12. As permitted by German law, the Target has issued bearer securities and does not maintain a share register. Accordingly, any information about Shares held by shareholders in Canada can only be determined on a limited enquiry basis. Based on such enquiry, the Filer believes that as of June 13, 2006 there was one holder of Shares resident in Canada, holding in total 37,900 Shares representing approximately 0.47% of the entire issued share capital of the Target. The Filer believes that the above-mentioned shareholder is located in Ontario. As a result of the fact

that the Target has issued bearer shares, the Filer is unable to determine conclusively where the holders of the Shares reside.

13. The Offer Document is expected to be published on June 28, 2006, in accordance with section 14 para. 3 of the WpÜG. The German version of the Offer Document and its non-binding English convenience translation will be published on the internet at <http://www.bandaigmbh.de>. In addition, an announcement regarding the publication of the German Offer Document will be published in the *Frankfurter Allgemeine Zeitung*. Furthermore, copies of the Offer Document and its English convenience translation will be made available to shareholders of the Target free of charge at BNP Paribas S.A. Niederlassung Frankfurt am Main, Grüneburgweg 14, 60322 Frankfurt am Main, Germany, and at BNP Paribas Securities Corp., Corporate Finance (U.S.), The Equitable Tower, 787 Seventh Avenue, New York, NY 10019, United States. On the same day, an announcement of the publication of the Offer Document and the availability of its English translation will also be made in the *The Wall Street Journal* (U.S. Edition) in the United States of America. Beyond that, as permitted under German law, the Filer does not expect to deliver any materials to the holders of the Shares in general (as the Target has issued bearer shares and does not maintain a share register or other record of the addresses of its shareholders). However, in the event that any material relating to the Offer is sent by the Filer generally to holders of the Shares in Germany, such material will also be sent to holders of Shares residing in the Jurisdictions (if addresses are known), along with an English translation for convenience purposes.

14. A public announcement in English in a national Canadian newspaper and in French in a newspaper that is widely circulated in Québec, made at the same time as the public announcement in the national German newspaper or as soon as practicable after issuance of this order, will specify where and how the shareholders may obtain a copy of the Offer Document or an English convenience translation free of charge. As soon as practicable after such date, the Filer will also file a copy of the Offer Document with the Decision Makers.

15. The *de minimis* take-over bid exemptions found in certain of the Jurisdictions are not available to the Filer since the bid is not being made in compliance with the laws of a jurisdiction that is recognized by the applicable Decision Makers for the purposes of the *de minimis* take-over bid exemptions. Also, because the Target does not maintain a share register, the Filer is unable to determine conclusively the number of holders of the Shares resident in each of the Jurisdictions, or the number of Shares held by any such persons.

16. In accordance with German law (home jurisdiction of both, the Filer and the Target) and with the provisions of Rule 14d-1(c) of the *U.S. Securities Exchange Act 1934* (Tier I), the Offer treats all shareholders (including Canadian holders) equally.

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 Filer is exempt from the Take-over Bid Requirements in making the Offer to the shareholders of the Target who are resident in the Jurisdictions provided that:

(i) the Offer and all amendments to the Offer are made in compliance with the laws of the Federal Republic of Germany,

(ii) any material relating to the Offer that is sent by the Filer generally to the holders of Shares in Germany will be sent by the Filer to the holders of Shares resident in the Jurisdictions (if addresses are known) together with an English convenience translation and copies thereof filed with the Decision Maker in each jurisdiction, and

(iii) the Filer makes a public announcement in English in a national Canadian newspaper and in French in a newspaper that is widely circulated in Québec specifying where and how holders of Shares in the Jurisdictions may obtain a copy of the Offer Document (or an English convenience translation) free of charge, and files copies thereof with the Decision Maker in each Jurisdiction.

"Paul K. Bates"
Commissioner
Ontario Securities Commission

"Paul M. Moore"
Commissioner
Ontario Securities Commission