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VIA E-MAIL AND DELIVERY

Ontario Securities Commission
20 Queen Street West, Suite 1903
Toronto, ON M5H 3S8

Attention: John Stevenson
Secretary of the Commission

Dear Mr. Stevenson:

**Re: KWG Resources Inc. proposed merger with Spider Resources Inc.
Application for relief under section 127 of the *Securities Act* (Ontario)**

We are counsel to Cliffs Natural Resources Inc. ("Cliffs"), which has made an offer (the "Cliffs Offer") by way of take-over bid to purchase all of the issued and outstanding common shares of Spider Resources Inc. (TSX-V: SPQ) ("Spider").

RELIEF REQUESTED

1. Cliffs hereby applies for an order pursuant to section 127 of the *Securities Act* (Ontario) (the "Act") in connection with the Cliffs Offer and the shareholder rights plan of Spider dated May 8, 2009 (the "Spider Rights Plan"). In particular, Cliffs seeks the following relief:
 - (a) a permanent order pursuant to paragraph 127(1) of the Act that trading cease in respect of any securities issued, or to be issued, under or in connection with the Spider Rights Plan, including without limitation, in respect of rights issued under the Spider Rights Plan (the "Rights") and any common shares of Spider to be issued upon the exercise of the Rights;
 - (b) a permanent order removing prospectus exemptions in respect of the distribution of the Rights on the occurrence of the Separation Time (as defined in the Spider Rights Plan) and in respect of the exercise of the Rights;
 - (c) to the extent necessary, a temporary order pursuant to subsection 127(5) of the Act suspending the operation of the Spider Rights Plan, or providing that any rights that have been or may be issued thereunder shall not separate from the Spider common shares or become exercisable or trade separately from the Spider common shares until such time as the matters raised in this request for a hearing have finally been disposed of by the Commission; and

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Reference: 11573/256

(d) such further and other relief as the Commission deems appropriate in the public interest.

2. The evidence supporting this application can be found in the affidavit of William Boor, a copy of which accompanies this letter.

OVERVIEW OF CLIFFS' POSITION

3. Cliffs submits that it is in the public interest to cease trade immediately the Spider Rights Plan for the reasons set out below.

(a) The Spider Rights Plan has served its purpose. In particular:

- (i) The Special Committee of Spider's board of directors (the "Spider Special Committee") charged with assessing the Cliffs Offer has indicated that it is prepared to accept the proposal Cliffs recently made to increase the cash consideration payable under the Cliffs Offer;
- (ii) Spider is prevented by the terms of a combination agreement dated as of June 11, 2010 (the "Combination Agreement") between Spider, KWG Resources Inc. (TSX-V: KWG) ("KWG") and a wholly-owned subsidiary of KWG from soliciting alternative bids; and
- (iii) while it is a highly unlikely prospect at this point in time, any party wishing to proceed with an unsolicited bid for Spider shares would need to make a proposal superior to that made by Cliffs, negotiate that proposal with Spider and submit it to KWG under the match provisions of the Combination Agreement in order to provide Spider with the right to terminate the Combination Agreement and avoid its proposed merger with KWG.

Accordingly, given that Spider has decided to enter into the Combination Agreement, the Spider Rights Plan does not enable Spider to solicit a more attractive alternative bid, and is not required to enable Spider an opportunity to negotiate with any party making an alternative bid.

- (b) The Cliffs Offer is fair to Spider shareholders in that it offers them a substantial premium for their shares, and is an all-cash offer for all outstanding common shares. The cash consideration is even higher under the more recent proposal Cliffs has made to the Spider board of directors (the "Spider Board");
- (c) Maintaining the Spider Rights Plan results in uncertainty for Spider shareholders and deprives them of the opportunity to participate in the benefits of the Cliffs Offer before it expires on July 6, 2010.

4. The purpose of any rights plan in general, and the Spider Rights Plan in particular, is to ensure that shareholders are treated fairly by allowing them sufficient time to evaluate an offer, and to allow directors time to consider and pursue alternatives. In this case, Spider's directors responded to the Cliffs Offer not by conducting an auction, but rather by entering into a binding letter agreement to undertake a merger with KWG on May 25, 2010. This binding letter agreement contained no-shop provisions restricting Spider from soliciting alternative bids, as does the definitive Combination Agreement that replaced it. Spider's directors subsequently determined that a proposal from Cliffs to increase the cash consideration payable under the Cliffs Offer constitutes a "Spider Superior Proposal" under the Combination Agreement. There is no auction in process. The Spider Rights Plan therefore currently serves no purpose and should be cease traded immediately to allow Spider shareholders to decide for themselves whether to accept the Cliffs Offer or the proposed merger transaction with KWG.

FACTUAL OVERVIEW

Parties

5. Cliffs is a publicly-held international mining and natural resources company. It is the largest producer of iron ore pellets in North America, a major supplier of direct-shipping iron ore out of Australia and a significant producer of metallurgical coal. Cliffs is an Ohio corporation that trades on the NYSE and the NYSE Euronet Exchange in Paris, France under the symbol CLF and is a member of the S&P 500 Index. It is a reporting issuer in British Columbia, Alberta, Ontario and Quebec. Cliffs indirectly owns a 47% interest in the "Big Daddy" chromite deposit ("Big Daddy") located in the McFaulds Lake area of Northern Ontario.¹

6. Spider is a development-stage mineral exploration company incorporated pursuant to the laws of Canada. Spider holds a 26.5% interest in Big Daddy as its primary asset and has an option to earn-in up to an aggregate 30% interest in Big Daddy. Spider is a Tier 2 Canadian exploration company, quoted for trading on the TSXV under the symbol SPQ.²

7. Cliffs currently holds 27,434,500 Spider common shares, representing approximately 4.2% of the issued and outstanding Spider common shares on a fully-diluted basis.³

8. KWG is a mineral exploration company the primary asset of which is a 26.5% interest in Big Daddy. KWG has an option to earn-in up to an aggregate 30% interest in Big Daddy. It also holds a 50% interest in a 2% smelter royalty in adjacent chromite prospects. KWG is a Quebec corporation that trades on the TSXV under the symbol KWG.⁴

¹ Affidavit of William C. Boor, sworn June 21, 2010 ("Boor Affidavit"), paras. 2-4

² Boor Affidavit, paras. 5 and 7

³ Boor Affidavit, para. 8

⁴ Boor Affidavit, paras. 7, 15 and Exhibit D

The Spider Rights Plan

9. The Spider Rights Plan was adopted by the Spider Board on May 8, 2009 and approved by Spider's shareholders on June 11, 2009.

10. According to its preamble, the Spider Rights Plan is intended to ensure that: (i) all shareholders are treated fairly in connection with any take-over bid; and (ii) Spider's directors are provided with sufficient time to evaluate unsolicited take-over bids and explore and develop alternatives to maximize shareholder value.⁵

11. The Spider Rights Plan provides for a massive dilution of shares if a person becomes the beneficial owner of 20% or more of the outstanding common shares of Spider (an "Acquiring Person"), unless the acquisition is through an exempt transaction such as a "Permitted Bid" as that term is defined in the Spider Rights Plan.⁶

12. If a triggering event occurs, each holder of Spider common shares (other than the Acquiring Person) has the right after the "Separation Time" as defined in the Spider Rights Plan, to purchase Spider common shares at a 50% discount to the then current market price.⁷

The Cliffs Offer

13. On May 23, 2010, Cliffs wrote to the Spider Board proposing to acquire all of the outstanding common shares of Spider not owned by Cliffs or its affiliates for C\$0.13 per share in cash. The proposed acquisition represented a premium of 62.5% over the closing price of Spider common shares on May 21, 2010, and implied a total equity value for Spider on a fully diluted basis of C\$86 million. The proposal included a request for access to due diligence and contained a "go shop" clause enabling Spider to canvass the market for a superior offer.⁸

14. The Spider Board declined the proposal. As a result, on May 24, 2010, Cliffs issued a press release outlining the terms of its proposal and announcing its intention to make the Cliffs Offer.⁹ Cliffs formally commenced the Cliffs Offer on May 31, 2010, by publishing an advertisement in The Globe and Mail and La Presse, and filing its take-over bid circular on SEDAR.¹⁰

15. The Cliffs Offer is open for acceptance by Spider shareholders until 5:00 pm (Eastern time) on July 6, 2010 (the "Expiry Time").¹¹

⁵ Spider Rights Plan, p. 1; Exhibit C, Boor Affidavit

⁶ Spider Rights Plan, Article 3; Exhibit C, Boor Affidavit

⁷ Spider Rights Plan, Article 3; Exhibit C, Boor Affidavit

⁸ Boor Affidavit, para. 17

⁹ Cliffs News Release, May 24, 2010; Exhibit D, Boor Affidavit

¹⁰ Boor Affidavit, para. 19 and Exhibit E

¹¹ Cliffs Offering Circular; Exhibit E, Boor Affidavit

16. The Cliffs Offer contains a number of conditions subject to which Cliffs may withdraw the Cliffs Offer and not take up and pay for any Spider shares, including conditions requiring that before the Expiry Time: (i) Spider shareholders deposit and not withdraw at least 66 2/3% of issued and outstanding Spider common shares on a fully-diluted basis and (ii) the Spider Rights Plan be waived or invalidated.¹²

Cliffs Announces Its Intention to Bid for KWG

17. On May 21, 2010, Cliffs wrote to the KWG board of directors (the "KWG Board") proposing to acquire all of the outstanding common shares of KWG not owned by Cliffs or its affiliates for C\$0.13 per share in cash. The proposed acquisition represented a premium of 62.5% over the closing price of KWG shares on May 21, 2010, and implied a total equity value for KWG of C\$100 million. The proposal included a request for access to due diligence and contained a "go shop" clause enabling Spider to canvass the market for a superior offer. The KWG Board declined the proposal. Cliffs announced its intention to bid for KWG together with its intention to make the Cliffs Offer in its press release issued on May 24, 2010.¹³

18. Cliffs currently holds 111,733,215 KWG shares and warrants to acquire 48,460,049 KWG shares, representing approximately 19.3% of the issued and outstanding KWG shares on a fully-diluted basis.¹⁴

19. On June 7, 2010, Cliffs announced that it was continuing to review its options with respect to making a formal offer for KWG and may not make such an offer in light of the Merger (as defined below).¹⁵ On June 14, 2010, Cliffs announced that it had requested that KWG stop the valuation that would be required to proceed with a formal bid.¹⁶

Spider's Response to the Cliffs Offer: The Proposed Merger of Spider and KWG

20. On May 25, 2010, two days after Cliffs announced its intention to make the Cliffs Offer, Spider announced that it had entered into a binding letter agreement (the "Letter Agreement") with KWG, under the terms of which the two companies would merge.¹⁷ The resulting corporation would hold an aggregate 53% interest in Big Daddy, with an option to earn a further 7%.¹⁸

21. The proposed merger transaction (the "Merger") would involve Spider amalgamating with a newly-formed, wholly-owned subsidiary of KWG. All of the common shares of Spider would be exchanged for common shares of KWG such that each company's shareholders would hold 50% of the outstanding common shares of KWG at an exchange ratio of 1.21 KWG shares per Spider share.¹⁹

¹² Boor Affidavit, paras. 21-22 and Exhibit E, pp. 24-28

¹³ Boor Affidavit, para. 23 and Exhibit D

¹⁴ Boor Affidavit, para. 25 and Exhibit D

¹⁵ Boor Affidavit, para. 26

¹⁶ Cliffs News Release, June 14, 2010; Exhibit O, Boor Affidavit

¹⁷ Boor Affidavit, para. 28 and Exhibits H and I

¹⁸ Boor Affidavit, para. 29

¹⁹ Boor Affidavit, para. 29

22. The Letter Agreement contained no-shop provisions that stipulated that Spider could not solicit proposals or offers regarding any other merger, amalgamation, take-over bid or other business combination without KWG's written consent. The one exception was that Spider was entitled to respond to unsolicited proposals made after the date of the Letter Agreement.²⁰ The Letter Agreement therefore prohibits the Spider Directors from seeking alternatives to either the Merger or the Cliffs Offer.²¹

23. The Letter Agreement further stipulated that each party had to pay the other a break fee of C\$2.3 million if the Merger was not completed as a result of either party completing an alternative transaction. The Letter Agreement could be terminated if the Merger was not completed by July 16, 2010.²²

Subsequent Steps by Spider

24. The Letter Agreement stipulated that the Merger had to be approved at a special meeting of Spider shareholders (the "Spider Shareholder Meeting") by a special resolution passed by a majority of not less than two-thirds of the votes cast at the meeting, in person or by proxy.²³

25. On May 28, 2010, Spider announced that it would hold the Spider Shareholder Meeting on July 8, 2010, two days after the Cliffs Offer expires. The record date for the Spider Shareholder Meeting is June 4, 2010.²⁴

26. Pursuant to the terms of the Letter Agreement, Spider and KWG entered into the definitive Combination Agreement, formalizing the terms of the Letter Agreement.²⁵ KWG announced the Combination Agreement by press release issued before the close of trading on the TSX-V on June 14, 2010.²⁶

27. On June 14, 2010, the Spider Board issued its directors' circular in respect of the Cliffs Offer (the "Directors Circular") in which it recommended that Spider shareholders reject the Cliffs Offer.²⁷

28. In the Directors Circular, the Spider Board announced that the Separation Time under the Spider Rights Plan had been extended to June 21, 2010. The Spider Board had initially announced that it had extended the Separation Time to June 11, 2010 to allow it and the Special Committee sufficient time to consider and assess the Cliffs Offer. The Separation Time was subsequently extended to June 28, 2010.²⁸

²⁰ Boor Affidavit, para. 30 and Exhibit I

²¹ Boor Affidavit, para. 30

²² Boor Affidavit, para. 31 and Exhibit I

²³ Boor Affidavit, para. 33 and Exhibit I

²⁴ Spider Press Release, May 28, 2010; Exhibit J, Boor Affidavit

²⁵ Boor Affidavit, para. 35 and Exhibit L

²⁶ KWG Press Release, June 14, 2010; Exhibit M, Boor Affidavit

²⁷ Boor Affidavit, para. 20 and Exhibit F

²⁸ Boor Affidavit, para. 34

Cliffs Dissident Circular

29. On June 21, 2010, Cliffs issued its dissident proxy circular (the "Cliffs Dissident Circular") setting out the reasons it believes Spider shareholders should prefer the Cliffs Offer to the Merger, and seeking shareholders' proxies to vote against the Merger.²⁹

30. The Cliffs Dissident Circular states, amongst other things, that:

- (a) Cliffs does not intend to take up common shares tendered to the Cliffs Offer by the Expiry Time unless it believes that it has obtained, by proxy or otherwise, sufficient votes against the Merger to ensure that the Merger is not approved by Spider shareholders; and
- (b) any common shares tendered to the Cliffs Offer that are taken up by Cliffs will be voted against the Merger to the extent permitted.

Cliffs Proposes to Increase the Price of the Cliffs Offer

31. On June 13, 2010, Cliffs proposed to the Spider Board that Cliffs increase the offer price under the Cliffs Offer to from C\$0.13 per common share to C\$0.16 per common share, provided the offer was supported by Spider.³⁰

32. On June 14, 2010, Cliffs made a further proposal (the "Proposal") to Spider to increase the cash consideration Cliffs was offering to pay Spider shareholders under the Cliffs Offer from C\$0.13 per common share to C\$0.165 per common share subject to, among other things, Cliffs reaching a satisfactory support agreement (the "Support Agreement") with Spider, and the termination of all agreements between Spider and KWG concerning the Merger.³¹

33. The Spider Special Committee determined that the Proposal was a Superior Proposal as defined in the Combination Agreement. On June 14, 2010, the Spider Directors advised Cliffs and KWG that the Proposal was a Superior Proposal as defined in Combination Agreement.³²

34. On June 16, 2010, Cliffs modified the terms of the Proposal to take into account the terms of the Combination Agreement, which Cliffs received after it was publicly filed on June 15, 2010. The modified proposal still provides for an increased offer price of C\$0.165 per common share and is subject to, amongst other things, Cliffs entering into a Support Agreement with Spider, and the termination of all agreements between Spider and KWG concerning the Merger (the "Cliffs Revised Proposal"). Spider confirmed that the Cliffs Revised Proposal constitutes a Superior Proposal as defined in the Combination Agreement.³³

²⁹ Boor Affidavit, paras. 38-40 and Exhibit N

³⁰ Boor Affidavit, para. 41

³¹ Boor Affidavit, para. 42

³² Boor Affidavit, para. 43

³³ Boor Affidavit, para. 44

35. The Cliffs Revised Proposal represents a 27% increase over Cliffs' original offer of C\$0.13 per share and a 106% premium over the closing price of the common shares of Spider on the TSXV on May 21, 2010, the last trading day prior to Cliffs' announcement of its intention to bid for the common shares of Spider. The Cliffs Revised Proposal implies a total equity value for Spider on a fully-diluted basis of C\$109 million.³⁴

36. The form of Support Agreement negotiated between Cliffs and Spider provides for a number of conditions to be met in order for Cliffs to be obliged to take up and pay for shares under the Cliffs Revised Proposal. Such conditions include, but are not limited to: (i) at least 50.1% of the common shares of Spider (on a fully-diluted basis) must be deposited under the Cliffs Revised Proposal and not withdrawn before the Expiry Time; and (ii) Cliffs must be satisfied with its treatment under the Spider Rights Plan. The Support Agreement also contains "no shop" provisions as well as matching provisions and a break fee in favour of Cliffs.³⁵

37. In view of Spider's determination that the Cliffs Revised Proposal is a Superior Proposal pursuant to the terms of the Combination Agreement, Spider will terminate the Combination Agreement and enter into the Support Agreement with Cliffs unless KWG matches the Revised Proposal pursuant to the terms of the Combination Agreement, by June 24, 2010 at 12:01 a.m.³⁶

Shareholders' Choice

38. If KWG matches the Cliffs Revised Proposal before the 12:01 a.m. deadline on June 24, 2010, Spider shareholders will be faced with two competing proposals to evaluate:³⁷

- (a) the Merger, subject to a shareholder vote at the July 8, 2010 special meeting of Spider shareholders; or
- (b) the Cliffs Revised Proposal, subject to shareholders: (i) tendering their Spider shares; and (ii) providing their proxies to vote (through intermediaries in the case of non-registered shareholders) against the Merger by July 6, 2010.

39. Cliffs does not intend to extend the Cliffs Offer if the Merger is proceeding unless Cliffs believes that it has obtained sufficient votes by proxy or otherwise, to ensure that the Merger is not approved by Spider shareholders.³⁸

³⁴ Boor Affidavit, para. 45

³⁵ Boor Affidavit, para. 46 and Exhibit Q

³⁶ Boor Affidavit, para. 47

³⁷ Boor Affidavit, para. 48

³⁸ Boor Affidavit, para. 49

CLIFFS' SUBMISSIONS

40. Cliffs submits that the OSC should exercise its public interest jurisdiction under section 127 of the Act to cease trade the Spider Rights Plan because the Spider Rights Plan has served its purpose. In particular:

- (a) the Spider Rights Plan has served its purpose:
 - (i) the provisions of the Combination Agreement foreclose Spider from soliciting alternative transactions, so there is no reasonable prospect that the continued operation of the Spider Rights Plan will yield a superior bid for Spider;
 - (ii) in the unlikely event that a new bid emerges, the continued operation of the Spider Rights Plan is not needed to ensure that any third party bid is superior to those now available to Spider's shareholders;
- (b) the Cliffs Offer is a premium bid that fair to Spider's shareholders and they should not be barred from participating in it; and
- (c) the Cliffs Offer will not be extended if the Spider Rights Plan is left in place unless Cliffs believes that it has obtained sufficient votes to ensure that the Merger is not approved.

In the context of the competing transactions initiated by KWG and Cliffs, the Spider Rights Plan causes uncertainty in the market, particularly for the extensive number of retail shareholders of Spider, and serves as a barrier to those shareholders of Spider wishing to tender their shares to the Cliffs Offer. This barrier should be removed.

National Policy 62-202

41. The paramount consideration underlying the take-over bid provisions in Canadian securities legislation is the protection of the *bona fide* interests of the target company's shareholders. Section 1.1(2) of National Policy 62-202 describes the takeover bid provisions of the Canadian securities legislation as follows:

The primary objective of the take-over bid provisions of Canadian securities legislation is the protection of the bona fide interests of the shareholders of the target company. A secondary objective is to provide a regulatory framework within which take-over bids may proceed in an open and even-handed environment. The take-over bid provisions should favour neither the offeror nor the management of the target company, and should leave the shareholders of the target company free to make a fully informed decision. The Canadian securities regulatory authorities are concerned that certain defensive measures taken by management of a target company may

have the effect of denying to shareholders the ability to make such a decision and of frustrating an open take-over bid process. [emphasis added]³⁹

42. In adopting National Policy 62-202, the Canadian securities regulators recognized that, while defensive tactics may sometimes be legitimately used by a target corporation as a means of maximizing shareholder value, it is inappropriate for the target corporation to adopt defensive tactics “that are likely to deny or limit severely the ability of shareholders to respond to a take-over bid or to a competing bid.”⁴⁰

43. The implementation or retention of a shareholder rights plan is a common defensive tactic employed by the management of a target corporation, as the effect of such a plan is to prevent a take-over bid from succeeding without the board’s approval. As described in greater detail below, and consistent with the objectives of National Policy 62-202, the Commission has repeatedly held that a shareholder rights plan will be set aside where it is being used to prevent shareholders of a target corporation from exercising their fundamental right to determine whether to accept or reject an offer to acquire their shares.

“When” not “If” the Rights Plan Should be Set Aside

44. All shareholder rights plans must at some time be set aside so that shareholders can determine whether to tender their shares to an outstanding offer. The fundamental issue on this application is not whether the Spider Rights Plan will be set aside, but *when* it will be set aside.

45. In determining whether a rights plan should be set aside, the target company bears the initial burden of justifying the plan by proving that “there appears to be a real and substantial possibility that, given a reasonable period of further time, the board of the target corporation can increase shareholder choice and maximize shareholder value.”⁴¹ It is only in circumstances where the target is able to discharge this burden of proof that the burden falls on the applicant to show that the rights plan should be set aside.⁴²

46. *Royal Host* and the subsequent cases which have followed it⁴³ set out a list of factors to consider in determining whether a rights plan should be allowed to continue:

- (a) when the plan was adopted;
- (b) whether shareholder approval of the rights plan was obtained;
- (c) whether there is broad shareholder support for the continued operation of the plan;
- (d) the length of time since the bid was announced and made;

³⁹ National Policy 62-202 – Take-over Bids – Defensive Tactics

⁴⁰ *Ibid.* at s. 1.1(6)

⁴¹ *Re MDC Corporation and Regal Greetings & Gifts Inc.* (1994), 17 O.S.C.B. 4971 at 4979

⁴² *Re Samson Canada Ltd.* (1999), 8 A.S.C.S. 1791 at 1793; *Re 1153298 Alberta Ltd.*, [2005] A.S.C.D. No. 1004 at para. 52

⁴³ *Re Royal Host Real Estate Investment Trust* (1999), 22 O.S.C.B. 7820 at 7828; *Re Falconbridge Ltd.* (2006), 29 O.S.C.B. 6783 at para. 7

- (e) the size and complexity of the target company;
- (f) the other defensive tactics, if any, implemented by the target company;
- (g) the steps taken by the target company to find an alternative bid or transaction that would be better for the shareholders;
- (h) the likelihood that, if given further time, the target company will be able to find a better bid or transaction;
- (i) the number of potential, viable offerors;
- (j) the nature of the bid, including whether it is coercive or unfair to the shareholders of the target company; and
- (k) the likelihood that the bid will not be extended if the rights plan is not terminated.

Application of the *Royal Host* Factors to This Case

47. Which factors are relevant will vary from case to case since all rights plans are unique to the circumstances of the bid.⁴⁴ Here, the Spider Directors are not permitted by the terms of the Combination Agreement or the Support Agreement to solicit alternative bids, so many of the *Royal Host* factors are not relevant. However, there are four factors from the above list that are relevant to this case:

- (a) the Spider Directors have agreed not to seek an alternative transaction, so the choice for Spider shareholders is clearly defined;
- (b) it is unlikely that a better bid will materialize and, if one does, the continued operation of the Spider Rights Plan is not needed to ensure that bid is superior to those now available to Spider's shareholders;
- (c) the Cliffs Offer is fair to Spider's shareholders and they should not be barred from participating in it; and
- (d) the Cliffs Offer will not be extended if the Spider Rights Plan is left in place unless Cliffs believes that it has obtained sufficient votes to ensure that the Merger is not approved.

Each of these factors will be dealt with individually in what follows.

⁴⁴ *Re Falconbridge Limited* (2006), 29 O.S.C.B. 6783 at para. 36; *Re Neo Material Technologies Inc.* (2009), 32 O.S.C.B. 6941 at para. 43

Spider Foreclosed from Seeking Alternative Bid

48. By entering into the Combination Agreement, Spider has ensured that it will be unable to prove that “there appears to be a real and substantial possibility that, given a reasonable period of further time, the board of the target corporation can increase shareholder choice and maximize shareholder value.”⁴⁵ This is because, as set out above, Spider is foreclosed from taking any steps to solicit bids under the terms of the Combination Agreement, which contains “no shop” provisions, matching provisions, and break fees in favour of KWG, as set out above at paragraphs 21, 22, and 25.

49. The Spider Board first determined that Spider’s best interests were served by committing to the Merger rather than seeking alternative transactions. The Letter Agreement and the Combination Agreement that set out the terms of the Merger both contain no-shop provisions that preclude Spider from seeking alternative bids.

50. The Spider Board then determined that the Cliffs Revised Proposal offers superior value to Spider shareholders relative to the Merger. Accordingly, Spider will terminate the Combination Agreement and enter into the Support Agreement with Cliffs unless KWG matches the Cliffs Revised Proposal before 12:01 a.m. on June 24, 2010. The Support Agreement also contains no-shop provisions that preclude Spider from seeking alternative bids.

51. In neither scenario does the Spider Rights Plan, if permitted to continue, enable the Spider Board to pursue a transaction potentially superior to either the Merger or the Cliffs Revised Proposal. This is not a situation, as in *Re Neo Material Technologies Inc.*,⁴⁶ where the Spider Directors have advised shareholders that they would be better served by continuing with management’s pre-existing plans for the company.

52. Setting aside the Spider Rights Plan will allow shareholders to exercise their election as between the Merger and the Cliffs Offer. There is therefore no reason to keep the Spider Rights Plan in place any longer. As a panel of the B.C. Securities Commission held recently in *Re Icahn Partners LP*, “once...it becomes clear that no enhancements, competing bids or alternative transactions are likely to surface, the [shareholder rights plan] has outlived its usefulness and must go.”⁴⁷

Better Bid Unlikely

53. It is highly unlikely that, given further time, a better bid or transaction will materialize. In the unlikely event that a third party makes a competing bid for Spider, the Spider Rights Plan is not needed to ensure that the competing bid is superior to either the Merger or the Cliffs Revised Proposal, since the Combination Agreement and the Support Agreement, respectively, require the bid to be superior before it can be entertained by the Spider Board.

54. It is not likely that any bid superior to the Cliffs Revised Proposal will be made because of:

⁴⁵ *Re MDC Corporation and Regal Greetings & Gifts Inc.* (1994), 17 O.S.C.B. 4971 at 4979

⁴⁶ (2009), 32 O.S.C.B. 6941 at paras. 102-114

⁴⁷ 2010 BCSECCOM 233 at para. 47

- (a) the protections afforded to KWG under the Combination Agreement and to Cliffs under the Support Agreement including the “no shop” provisions, matching provisions and break fees;
- (b) the quantum of the premium payable under the Cliffs Revised Proposal, as set out at paragraph 31, above; and
- (c) the time that has elapsed without an additional bid emerging since the announcement by Cliffs of its intent to make the Cliffs Offer on May 24, 2010.

55. Even if a new bid were to be made, the Spider Rights Plan is unnecessary. There is no prospect that a competing bid will receive the support of Spider shareholders unless it is superior to either the Merger or the Cliffs Revised Proposal. In addition, any party that wished to proceed with a superior unsolicited bid for Spider shares would need to negotiate that proposal with Spider and submit it to KWG under the match provisions of the Combination Agreement in order to provide Spider with a right to terminate the Combination Agreement and avoid its proposed merger with KWG. Accordingly, the Spider Rights Plan is not necessary to provide Spider with an opportunity to negotiate with any party making an alternative bid, as that party cannot effectively complete that bid so long as Spider is committed to complete the Merger pursuant to the Combination Agreement.

Fairness of the Cliffs Offer to Spider Shareholders

56. In any event, the Spider Rights Plan has served its purpose of attracting a bid that, in the view of the Spider Board, provides superior value to shareholders. The Cliffs Offer is a premium, all-cash bid for all of the outstanding common shares of Spider. Spider shareholders should be given the opportunity to participate in its benefits.

57. The Cliffs Revised Proposal represents a substantial 106% premium to the closing price of Spider common shares prior to the announcement of Cliffs' intention to bid. The Spider Special Committee itself has determined that the Cliffs Revised Proposal is a Superior Offer within the terms of the Combination Agreement.

58. As of the Expiry Time on July 6, 2010, the Cliffs Offer will have been open for 36 days from the date of the formal bid, and 43 days from the date of the announcement of Cliffs' intention to bid. Cliffs has also expressed its intention to acquire all of the shares not deposited under the Cliffs Offer. As a result, any Spider shareholder who does not tender to the Cliffs Offer will likely still be able to receive the equivalent consideration for his or her shares if the Cliffs Offer succeeds.

59. The Cliffs Offer is not coercive, improper or unfair, yet the Spider Rights Plan as it stands prevents Spider shareholders from participating in its benefits. The Spider Rights Plan is no longer required to protect Spider shareholders' interests in this case and should be cease traded immediately to give Spider shareholders the option of tendering to the Cliffs Offer.

Expiry of the Cliffs Offer

60. The Cliffs Offer will expire on July 6, 2010. Cliffs does not intend to extend the Cliffs Offer if the Merger is proceeding unless Cliffs believes that it has obtained sufficient votes to ensure that the Merger is not approved. This factor tends to support an immediate cease trade order to ensure that Spider shareholders are not deprived of the opportunity to tender their shares to the offer. To the extent that the Spider Rights Plan continues to operate, it will cause difficulty for Spider shareholders attempting to assess the merits and risks of the two alternative transactions—the Merger and the Cliffs Offer—and then take appropriate action within the prescribed time.

61. As Cliffs has indicated in the Cliffs Dissident Circular, it does not intend to take-up common shares tendered by the Expiry Time unless it believes it has obtained, by proxy or otherwise, sufficient votes against the Merger to ensure that the Merger is not approved by Spider Shareholders. In order to participate in the Cliffs Offer, then, shareholders must both tender to the Cliffs Offer and transmit their proxy to vote against the Merger by July 6, 2010. The inability to take steps before July 6, 2010 by reason of the operation of the Spider Rights Plan will hinder the fundamental right of Spider shareholders to choose the way forward.

62. While an immediate cease trade order would not deprive Spider shareholders of the opportunity to hold out and participate in the Merger, allowing the Spider Rights Plan to continue in force will serve as a barrier to Spider shareholders participating in the benefits of the Cliffs Offer.

CONCLUSION

63. Having regard to all of the above, Cliffs submits that the circumstances of this case provide a substantial and compelling basis for the Commission to exercise its public interest jurisdiction to cease trade any securities issued under, or in connection with the Spider Rights Plan.

64. The Spider Rights Plan has accomplished its purpose and should now be set aside to allow Spider shareholders to choose the way forward. As of its expiry date, the Cliffs Offer will have been known to the market for 41 days, a substantial period of time. In entering into the Combination Agreement and then the Support Agreement, the Spider Directors have agreed not to seek out an some other transaction, foreclosing the possibility of other bidders emerging. Notwithstanding that fact, Cliffs has proposed an increase in the Cliffs Offer, raising the premium potentially available to Spider shareholders from 62.5% to 106%. The Cliffs Offer is from a natural purchaser which has the resources and know-how to develop the Big Daddy project to maturity.

65. Furthermore, in the context of this particular take-over bid, the order cease trading the Spider Rights Plan needs to be made immediately. As of today's date, the meeting of Spider shareholders to vote on the Merger is still scheduled for July 8, 2010, some sixteen days from now. Unless the Spider Rights Plan is cease traded immediately its continued application will only confuse Spider shareholders in what are already confusing circumstances in which there are two competing proposals, one of which is a merger transaction

to be selected by the vote of shareholders, and the other, the Cliffs Offer, which is to be selected by tendering of shares.

66. The purpose of the Cliffs Offer is to obtain control of Spider. The Merger is inconsistent with that objective. Cliffs has indicated in the Cliffs Dissident Circular, it does not intend to take-up common shares tendered pursuant to the Cliffs Offer at its expiry time on June 6, 2010 unless it believes that it has obtained, by proxy or otherwise, sufficient votes against the Merger to ensure that the Merger is not approved by Spider shareholders. For the same reason, Cliffs does not intend to extend the Cliffs Offer if the Merger is proceeding, unless it believes that it has obtained sufficient votes to ensure that the Merger is not approved. As long as the Spider Rights Plan remains in place it only heightens the uncertainty associated with accepting the Cliffs Offer as well as the likelihood of the Cliffs Offer's ultimate completion. Cease trading the Spider Rights Plan immediately removes that element of uncertainty.

67. The continued operation of the Spider Rights Plan is contrary to the public interest. It prevents Spider shareholders from exercising their fundamental right to determine whether to accept or reject a premium, all-cash offer to acquire their shares. The Spider Rights Plan should be cease traded immediately, allowing Spiders' shareholders to elect whether to accept the Cliffs Offer.

Yours very truly,



R.S.M. Woods

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