



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, c.S.5, AS AMENDED**

- AND -

**IN THE MATTER OF
NEO MATERIAL TECHNOLOGIES INC. AND PALA INVESTMENTS
HOLDINGS LIMITED AND ITS WHOLLY-OWNED SUBSIDIARY
0833824 B.C. LTD.**

**DECISION (REASONS TO FOLLOW)
Section 127 of the *Securities Act*, R.S.O. 1990 c. S.5**

Hearing: May 7, 2009

Decision: May 11, 2009

Panel: Lawrence E. Ritchie - Vice-Chair (Chair of the Panel)
David L. Knight, FCA - Commissioner

Counsel: Tom Friedland - Pala Investments Holdings Limited
Grant McGlaughlin and its wholly-owned subsidiary
Rebecca Burrows 0833824 B.C. Ltd.
Melanie Ouanounou

Peter F.C. Howard -Neo Material Technologies Inc.
Edward J. Waitzer
David Weinberger
Samaneh Hosseini

James Sasha Angus -Staff of the Ontario Securities
Shannon O'Hearn Commission
Paul Hayward
Konata Lake

DECISION

[1] This is the decision of the Ontario Securities Commission (the “Commission”) in connection with the application brought by Pala Investments Holdings Limited (“Pala”) and 0833824 B.C. Ltd. (“083”) related to the transaction under which Pala proposes to purchase for cash up to a maximum of 10.6 million (as amended on April 27, 2009) of the outstanding common shares of Neo Material Technologies Inc. (“Neo”).

[2] This document does not constitute the Commission’s reasons for our decision in this matter. Given the nature of the application and the facts that gave rise to it, we have been asked to render a decision as quickly as possible. Accordingly, we are issuing this decision now on an expedited basis. Full reasons will follow in due course for purposes of subsection 9(1) of the Securities Act, R.S.O. 1990, c. S.5, as amended (the “Act”).

I. THE APPLICATION

[3] This matter arises out of an application brought by Pala and 083 seeking an order from this Commission made pursuant to section 127 of the Act in connection with an offer by 083 to purchase for cash up to a maximum of 23 million (or approximately 20%) of the outstanding shares of Neo not already held by 083 and its affiliates at a price of \$1.40 for each common share (the “Pala Offer”). The Pala Offer was subsequently amended on April 27, 2009 (i) to increase the offer price to \$1.70 per share (ii) to decrease the maximum number of shares to be taken up to a maximum of 10.6 million (or approximately 9.5%) and (iii) to extend the expiry time of the Pala Offer to May 15, 2009.

II. THE RELIEF SOUGHT BY PALA

[4] In connection with the Pala Offer, 083 and Pala seek a permanent order pursuant to subsection 127(1) of the Act that:

- (a) trading cease in respect of any securities issued, or to be issued, under or in connection with the Second Shareholder Rights Plan (as defined below); and
- (b) trading cease in respect of any securities issued, or to be issued, under or in connection with the First Shareholder Rights Plan (as defined below).

[5] In argument, the Respondent to this Application, Neo, and Staff of the Commission take the position that our focus need be only on the Second Shareholder Rights Plan. All parties agree that if we do not grant the relief sought in respect of the Second Shareholder Rights Plan, the relief sought in respect of the First Shareholder Rights Plan is unnecessary.

III. THE TRANSACTION

[6] The parties to this Application provided us with an agreed statement of facts, as well as affidavit materials relied on respectively by each party.

[7] Neo is a public corporation continued under the laws of Canada. It is a producer, processor and developer of neodymium-iron-boron magnetic powders, rare earths and zirconium based engineered materials and applications.

[8] Pala is a multi-strategy investment company launched in 2006 and registered in Jersey, Channel Islands. It has a particular focus on mining and resource companies in both developed and emerging markets. Pala has been an investor in Neo since July 2007. At the date of the Pala Offer, Pala had beneficial ownership of, or exercised control or direction over, 23,640,000 common shares of Neo, representing 20.46% of the 115, 521,000 outstanding common shares of Neo.

[9] 083 was incorporated on August 29, 2008 under the laws of the province of British Columbia. It was incorporated for the purpose of acquiring or investing in Canadian businesses.

[10] Neo has a shareholder rights plan dated as of February 5, 2004 (the “First Shareholder Rights Plan”). The First Shareholder Rights Plan was approved by the Neo shareholders at the annual and special meeting of shareholders held June 28, 2004 and reconfirmed on April 28, 2007. It contains a minimum tender condition requiring that at least 50% of the independently held common shares of Neo must be tendered in order for a bidder to take up and pay for any of the shares deposited under the offer (the “Minimum Tender Condition”).

[11] On February 9, 2009, Pala announced that, through a wholly-owned subsidiary, it intended to acquire up to a maximum of 23 million of the outstanding common shares of Neo, representing approximately 20% of Neo’s shares at a price of \$1.40 per share. The Pala Offer was structured to comply with the Permitted Bid definition contained in the First Shareholder Rights Plan by remaining open for at least 60 days, and, in the event that the Minimum Tender Condition is met, by remaining open for another 10 days from the date of the announcement that 50% had been tendered.

[12] On February 12, 2009, Neo’s Board of Directors (the “Neo Board”) adopted a second shareholder rights plan (the “Second Shareholder Rights Plan”). The Second Shareholder Rights Plan is substantially similar to the First Shareholder Rights Plan except that it prohibits partial bids.

[13] Pala issued a Take-over Bid Circular on February 25, 2009.

[14] On April 21, 2009, Pala filed a press release announcing its intention to vary and extend the Pala Offer (i) to increase the offer price to \$1.70 per share (ii) to decrease the maximum number of shares to be taken up to a maximum of 10.6 million and (iii) to extend the expiry time of the Pala Offer to May 15, 2009.

[15] At Neo’s Annual and Special Meeting on April 24, 2009, Neo’s shareholders passed a resolution to approve, ratify and confirm the adoption of the Second Shareholder Rights Plan. Although not in the agreed statement of facts, it was not contested that (i) excluding Pala’s holdings, 81.24% of the shares voted were in favour of the Second Shareholder Rights Plan and (ii) 82.74% of Neo’s shares were represented in person and by proxy at the meeting.

[16] On April 27, 2009, Pala formally amended the Pala Offer by filing its Notice of Variation and Extension.

IV. DECISION

[17] In this case, the Applicant asserts that Neo's "pill" must go, and urges us to exercise our public interest jurisdiction to "cease trade" the Second Shareholder Rights Plan. In all of the circumstances, we are not satisfied that it is in the public interest to grant the relief sought at this time.

[18] While we intend to expand on these points in the reasons to follow, at this time (and without limiting ourselves), we point out that we are influenced by the following considerations:

- (a) the Second Shareholder Rights Plan was adopted by the Neo Board in the context of, and in response to the Pala Offer;
- (b) there is no evidence that the process undertaken by the Neo Board to evaluate and respond to the Pala Offer, including the decision to implement the Second Shareholder Rights Plan, was not carried out in what the Neo Board determined to be the best interests of the corporation and of the Neo shareholders, as a whole;
- (c) an overwhelming majority of the Neo shareholders (excluding Pala) approved the Second Shareholder Rights Plan while the Pala Offer remained outstanding;
- (d) the evidence supports a finding that the Neo shareholders were sufficiently informed about the Second Shareholder Rights Plan prior to casting their votes; and
- (e) there is no evidence to suggest that management or the Neo Board coerced or unduly pressured the Neo shareholders to approve the Second Shareholder Rights Plan.

[19] As a result of our decision, the Application is dismissed.

Dated at Toronto this 11th day of May, 2009.

"Lawrence E. Ritchie"

Lawrence E. Ritchie

"David L. Knight"

David L. Knight, FCA