

December 20, 2007

**IN THE MATTER OF: THE SECURITIES ACT**  
**IN THE MATTER OF: QUALICO DEVELOPMENTS WEST LTD.**  
**(Applicant)**  
**Application for Partial Revocation of Cease**  
**Trade Order**

**REASONS FOR DECISION**  
**OF**  
**THE MANITOBA SECURITIES COMMISSION**

**Panel:**

Chair	Mr. D.G. Murray
Commission Members:	Mr. D.H. Smith

**Appearances:**

Mr. C. Besko	)	Counsel for the Commission
Mr. S. Gingera	)	
Mr. T. Kormylo	)	Counsel for the Applicant

The Applicant, Qualico Developments West Ltd. (Qualico) applied for a partial revocation of a CTO issued by the Commission on September 27, 2006, restricting trading in the securities of Deer Valley Shopping Centre LP (Deer Valley). The application was heard August 21, 2007. Due to time constraints the panel issued a brief written decision on August 22, 2007, denying the application along with an indication that written reasons would follow.

**Background**

Deer Valley, which is a limited partnership, owns and operates a shopping centre in Alberta. The authorized capital of Deer Valley consists of 2,500 units. These units are held in varying amounts by 185 unitholders, all but six of whom are Canadian residents. The units were issued pursuant to a prospectus filed in April 1983 at \$2,500.00 per unit, yielding \$6,250,000.00. The units are not listed on any Exchange. Deer Valley is a reporting issuer in B.C., Alberta, Saskatchewan, Manitoba, Ontario and Quebec as well as Newfoundland/Labrador, although no unitholders are resident there. The general partner is wholly owned by Qualico, which manages its business and affairs.

According to counsel for Qualico, the general partner has been providing unitholders with audited annual financial statements as required by the Limited Partnership Agreement (LPA). When Deer Valley was constituted the only financial disclosure required was what was dictated by the LPA. This changed over time and continuous disclosure filings for limited partnerships were prescribed in legislation requiring compliance with corporate disclosure standards. This

increased the financial disclosure required including filings with the Commissions.

Deer Valley, through the general partner, did not comply with the legislative disclosure requirements. The reasons for non-compliance given by counsel for Qualico is that the disclosure required was not relevant to the unitholders and too costly.

As a result of this non-compliance, jurisdictions began to cease trade Deer Valley. CTOs were issued in Quebec, B.C. (1998), Saskatchewan (2001) and Ontario and Manitoba (2006). Alberta, where a significant number of unitholders reside, has not issued a CTO.

Despite the fact that Deer Valley units were cease traded in three provinces by 2001, Qualico took no steps to have the limited partnership brought into compliance. Counsel for Qualico stated that the CTOs in those jurisdictions were not “important” enough to Deer Valley to cause the general partner to incur the additional expenses of compliance. This attitude and inaction prevailed over the next five years, despite the fact that about 30% of the unitholders and outstanding units were directly impacted by the orders. Counsel argued that liquidity was limited at any rate and most of the unitholders bought with the intention to hold for income distribution and eventual sale of the asset.

It seems that when Ontario and Manitoba issued CTOs in 2006, there became enough of a critical mass of units affected to cause Qualico to decide it was necessary to take some steps toward compliance. In March of 2007, Qualico caused Deer Valley to file with the MSC six-month interim statements as well as its last annual financial statement. The statements, although in the form which had been sent to investors over the years, did not comply with GAAP and were not acceptable. The same situation occurred at the OSC.

In May 2007, representatives of Qualico met with the Director of Capital Markets of the MSC to discuss the possibility of some accommodation to Deer Valley in meeting the continuous disclosure requirements. Shortly thereafter, however, in June 2007 the CSA issued Policy 12-202 for the revocation of cease trade orders. This Policy would require Deer Valley to restate its financial statements for three years as well as preparing MD&A. Qualico considered compliance with these new requirements to be too expensive.

In July 2007, the jurisdictions in which Deer Valley was cease traded, including Manitoba, approved an application to vacate the existing CTOs for the express purpose of allowing a third party, Amalgamated Income Limited Partnership, to present a takeover bid to all Deer Valley unitholders, in the normal course. This takeover bid resulted in the current application. Qualico brought its application to the MSC as Qualico is headquartered in Winnipeg and takes the position that the MSC Order has the effect of preventing it, as such, from seeking to acquire units in Alberta where there is no CTO in place. Even if Qualico is correct in its point of view, a partial revocation given by the MSC would only open Qualico’s offer to unitholders in Manitoba and Alberta.

The specific relief sought by Qualico was for a partial revocation of the MSC Order that would permit Qualico to make a limited offer to acquire for cash a maximum of 347 Deer Valley Units. The reason provided for restricting the bid to 347 units was that, this quantity, when combined

with the 152 units already owned by Qualico, would leave it at just below the 20% threshold for a takeover bid. The panel was told that Qualico did not wish to take over the partnership and in fact its practice was to refrain from even voting its units. Qualico wanted to acquire as many units as possible, short of making a proper takeover bid, to attempt to prevent Amalgamated from acquiring 25% of the units under its bid. Pursuant to the LPA, 25% of the units can prevent the sale of the partnership asset.

The Amalgamated bid was for \$7,000.00 per unit. An independent valuation had been obtained by the Directors that set the unit value at \$9,000.00 to \$10,000.00. This had been sent to the unitholders with a recommendation to decline the Amalgamated bid. Qualico proposed in documents submitted at the hearing, to offer \$7,350.00 per unit, which, the panel was advised at the hearing was going to be raised to \$7,500.00 per unit. Qualico also offered at the hearing to bring Deer Valley into compliance with its continuous disclosure obligations, provided it was successful in its bid.

Counsel for Qualico argued that its proposal would protect the investors by offering a greater sum for their units than Amalgamated was offering and as such was not contrary to the public interest. Counsel for Commission staff on the other hand argued:

1. Qualico did not come with “clean hands” having intentionally kept Deer Valley in non-compliance with regulatory requirements for years and making the units illiquid;
2. The terms of the offer Qualico was proposing were not clearly set out;
3. Qualico’s offer was only open to a limited number of Manitoba and Alberta resident unitholders, whereas the Amalgamated takeover bid was made according to the rules with equal terms for all unitholders and full disclosure (which full disclosure included a Director’s Circular advising against accepting the offer);
4. Qualico’s offer was obviously intended to thwart the Amalgamated bid; and
5. Even if Amalgamated was successful in its takeover bid, Qualico stood to obtain a larger portion of the units than it already owned at a price per unit that it knew to be significantly discounted.

To put it in a nutshell, Qualico chose not to comply with regulatory requirements over a number of years, thereby rendering the units, or many of them, illiquid. Despite this intransigence, Qualico sought extraordinary relief that would ignore the longstanding non-compliance and allow it to possibly acquire more limited partnership units at a price less than full value from only some of the unitholders. The application appeared to be aimed primarily at preventing the success of a properly made takeover bid by a third party which was available to all unitholders and came with full disclosure and statutory protections. Only if Qualico was successful in its bid would it bring Deer Valley into regulatory compliance. The main beneficiary of Qualico’s application would be Qualico. This scenario could not, by any reasonable definition of the term, serve the “public interest”.

As indicated on August 22, 2007, the application was refused.

"D.G. Murray"

D.G. Murray

Chair

"D.H. Smith"

D.H. Smith

Member