

# 2005 BCSECCOM 103

December 22, 2004

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act, s. 114(2) - Exemption from the formal take over bid requirements in Part 13 of the Act - Issuer needs relief from certain disclosure requirements for the takeover bid circular required by Item 15(1) of BC Form 62-902F - The offeror is a foreign issuer and is not a reporting issuer in Canada; the offeror is not required under its home jurisdiction's laws to prepare certain financial statements; the bid circular will include the financial statements the offeror is required to prepare under the laws of its home jurisdiction; if the bid is successful, the offeror will either comply with National Instrument 51-102 Continuous Disclosure Obligations, or will rely on exemptions from NI 51-102 in National Instrument 71-102 Continuous Disclosure and Other Exemptions Relating to Foreign Issuers

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 108 and 114(2)  
Form 62-902F, Item 15

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New  
Brunswick, Nova Scotia 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  
Linedata Services S.A. (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) for:

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- (i) an exemption from the requirement to include unaudited interim financial statements and management's discussion and analysis for the Filer's third quarter of 2004; and
- (ii) an exemption from the requirements relating to generally accepted accounting principles, generally accepted auditing standards and foreign auditors' reports set out under the required form of prospectus, in connection with the filing of a circular (the Circular) relating to a securities exchange take-over bid (the Bid) (collectively, the Financial Information Relief).

The Decision Maker in each of Alberta, Ontario and New Brunswick (the First Trade Jurisdictions) has received an application from the Filer for a decision under the Legislation of the First Trade Jurisdictions for an exemption from the prospectus and registration requirements as they relate to the first trade of shares in the capital of the Filer (the Linedata Shares) distributed pursuant to the Bid (the First Trade Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) the MRRS decision document evidences the decision of each applicable Decision Maker.

### **Interpretation**

Defined terms contained in National Instrument 14-101 – *Definitions* 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 was formed on December 22, 1997 and is governed by French law. Its registered and executive head office is located at 19 rue d'Orléans – 92200 Neuilly-sur-Seine, France. The Filer is a major international provider of financial information technology solutions that specializes in asset management, credit finance and employee savings and insurance.
2. The Filer's share capital is comprised of 11,720,411 Linedata Shares of one euro each, fully paid-up and of a single class.
3. The Linedata Shares are traded on the Nouveau Marché of the Paris Bourse.

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4. The Filer is not currently a reporting issuer in any of the Jurisdictions.
5. The Filer intends to distribute the Circular to all of the shareholders of Financial Models Company Inc. (FMC), which Circular describes an offer to purchase all of the issued and outstanding common shares and class C shares (the FMC Shares).
6. FMC is incorporated under the *Business Corporations Act* (Ontario), and its registered and executive head office is located in Mississauga, Ontario. FMC is a reporting issuer in each of the Jurisdictions, and its common shares are listed for trading on the Toronto Stock Exchange.
7. The offer to purchase provides that as consideration for the FMC Shares deposited under the Bid, each holder of FMC Shares (the FMC Shareholders) will be entitled to receive \$13.00 in cash for 70% of the FMC Shares deposited by such FMC Shareholder and one Linedata Share for every 1.97 FMC Shares with respect to the remaining 30% of the FMC Shares deposited by such FMC Shareholder.
8. The Filer will file the Circular on the System for Electronic Document Analysis and Retrieval (SEDAR).
9. Pursuant to the form requirements for a take-over bid circular in the Jurisdictions, the Filer is obligated to include in the Circular disclosure about the Filer prescribed by the form of prospectus appropriate for the Filer.
10. In connection with the prescribed prospectus form requirements, the Filer must include in the Circular, among other financial information, historical audited and unaudited financial statements of the Filer prepared in accordance with French generally accepted accounting principles (French GAAP) but reconciled to Canadian generally accepted accounting principles (Canadian GAAP) and accompanied by a foreign auditors' report (which includes unaudited interim financial statements for the third quarter of 2004) and file a foreign auditors' proficiency letter (the Financial Information Requirements).
11. Under applicable French laws, the Filer's most recently prepared interim financial statements are for the Filer's six-month period ended June 30, 2004 and they have been prepared pursuant to applicable French laws. Third quarter financial statements are not required in France. Therefore, the Filer has not prepared third quarter financial statements for dissemination to the public (except that it does release revenue figures on a quarterly basis) and is

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not in a position to include interim financial statements and management's discussion and analysis for the Filer's third quarter in the Circular.

12. The Circular will contain the following financial statements:
  - (a) the Filer's audited financial statements for the years ended December 31, 2003, 2002 and 2001 and the Filer's unaudited financial statements for the six-month period ended June 30, 2004, all prepared in accordance with French GAAP and, if applicable, audited in accordance with French auditing standards; and
  - (b) unaudited pro forma financial statements for the year ended December 31, 2003 and the six-month period ended June 30, 2004, all prepared in accordance with Canadian GAAP.
13. A reconciliation of the Filer's financial information to Canadian GAAP for the periods contained in the pro forma financial statements will be included in the Circular.
14. Pursuant to National Instrument 52-107 – *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (NI 52-107) a proficiency letter from the Filer's French auditors is not required and the Filer may prepare its financial statements in accordance with French GAAP and audited in accordance with French auditing standards.
15. If this decision is not granted, the Circular will not comply with the Financial Information Requirements.
16. After the filing of the Circular, the Filer will become a reporting issuer in Quebec, Newfoundland and Labrador, Nova Scotia and Saskatchewan and, if the Filer takes up and pays for the FMC Shares, the Filer will become a reporting issuer in British Columbia (collectively, the Reporting Issuer Jurisdictions).
17. The distribution of the Linedata Shares pursuant to the Bid will be exempt from the registration and prospectus requirements in all Jurisdictions pursuant to statutory exemptions.
18. Following completion of the Bid, the annual reports, financial statements, proxy materials and other materials currently distributed to the holders of the Linedata Shares pursuant to the securities laws of France will be provided, as applicable, to the holders of the Linedata Shares resident in Canada unless the Filer, at such time or times, is not a "designated foreign issuer" under National

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Instrument 71-102 – *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*, in which case the Filer will be obligated to comply with National Instrument 51-102 – *Continuous Disclosure Obligations* instead.

19. Pursuant to Section 2.6 of Multilateral Instrument 45-102 – *Resale of Securities* (MI 45-102), the first trade in securities acquired pursuant to a securities exchange take-over bid is deemed to be a distribution, unless certain conditions are met. Where the issuer was not a “reporting issuer” on the date that the FMC Shares are first taken up under the Bid, security holders are generally subject to a four-month seasoning or hold period.
20. Because there is no market for the Linedata Shares in Canada and none is expected to develop, it is expected that any resale of the Linedata Shares by Canadian residents will be effected through the facilities of the Nouveau Marché of the Paris Bourse in accordance with its rules and regulations.
21. While Section 2.11 of MI 45-102 provides first trade relief in respect of a security acquired in a securities exchange take-over bid, such relief is subject to the condition that the offeror was a reporting issuer in the local jurisdiction on the date the securities of the offeree issuer are first taken up pursuant to the take-over bid. An issuer that has filed a securities exchange take-over bid circular or that has taken up and paid for the shares of an offeree issuer will become a reporting issuer in each of the Canadian jurisdictions which recognizes the concept of a reporting issuer, other than Alberta, Ontario and New Brunswick. Accordingly, the relief provided by Section 2.11 of MI 45-102 is unavailable in the First Trade Jurisdictions.
22. If this decision is not granted, FMC Shareholders in the Reporting Issuer Jurisdictions who pursuant to the Bid acquire Linedata Shares will, pursuant to MI 45-102, be free to trade such securities over the Nouveau Marché of the Paris Bourse immediately after the Bid is completed whereas FMC Shareholders in the First Trade Jurisdictions will be subject to a seasoning or hold period of four months.

### **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 Financial Information Relief is granted provided that the Circular:

- (i) contains the following financial information:

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- (a) the Filer's audited financial statements for the years ended December 31, 2003, 2002 and 2001 and the Filer's unaudited financial statements for the six-month period ended June 30, 2004, all prepared in accordance with French GAAP and, if applicable, audited in accordance with French auditing standards;
  - (b) unaudited pro forma financial statements for the year ended December 31, 2003 and the six-month period ended June 30, 2004, all prepared in accordance with Canadian GAAP; and
  - (c) a reconciliation of the Filer's financial information to Canadian GAAP for the periods contained in the pro forma financial statements; and
- (ii) complies with NI 52-107 with respect to the exemption from the requirements relating to generally accepted accounting principles, generally accepted auditing standards and foreign auditors' reports set out under the required form of prospectus.

The decision of the Decision Makers in Alberta, Ontario and New Brunswick under the Legislation in such Jurisdictions is that the First Trade Relief is granted provided that trades of Linedata Shares are made through an exchange, or a market, outside of Canada and that such trades are not control distributions as defined in the Legislation.

Paul M. Moore  
Vice-Chair  
Ontario Securities Commission

David L. Knight, FCA  
Commissioner  
Ontario Securities Commission