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January 5, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 76 - Exemption from s. 61 requirement to file a prospectus in connection with a distribution - An issuer that is not a reporting issuer in Canada is seeking first trade relief for securities that it will issue or has issued to Canadian residents - The issuer meets all of the conditions of section 2.14 of National Instrument 45-102 *Resale of Securities* except that residents of Canada will own more than 10% of the securities of the class and will represent more than 10% of the total number of holders of the securities of the class; the issuer has a de minimis connection to Canada once certain angel or founding investors are excluded; the issuer will provide security holders who are resident in Canada with the same continuous disclosure materials that are provided to foreign shareholders

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 61 and 76

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Ontario and Québec (the Jurisdictions)

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of
Excapsa Software, Inc.

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from Excapsa Software, Inc. (the Filer) for a decision under the securities legislation of the Jurisdictions (the Legislation) exempting the Filer from the prospectus requirements contained in the Legislation in connection with the first trades of Canadian Offering Shares (as defined below) of the Filer acquired by certain persons pursuant to applicable private placement exemptions from the dealer registration and prospectus

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requirements contained in the Legislation (the Requested Relief), subject to certain terms and conditions.

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 *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 incorporated under the laws of British Columbia on April 28, 2004, and continued under the *Canada Business Corporation Act* on February 28, 2005. The head office of the Filer is located in Toronto, Ontario.
2. The Filer is not a reporting issuer in any jurisdiction of Canada where that concept exists, nor are any of its securities listed or posted for trading on any stock exchange in Canada or elsewhere. The Filer has no present intention of listing its securities on any stock exchange in Canada or of becoming a reporting issuer under the *Securities Act* (Ontario) or under any other Canadian securities laws.
3. The authorised capital of the Filer consists of an unlimited number of common shares, of which 169,235,424 common shares (the Shares) were issued and outstanding as of December 22, 2005.
4. As of December 22, 2005, an aggregate of 10,103,384 Shares (5.97% of the outstanding Shares), are held by residents of Canada (the Founders' Shares). The holders of the Founders' Shares consist of three individuals and one family trust.
5. Three individuals acquired an aggregate of 1,783,384 Founders' Shares in private placements exempt from registration when such individuals were

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domiciled in the United States. All three individuals only became residents of Canada after initially acquiring their Founders' Shares.

6. A family trust domiciled in Canada acquired 8,320,000 Founders' Shares in a private placement. The settler of such trust is the Chief Executive Officer who is the founder of the Filer, and the settler was the sole shareholder of the Filer at the time the family trust initially acquired its Founders' Shares.
7. While the exact number of common shares to be issued has not yet been determined, the Filer proposes to conduct an initial public offering (the Offering) of its common shares outside of Canada, which will include, as part of the Offering, a private placement of common shares to investors in the Jurisdictions (the Canadian Investors) in reliance on dealer registration and prospectus exemptions contained in National Instrument 45-106 – *Prospectus and Registration Exemptions* (the Canadian Offering Shares).
8. The Filer is proposing to make an application for all of its issued and outstanding common shares, immediately following the Offering, to be listed for trading on the AIM Market operated by the London Stock Exchange plc (AIM and the Foreign Listing). Following the Offering and the Foreign Listing, the common shares will be publicly traded on AIM.
9. Immediately following the Offering it is anticipated that the Canadian Offering Shares will constitute ten percent (10%), but not more than 10%, of the issued and outstanding common shares. However, when aggregated with the previously issued Founders' Shares, it is anticipated that the total number of common shares held by Canadians will be approximately 16% of the total number of issued and outstanding common shares.
10. After giving effect to the Offering, purchasers of the Canadian Offering Shares will not represent in number more than 10% of the total number of owners directly or indirectly of common shares of the Filer.
11. Pursuant to the rules for AIM companies published by the London Stock Exchange, the Founders' Shares will be subject to a one year lock-up period following the Foreign Listing.
12. Any resale of the Canadian Offering Shares or the Founders' Shares by the Canadian Investors or the Founders, as the case may be, is expected to be made over AIM, as there is no market for the common shares in Canada and none is expected to develop.

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13. In the absence of an order granting relief, the first trade in Canadian Offering Shares by any of the Canadian Investors will be deemed to be a distribution pursuant to section 2.6 of National Instrument 45-102 – *Resale of Securities* (NI 45-102) unless, among other things, the Filer has been a reporting issuer for four months immediately preceding the trade in one of the jurisdictions set forth in Appendix B to NI 45-102.
14. The exemption provided for by section 2.14 of NI 45-102 will not be available to the Canadian Investors with respect to a first trade of Canadian Offering Shares as the criteria set out at subsection 2.14(b) of NI 45-102 is not met in that it is expected that, at the distribution date of the Canadian Offering Shares, residents of Canada (including holders of the Founders' Shares) will own directly or indirectly more than 10% of the outstanding common shares of the Filer.
15. No market for the common shares exists in Canada and none is expected to develop. It is intended that any resale of the Canadian Offering Shares or the Founders' Shares by Canadian residents be effected through the facilities of AIM or any other exchange or market outside of Canada on which the common shares may be quoted or listed at the time that the trade occurs or to a person or company outside of Canada, in accordance with the rules and regulations of such foreign market.
16. The Filer will be subject to reporting obligations under the rules of the London Stock Exchange. Holders of Canadian Offering Shares and holders of the Founders' Shares will receive copies of all shareholders materials provided to all other holders of common shares, as required by the rules of the London Stock Exchange.

Decision

This MRRS Decision Document evidences the decision of each of the Decision Makers (collectively, the Decision).

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the Decision has been met.

The Decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that:

- i) at the date of the trade, the Filer is not a reporting issuer in any jurisdiction of Canada where that concept exists; and

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- ii) the trade is executed through the facilities of AIM or on another exchange or market outside Canada or to a person or company outside of Canada.

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