

## 2002 BCSECCOM 319

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – relief from prospectus requirements for first trade of shares acquired under merger

### **Applicable British Columbia Provisions**

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

Multilateral Instrument 45-102 *Resale of Securities*, s. 2.14

**IN THE MATTER OF THE SECURITIES LEGISLATION  
OF ALBERTA, BRITISH COLUMBIA, NEWFOUNDLAND AND  
LABRADOR,  
NOVA SCOTIA, ONTARIO, AND SASKATCHEWAN**

**AND**

**IN THE MATTER OF  
THE MUTUAL RELIANCE REVIEW SYSTEM FOR  
EXEMPTIVE RELIEF APPLICATIONS**

**AND**

**IN THE MATTER OF  
HEWLETT-PACKARD COMPANY**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the “Decision Maker”, and collectively, the “Decision Makers”) in each of Alberta, British Columbia, Newfoundland and Labrador, Nova Scotia, Ontario and Saskatchewan (the “Jurisdictions”) has received an application (the “Application”) from Hewlett-Packard Company (“HP” or the “Filer”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirements contained in the Legislation to file and obtain a receipt for a preliminary prospectus and a prospectus (the “Prospectus Requirements”) shall not apply to certain first trades in common shares in the capital of HP (the “HP Common Shares”);

**AND WHEREAS** under the Mutual Review Reliance System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal Decision Maker for this application;

**AND WHEREAS** the Filer has represented to the Decision Makers that:

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1. HP is a corporation incorporated under the laws of Delaware and is not currently a reporting issuer in any province or territory of Canada. HP is subject to the reporting requirements of the U.S. Securities Exchange Act of 1933, as amended (the “1933 Act”), and the U.S. Securities Exchange Act of 1934, as amended (the “1934 Act”). The Common Shares are listed and posted for trading on the New York Stock Exchange (the “NYSE”) and the Pacific Exchange.
2. The authorized share capital of HP consists of 9,600,000,000 HP Common Shares with a par value of US\$0.01 each and 300,000,000 shares of preferred stock with a par value of US\$0.01 each. As at January 28, 2002, there were 1,941,391,000 HP Common Shares and no preferred stock of HP issued and outstanding.
3. Compaq Computer Corporation (“Compaq”) is a corporation incorporated under the laws of the state of Delaware and is subject to the reporting requirements of the 1933 Act and the 1934 Act. It is not a reporting issuer or its equivalent in any province or territory of Canada except Québec.
4. In 1998, Compaq merged with Digital Equipment Corporation, which was then a reporting issuer in Québec. As a consequence of this merger, Compaq became a reporting issuer in Québec pursuant to subsection 68(4) of the *Securities Act* (Québec) (“the “QSA”). On January 14, 2000 Compaq obtained from the Commission des valeurs mobilières du Québec (the “CVMQ”) an exemption from continuous disclosure requirements in Title III of the QSA which governs reporting issuers in Québec (decision no. 2000-C-0029). As a condition of the CVMQ Exemption, Compaq provides disclosure to Compaq shareholders resident in Québec in accordance with the reporting requirements of the 1933 Act and the 1934 Act.
5. The authorized share capital of Compaq consists of 3,000,000,000 shares of common stock with a par value of US\$0.01 per share (“Compaq Common Shares”) and 10,000,000 shares of preferred stock with a par value of US\$0.01. As of January 28, 2002, there were 1,704,636,432 Compaq Common Shares and no preferred stock of Compaq issued and outstanding.
6. Indigo N.V. (“Indigo”) is a corporation incorporated under the laws of The Netherlands and is not a reporting issuer or its equivalent in any province or territory in Canada and has no present intention of becoming a reporting issuer or its equivalent in any province or territory in Canada.
7. The authorized share capital of Indigo consists of 240,000,000 common shares with a par value of NLG 0.04 per share (“Indigo Common Shares”). As of

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September 5, 2001, there were 113,676,895 issued and outstanding Indigo Common Shares. Indigo is subject to the reporting requirements of the 1933 Act and the 1934 Act.

8. HP and Compaq have agreed that, subject to certain conditions, HP will acquire Compaq pursuant to an Agreement and Plan of Reorganization, dated as of September 4, 2001 (the "Merger").
9. Pursuant to the terms of the Merger and the applicable provisions of Delaware corporations law, upon filing the Certificate of Merger with the Secretary of State of the State of Delaware, all issued and outstanding Compaq Common Shares will be automatically converted into HP Common Shares. Holders of Compaq Common Shares will receive 0.6325 of a HP Common Share in exchange for each Compaq Common Share held.
10. Following the Merger, HP will become a reporting issuer in Québec pursuant to subsection 68(4) of the QSA. HP has no present intention of becoming a reporting issuer in any other province or territory of Canada. Immediately upon completion of the Merger, there will be approximately 168 holders of HP securities resident in Québec holding less than 0.009% percent of then outstanding HP Common Shares.
11. HP and Indigo have agreed pursuant to an Offer Agreement dated as of September 6, 2001 that, subject to certain conditions, HP will acquire Indigo by way of an exchange offer for the Indigo Common Shares (the "Indigo Offer").
12. Pursuant to the terms of the Indigo Offer, all issued and outstanding Indigo Common Shares tendered to the offer will be exchanged for HP Common Shares or HP Common Shares and a non-transferable contingent value right that will entitle its holder to a contingent cash payment in 2005 if certain conditions set out in the Indigo Offer are satisfied.
13. Pursuant to the applicable provisions of the Legislation, the distribution of HP Common Shares to holders of Compaq Common Shares pursuant to the Merger, and the distribution of HP Common Shares to holders of Indigo Common Shares pursuant to the Indigo Offer, will be exempt from the Prospectus Requirements.
14. The first trade of HP Common Shares so distributed, if made through the facilities of the New York Stock Exchange, would be exempt from the Prospectus Requirements pursuant to the exemption provided for in section

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2.14 of Multilateral Instrument 45-102 but for the fact that HP will be deemed to be a reporting issuer in Québec upon completion of the Merger.

15. Holders of HP Common Shares resident in Canada will be concurrently provided with the same continuous disclosure materials regarding HP as those holders of HP Common Shares who are resident in the United States.

**AND WHEREAS** pursuant to the System, this MRRS Decision Document evidences the decision of the Decision Makers (collectively, the “Decision”);

**AND WHEREAS** 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 pursuant to the Legislation is that the first trade in HP Common Shares issued to holders of Compaq Common Shares pursuant to the Merger or to holders of Indigo Common Shares pursuant to the Indigo Offer shall not be subject to the Prospectus Requirements provided that:

- (i) after giving effect to the issuance of such HP Common Shares, and any other HP Common Shares that were issued at the same time or as part of the same distribution, residents of Canada will:
  - (a) not own directly or indirectly more than ten percent (10%) of the outstanding HP Common Shares; and
  - (b) not represent in number more than ten percent (10%) of the total number of owners directly or indirectly of outstanding HP Common Shares; and
- (ii) such first trade is made through an exchange or a market outside of Canada, or to a person or company outside of Canada.

DATED this 18<sup>th</sup> day of April, 2002.

Theresa McLeod

Lorne Morphy