

# 2002 BCSECCOM 939

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Application – relief from the registration and prospectus requirements involving trades by employees of securities of a foreign issuer under an employee stock purchase plan, subject to conditions – issuer with de minimis Canadian presence

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C.1996, c. 418, ss. 48 and 76

Multilateral Instrument 45-102 *Resale of Securities*

## **IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, MANITOBA, ONTARIO, QUEBEC AND NOVA SCOTIA**

**AND**

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

**AND**

## **IN THE MATTER OF COMPUTERSHARE LIMITED**

## **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (collectively, the "Decision Makers") in each of British Columbia, Alberta, Manitoba, Ontario, Québec and Nova Scotia (collectively, the "Jurisdictions") has received an application from Computershare Limited (the "Applicant") for a decision pursuant to the securities legislation in the Jurisdictions (collectively, the "Legislation") that: (i) the requirement to be registered to trade in a security contained in the Legislation (the "Registration Requirements") and the requirement to file and obtain a receipt for a preliminary prospectus and a prospectus contained in the Legislation (the "Prospectus Requirements") shall not apply to certain trades and distributions of American Depositary Receipts ("ADRs") and shares in the common stock of the Applicant (the "Common Shares") made in connection with the Applicant's Employee Stock Purchase Plan (the "Plan"); and (ii) the Registration Requirements shall not apply to first trades of ADRs and Common Shares acquired under the Plan executed on an exchange or market, or made to a company, outside of Canada;

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AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS the Applicant has represented to the Decision Makers that:

1. The Applicant is a company incorporated under the laws of the State of Victoria, Australia. The Applicant intends to make the employees and employee executives of Computershare Trust Company of Canada ("CTCC" or the "Canadian Affiliate"), an indirect wholly owned Canadian subsidiary of the Applicant, eligible to participate in the Plan.
2. As of June 30, 2002, approximately 554,326,613 Common Shares were issued and outstanding. The authorized capital of the Applicant includes Common Shares and reset convertible preference shares.
3. The Applicant is not, and has no present intention of becoming, a reporting issuer or the equivalent under the Act or under the applicable securities legislation of any of the other Jurisdictions.
4. The Applicant is a reporting company with the relevant securities commission in Australia. The Applicant is current with its reporting obligations under the relevant legislation of this jurisdiction.
5. Neither the Common Shares nor any other securities of the Applicant are listed or posted for trading on any stock exchange or over-the-counter market in Canada. The Common Shares are listed and posted for trading on the Australian Stock Exchange (the "ASX") and the New Zealand Stock Exchange. The Applicant is current in all applicable filing and reporting obligations as required by these exchanges.
6. The Plan is intended to advance the interests of the Applicant and its stockholders by encouraging certain eligible employees and employee executives of the Applicant to either acquire a proprietary interest or increase their proprietary interest in the Applicant and to otherwise benefit from the success of the Applicant.
7. Under the Plan, certain employees and employee executives of the Canadian Affiliate (the "Participants") may purchase through payroll deductions (the "Participant Contribution") Common Shares, on the ASX through an Australian registered broker. Such Common Shares are to be exchanged into ADRs as soon as reasonably practicable after the purchase. The Applicant

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will match the purchase by the Participants (the "Employer Contribution") as more fully described in paragraph 11.

8. The Plan contemplates that Participants may purchase Common Shares on the first Business Day of each three-month period which begins on the first day of each calendar quarter (an "Offering Period"), in which the Plan is in effect. The Participant may participate in the Plan, in any given calendar year, in an amount not less than 1% and not more than 15% (as may be amended by CTCC from time to time) of the Participant's annual base salary.
9. On the date that Common Shares are acquired on the ASX for each applicable Offering Period (the "Purchase Date"), the cash balance in each Participant's account held by CTCC shall be applied to the purchase Common Shares on the ASX by an Australian registered broker on behalf of the Participants and registered in the name of CTCNY or its nominee.
10. All trades to Participants of Common Shares acquired in the open market will be effected through an Australian registered broker. The initial broker currently selected by the Applicant is E-Trade Australia Securities Ltd. ("E-Trade"). However, E-Trade will not be used for issuances or trades of Common Shares issued from treasury or ADRs under the Plan. Also, in the future a different Australian or other foreign registered broker (the "Broker") may be used.
11. The Applicant will, effective as of the first anniversary of each Purchase Date (the "Anniversary Date"), issue to each Participant from treasury such number of Common Shares equal to the number of Common Shares purchased with each Participant Contribution on such Purchase Date and still held in each Participant's account with CTCC as of the Anniversary Date. Such Common Shares will also be exchanged into ADRs as soon as reasonably practicable after such Anniversary Date.
12. During any calendar year, a Participant shall not be issued Common Shares pursuant to the Employer Contribution component of the Plan where the aggregate book value of Common Shares already issued to the Participant under the Employer Contribution during such calendar year is equal to Aus \$3,000.
13. The Common Shares purchased on the ASX with the Participant Contributions and the Common Shares issued from treasury as Employer Contributions shall be held in a separate account of CTCNY with Computershare Clearing Pty Limited ("CCPL"), as custodian.

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14. CTCNY will issue ADRs to Participants in exchange for the number of Common Shares held by CTCNY on behalf of a Participant as soon as practicable after the Purchase Date or Anniversary Date, as applicable, and shall be recorded in the Participant's account with CTCC as of the applicable Purchase Date or Anniversary Date.
15. A Participant may withdraw some or all of his or her holdings from the Plan at any time. The Participant shall indicate to CTCNY the number of ADRs to be withdrawn from the Plan and the manner in which the corresponding Common Shares will be dealt.
16. The Participant may request that the Common Shares represented by such withdrawn ADRs be:
  - (a) sold on the ASX, in which case the sale proceeds converted into Canadian currency, less any conversion and any commissions and processing fees, shall be forwarded to the Participant as soon as practicable after such sale; or
  - (b) be transferred into such Participant's personal securities account in accordance with the instructions provided on the withdrawal instructions.
17. All dividends received in respect of the Common Shares held by CTCNY for a Participant shall be allocated to his or her Participant account with CTCC and used to purchase additional Common Shares for the Participant in accordance with section 9 above (the "Dividend Reinvestment").
18. A Participant shall have the right to vote or direct CTCC, as agent for the Participant, as to the voting of any Common Shares registered in the name of CTCNY and held by CCPL, as custodian on behalf of the Participant.
19. Any Common Shares and ADRs acquired under the Plan are non-transferable, except in accordance with the withdrawal and termination provisions of the Plan, and any rights attaching thereto may only be exercised by a Participant.
20. CTCC shall have full power and authority to administer the Plan including arranging trade instructions regarding Common Shares on the sale of ADRs.
21. Participation in the Plan is voluntary and Participants are not induced to participate in the Plan by expectation of employment or continued employment.

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22. No expenditure for distribution or promotion, other than the professional fees and remuneration paid to a broker, have been or will be made in respect of the Plan.
23. The resale of Common Shares by Participants in connection with the Plan will be effected through E-Trade or the Broker and executed through the facilities of the exchanges listed in paragraph 5 or another exchange outside Canada. As such, these trades will be subject to the regulations and requirements of both the relevant exchange and securities legislation.
24. Neither CTCC, CTCNY, E-Trade nor the Broker will offer any advice to the Participants regarding the decision to acquire, hold or sell the ADRs or Common Shares under the Plan.
25. Participants resident in the Jurisdictions will be provided with the same level of disclosure in respect of the Plans as is provided to all other Participants and, upon becoming a shareholder of the Applicant, Participants resident in the Jurisdictions will be provided with the same disclosure material relating to the Applicant that is provided to all other holders of Common Shares. Participants residing in Québec shall also receive a French language document that complies with local requirements.
26. As of the date of this Application, residents of Canada hold less than 10% of the issued and outstanding Common Shares, and residents of Canada represented in number less than 10% of the total number of holders of the issued and outstanding Common Shares.
27. If, at any time during the currency of the Plan, Canadian resident shareholders of the Applicant hold, in aggregate, greater than 10% of the total number of issued and outstanding Common Shares or if such shareholders constitute more than 10% of all shareholders of the Applicant, the Applicant will apply to the relevant Jurisdiction for an order with respect to further trades to any by the Canadian resident shareholders in that Jurisdiction in respect of Common Shares acquired under the Plan.
28. As of the date of this Application, the Applicant and its Canadian Affiliate had in total approximately 986 eligible employees and employee executives resident in Canada, of which approximately 136 reside in Alberta, 92 reside in British Columbia, 8 reside in Nova Scotia, 3 reside in Manitoba, 417 reside in Ontario and 330 reside in Québec.

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AND WHEREAS pursuant to the System, this MRRS Decision Document evidences the decision of each 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:

- (i) the Registration Requirements and the Prospectus Requirements shall not apply to any trade or distribution of Common Shares or ADRs made in connection with the Plan, including trades and distributions involving the Applicant and its Canadian Affiliate, E-Trade, the Broker and the Participants, provided that: (a) the first trade of ADRs acquired through the Plan pursuant to this Decision shall be deemed to be a distribution or primary distribution to the public under the Legislation unless such trade is made to CTCNY; (b) except in Québec, the first trade in Common Shares acquired through the Plan pursuant to this Decision will be deemed a distribution or primary distribution to the public under the Legislation unless the conditions in subsection 2.14(1) of Multilateral Instrument 45-102 Resale of Securities are satisfied; and (c) in Québec, the alienation (resale) of Common Shares acquired through the Plan pursuant to this Decision will be deemed a distribution unless such alienation (resale) is made outside of Canada or among Participants or between Participants and persons related to the Participants;
- (ii) the Registration Requirement shall not apply to the first trade in ADRs acquired by Participants under the Plan pursuant to this Decision provided that the first trade of the ADRs is to CTCNY; and
- (iii) the Registration Requirement shall not apply to the first trade in Common Shares acquired by a Participant under the Plan made through E-Trade or the Broker provided that the first trade is executed through the facilities of a stock exchange or organized market outside Canada.

DATED November 8<sup>th</sup>, 2002.

Paul M. Moore

Harold P. Hands