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## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief from the registration and prospectus requirements for trades in connection with an employee stock incentive plan – relief from issuer bid requirements for acquisitions by the issuer of its securities to satisfy withholding tax obligations, in accordance with the terms of stock incentive plan – issuer with *de minimis* Canadian presence

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61, 76, 105-108, 110 and 114(2)(c)

## IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, MANITOBA, ONTARIO, QUÉBEC, AND NEW BRUNSWICK

AND

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

AND

## IN THE MATTER OF MCKESSON CORPORATION

## MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in British Columbia, Alberta, Manitoba, Ontario, Québec, and New Brunswick (the “Jurisdictions”) has received an application from McKesson Corporation (“McKesson”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that (i) the requirements contained in the Legislation to be registered to trade in a security (the “Registration Requirements”) and to file and obtain a receipt for a preliminary prospectus and a prospectus (the “Prospectus Requirements”) (collectively, the “Registration and Prospectus Requirements”) will not apply to certain trades in shares of McKesson’s common stock made in connection with the McKesson Corporation 2000 Employee Stock Purchase Plan (the “Plan”); (ii) the Registration and Prospectus Requirements will not apply to first trades of Shares acquired under the Plan executed on an exchange or market outside of Canada; and (iii) the requirements contained in the Legislation relating to the delivery of an offer and issuer bid circular and any notices of change or variation thereto, minimum deposit periods and withdrawal rights, take-up and

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payment for securities tendered to an issuer bid, disclosure, restrictions upon purchases of securities, financing, identical consideration, collateral benefits, and the requirement to file a reporting form within 10 days of an exempt issuer bid and pay a related fee (the "Issuer Bid Requirements") will not apply to certain acquisitions by McKesson of Shares under the Plan in each of the Jurisdictions that regulates issuer bids;

2. AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System") the Alberta Securities Commission is the principal regulator for this application;
3. AND WHEREAS McKesson has represented to the Decision Makers that:
  - 3.1 McKesson is a corporation incorporated under the laws of the State of Delaware;
  - 3.2 McKesson's head office is located in San Francisco, California;
  - 3.3 McKesson is registered with the Securities and Exchange Commission (the "SEC") in the United States of America (the "U.S.") under the U.S. Securities Exchange Act of 1934, as amended (the "Exchange Act") and is not exempt from the reporting requirements of the Exchange Act;
  - 3.4 the authorized share capital of McKesson consists of 400 million shares of common stock (the "Shares") of which as of February 8, 2002, there were 287,453,771 Shares outstanding;
  - 3.5 the Shares are listed on the New York Stock Exchange (the "NYSE") under the symbol MCK and the Pacific Stock Exchange;
  - 3.6 McKesson is not a reporting issuer or the equivalent in any Jurisdiction and has no present intention of becoming a reporting issuer in any of the Jurisdictions;
  - 3.7 under the Plan, employees of McKesson or its affiliates (the "Employees") are permitted to purchase Shares at a discount to the market price of the Shares;
  - 3.8 the purpose of the Plan is to encourage employees to acquire a proprietary interest, or to increase their existing proprietary interest, in McKesson;

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- 3.9 subject to adjustment as provided in the Plan, the maximum number of Shares which may be issued under the Plan is 6,100,000;
- 3.10 Shares offered under the Plan have been registered with the SEC under the Securities Act of 1933, as amended, of the U.S. and all necessary securities filings have been made in the U.S. in order to offer the Plan to Employees resident in the U.S.;
- 3.11 only Employees are eligible to participate in the Plan, except Employees whose customary employment is (a) less than 20 hours per week, and (b) for not more than five months in any calendar year;
- 3.12 as of March 13, 2002, there were approximately 31, 8, 3, 77, 16, and 19 Employees eligible to participate in the Plan resident in British Columbia, Alberta, Manitoba, Ontario, Québec, and New Brunswick, respectively;
- 3.13 Employees who enroll in the Plan (and in limited cases former Employees and Beneficiaries (defined below)) may purchase Shares from McKesson at a discount to the market price;
- 3.14 purchases under the Plan are made solely with funds contributed through payroll deductions, with an Employee electing to contribute between 1 and 15% of the Employee's salary;
- 3.15 McKesson intends to use the services of one or more agents in connection with the Plan, (each, an "Agent");
- 3.16 the role of the Agent may include (a) assisting with the administration of and general record keeping for the Plan; (b) maintaining record keeping and limited purpose brokerage accounts on behalf of participants in the Plan; (c) holding Shares on behalf of participants in limited purpose brokerage accounts; (d) facilitating the payment of withholding taxes, if any, and (e) facilitating the resale of Shares acquired under the Plan through the NYSE;
- 3.17 E\*Trade Securities, Inc. ("E\*Trade") and E\*Trade Canada Securities Corporation ("E\*Trade Canada") have initially been appointed by McKesson to act as Agents for the Plan. E\*Trade is a corporation registered under applicable U.S. securities legislation and E\*Trade Canada is registered as a broker/dealer in each of the Jurisdictions. McKesson may at any time appoint additional or replacement Agents under the Plan. Any Agent appointed in replacement of or in addition to

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E\*Trade and E\*Trade Canada is not expected to be a registrant in the Jurisdictions and if not a registrant in the Jurisdictions, will be registered under applicable U.S. securities or banking legislation;

- 3.18 Participation in the Plans by Canadian Employees is voluntary and such persons are not induced to participate in the Plan by expectation of employment or continued employment with McKesson or its affiliates;
- 3.19 neither payroll deductions credited to an Employee's account nor any rights under the Plan may be assigned, transferred, pledged or otherwise disposed of in any way by an Employee (other than by will or the laws of intestacy or to a Beneficiary in accordance with the terms of the Plan). In general, rights under the Plan are exercisable during the lifetime of an Employee only by the Employee (or in the case of incapacity, by his or her legal representative);
- 3.20 in the event of the termination of the employment of an Employee for any reason other than death, disability or retirement, the Employee's participation in the Plan will immediately terminate and the balance of the former Employee's cash account will be returned to the former Employee;
- 3.21 if an Employee terminates employment with the McKesson Companies during a Purchase Period (as defined in the Plan) due to death, then, at the election of the Employee's beneficiary under the terms of the Plan or under a will or the laws of intestacy (a "Beneficiary"), the balance of the former Employee's cash account will be (i) delivered to the Beneficiary, or (ii) held in the cash account until the end of the relevant Purchase Period and applied to the purchase of Shares on the purchase date;
- 3.22 Employees, former Employees and Beneficiaries may sell Shares acquired under the Plan through the Agent;
- 3.23 a prospectus prepared according to U.S. securities laws describing the terms and conditions of the Plan will be delivered to each Employee who is eligible to participate in the Plan. The annual reports, proxy materials and other materials McKesson provides to its U.S. shareholders will be provided to Employees resident in the Jurisdictions who acquire and retain Shares under the Plan at the same time and in the same manner as such documents would be provided to U.S. shareholders;
- 3.24 Canadian resident shareholders of McKesson do not own, directly or indirectly, more than 10% of the issued and outstanding Shares and do

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not represent in number more than 10% of the total number of shareholders of McKesson;

- 3.25 if at any time during the currency of the Plan Canadian resident shareholders of McKesson hold, in aggregate, greater than 10% of the total number of issued and outstanding Shares or if such shareholders constitute more than 10% of all shareholders of McKesson, McKesson will apply to the relevant Jurisdiction for an order with respect to further trades to and by the Canadian resident shareholders in that Jurisdiction in respect of Shares acquired under the Plan;
  - 3.26 because there is no market for the Shares in Canada and none is expected to develop, any resale of the Shares acquired under the Plan will be effected through the facilities of, and in accordance with the rules and laws applicable to, a stock exchange or organized market outside of Canada on which the Shares may be listed or quoted for trading;
  - 3.27 the Legislation of certain of the Jurisdictions does not contain exemptions from the Registration and Prospectus Requirements for trades of Shares to Employees, former Employees or Beneficiaries;
  - 3.28 where the Agent holds or sells Shares on behalf of Employees, former Employees or Beneficiaries, none of the Employees, former Employees, Beneficiaries or the Agent is able to rely on the exemption from the Registration Requirements contained in the Legislation of certain Jurisdictions to effect such sales;
  - 3.29 under the Plan, McKesson may acquire Shares from Employees, former Employees or Beneficiaries directly or through the Agent in connection with the satisfaction of withholding taxes ("Withholding Acquisitions");
  - 3.30 the exemptions in the Legislation from the Issuer Bid Requirements are not available for certain acquisitions by McKesson of its Shares from Employees, former Employees or Beneficiaries in accordance with the terms of the Plan, since acquisitions relating to Withholding Acquisitions may occur at a price that is not calculated in accordance with the "market price," as that term is defined in the Legislation; under the Plan, McKesson will acquire such Shares at their fair market value, as determined in accordance with the Plan;
4. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

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5. 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;
6. AND WHEREAS the Decision of the Decision Makers under the Legislation is that:
  - 6.1 the Registration and Prospectus Requirements will not apply to any trade or distribution of Shares made in connection with the Plan, including trades or distributions involving McKesson or its affiliates, the Agent, Employees, former Employees or Beneficiaries, provided that, except in Québec, the first trade in Shares acquired under the Plan under this Decision will be deemed a distribution or a primary distribution to the public under the Legislation unless the conditions in subsection 2.14(1) of Multilateral Instrument 45-102 *Resale of Securities* ("MI 45-102") are satisfied and provided that, in Québec, the first trade in Shares acquired through the Plan under this Decision will be deemed a distribution unless the alienation (resale) is made outside Québec;
  - 6.2 the first trade by Employees, former Employees or Beneficiaries in Shares acquired under this Decision will not be subject to the Registration Requirement provided that, except in Québec, the conditions in subsection 2.14(1) of MI 45-102 are satisfied and, in Québec, the first trade is executed through a stock exchange or market outside of Canada; and
  - 6.3 the Issuer Bid Requirements will not apply to the acquisition by McKesson of Shares from Employees, former Employees and Beneficiaries in connection with Withholding Acquisitions, made in accordance with the provisions of the Plan.

DATED this 29<sup>th</sup> day of May, 2002

Glenda A. Campbell, Q.C., Vice-Chair

David W. Betts, Member