

2003 BCSECCOM 719

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Issuer bid by Australian corporation that is a reporting issuer in Canada - bid made in compliance with applicable Australian laws – 78 registered British Columbia shareholders holding less than 0.0008% of the outstanding shares - corporation exempted from issuer bid requirements, subject to conditions.

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 105, 106, 107, 108, 110 and 114(2)(c)

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

AND

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

AND

IN THE MATTER OF TELSTRA CORPORATION LIMITED

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of the provinces of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, Nova Scotia, and Newfoundland and Labrador (the “Jurisdictions”) has received an application from Telstra Corporation Limited (“Telstra”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirements contained in the Legislation relating to delivery of an offer and issuer bid circular and any notices of change or variation thereto, minimum deposit periods and withdrawal rights, take-up of and payment for securities tendered to an issuer bid, disclosure, restrictions upon purchases of securities, identical consideration and collateral benefits (collectively, the “Issuer Bid Requirements”) do not apply to the proposed issuer bid (the “Issuer Bid”) by Telstra;

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

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or in Québec Commission Notice 14-101;

AND WHEREAS Telstra has represented to the Decision Makers that:

1. Telstra is a corporation governed by the laws of Australia.
2. Telstra is a major provider of telecommunications and Internet services in Australia, with a market capitalization of approximately U.S. \$40 billion.
3. Telstra is a reporting issuer, or the equivalent, in each of the provinces of Canada.
4. The common shares of Telstra (the “Telstra Shares”) are listed for trading on the Australian Stock Exchange, the New Zealand Stock Exchange and the New York Stock Exchange (through American Depositary Receipts).
5. Telstra proposes to make an offer to purchase a number of the Telstra Shares from its shareholders.
6. The Issuer Bid will be conducted by way of a “Dutch auction” in compliance with the laws and requirements of the Australian *Corporations Act* 2001.
7. The details of the Issuer Bid will be contained in an offer document (the “Circular”) which will be distributed to all holders of Telstra Shares (the “Telstra Shareholders”) and which will comply with all Australian law requirements.
8. As of August 25, 2003, there were 12,866,600,200 Telstra Shares issued and outstanding. There are, according to Telstra’s share register, 285 Telstra Shareholders resident in Canada (the “Canadian Shareholders”), holding in the aggregate 378,091 Telstra Shares as follows:

<u>Province of Residence</u>	<u>Number of Shareholders</u>	<u>Number of Telstra Shares</u>
Ontario	106	162,296
British Columbia	78	97,929
Alberta	52	58,317

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Saskatchewan	1	1,000
Manitoba	5	8,000
Quebec	17	18,430
Nova Scotia	5	5,100
Newfoundland	6	5,830

9. The Issuer Bid will be made by way of an invitation to all Telstra Shareholders as at a specified record date (currently anticipated to be October 17, 2003) to make an offer to sell a specified number of their Telstra Shares to Telstra.
10. Telstra Shareholders will be invited to tender up to 100% of their Telstra Shares. However, Telstra does not intend to purchase more than approximately 260 million Telstra Shares pursuant to the Issuer Bid, with Telstra's total spending on the Issuer Bid to fall between Austr.\$800M (Cdn.\$728M) and Austr.\$1B (Cdn.\$911.1M) (the "Purchase Limit").
11. Telstra Shareholders will be required to specify in their offer the price at which they are willing to sell their Telstra Shares. This price must be within a range specified by Telstra in the Circular. This range will be set shortly before the Issuer Bid tender period opens and will be around the prevailing market price of Telstra Shares. Alternatively, Telstra Shareholders who do not wish to specify a price may make a "final price tender". Telstra Shareholders who choose to make a final price tender offer will be paid the final Issuer Bid price determined by Telstra, which may be any of the nominated prices within the range specified by Telstra.
12. The final Issuer Bid price (the "Issuer Bid Price") will effectively be determined by Telstra Shareholders through the tender process. The price will be the lowest price at which Telstra can purchase its desired number of shares up to the Purchase Limit. Little or no scale back of tenders is likely because Telstra will be able to select the price at which it can purchase the amount of capital that is desired. However, the Issuer Bid terms will include a scale-back procedure to cover the situation where more tenders are received at and below the Issuer Bid Price than the number of Telstra Shares targeted to be purchased. The scale back procedure will be described in full in the Circular.
13. All successful Telstra Shareholders will be paid the Issuer Bid Price even where they tendered a price that was below the Issuer Bid Price determined by Telstra. Telstra Shareholders who tender a price which is greater than the Issuer Bid Price will not have their Telstra Shares bought back.

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14. Telstra Shareholders will be able to withdraw their tender up until the tender closing date which will be at least 15 business days after the tender period commences.
15. All of the Telstra Shareholders to whom the Issuer Bid is made will be treated equally.
16. The *de minimis* issuer bid exemptions found in certain of the Jurisdictions are not available in respect of the Issuer Bid since the bid is not being made in compliance with the laws of a jurisdiction that is recognized by the applicable Decision Makers for the purposes of the *de minimis* issuer bid exemptions. Also, the *de minimis* issuer bid exemptions found in certain of the Jurisdictions are not available in respect of the Issuer Bid since the number of Telstra Shareholders resident in such Jurisdictions is over 50.
17. The percentage of total outstanding Telstra Shares held by Telstra Shareholders resident in each of Ontario, British Columbia and Alberta is well below the 2% *de minimus* threshold (being approximately 0.001%, 0.0008% and 0.0005% respectively).
18. The Issuer Bid will be made by and in respect of a company governed by and subject to the laws of Australia in compliance with applicable Australian laws, specifically the requirements of the Australian *Corporations Act* 2001, and the Circular and all other material relating to the Issuer Bid that is sent by or on behalf of Telstra to Telstra Shareholders in Australia will be sent concurrently to the Canadian Shareholders and copies thereof will be filed concurrently with the Decision Makers.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (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 under the Legislation is that Telstra is exempt from the Issuer Bid Requirements in respect of the Issuer Bid, provided that:

1. the Issuer Bid (and any amendments thereto) is made in compliance with applicable Australian laws; and

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2. all materials relating to the Issuer Bid and any amendments thereto which are sent by or on behalf of Telstra to Telstra Shareholders in Australia are sent concurrently to Canadian Shareholders and copies thereof are filed concurrently with the Decision Makers.

DATED October 20, 2003.

Robert L. Shirriff

Robert W. Davis