

# **2002 BCSECCOM 764**

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - relief granted from the requirement to reconcile to Canadian GAAP certain financial statements included in an information circular that were prepared in accordance with U.S. GAAP

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, s. 119(2)(b)

BC Form 54-901F *Information Circular*

**IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA,  
BRITISH COLUMBIA, SASKATCHEWAN, ONTARIO AND QUÉBEC**

**AND**

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

**AND**

**IN THE MATTER OF WITTKE INC.**

**AND**

**IN THE MATTER OF FEDERAL SIGNAL CORPORATION**

## **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Ontario and Québec (the “Jurisdictions”) has received an application from Wittke Inc. (“Wittke”) and Federal Signal Corporation (“FSC” and, together with Wittke, the “Applicant”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirements contained in the Legislation:

- (a) that the historical financial statements of FSC (the “FSC Financial Statements”), which are prepared in accordance with United States generally accepted accounting principles (“U.S. GAAP”), be accompanied by a note to explain and quantify the effect of material differences between Canadian generally accepted accounting principles (“Canadian GAAP”) and U.S. GAAP that relate to measurements and provide a reconciliation of such financial statements to Canadian GAAP or otherwise provide disclosure consistent with Canadian GAAP

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requirements to the extent not already reflected in the FSC Financial Statements;

- (b) that the foreign auditor's report accompanying the FSC Financial Statements be accompanied by a statement from the auditor of FSC disclosing any material differences in the form and content of its auditor's report as compared to a Canadian auditor's report and confirming that the auditing standards applied are substantially equivalent to Canadian generally accepted auditing standards;
- (c) to provide a restatement of those parts of the management's discussion and analysis of financial condition and results of operations for the FSC Financial Statements (the "FSC MD&A") that would read differently if the FSC MD&A were based on financial statements prepared in accordance with Canadian GAAP; and
- (d) that the FSC MD&A and the selected consolidated financial information required in connection therewith provide a cross-reference to the notes to the FSC Financial Statements containing a reconciliation of the FSC Financial Statements to Canadian GAAP.

(collectively, the "GAAP Reconciliation Requirements") shall not apply to the Applicant with respect to disclosure pertaining to FSC in the management information circular of Wittke (the "Circular") to be sent to the shareholders of Wittke in connection with a proposed transaction pursuant to which 984069 Alberta Ltd. ("Subco"), an indirect wholly-owned subsidiary of FSC, will, subject to the satisfaction of certain conditions, acquire all of the issued and outstanding common shares ("Wittke Shares") of Wittke by way of an arrangement (the "Arrangement") under section 193 of the *Business Corporations Act* (Alberta) (the "ABCA") involving Wittke, its shareholders (the "Securityholders") and optionholders, FSC and Subco;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System") created pursuant to National Policy 12-201, the Alberta Securities Commission 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 or in Québec Commission Notice 14-101;

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

1. Wittke is incorporated under the ABCA and maintains its head office in Calgary, Alberta.

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2. The authorized capital of Wittke consists of an unlimited number of Wittke Shares and an unlimited number of preferred shares, issuable in series. As of the close of business on August 14, 2002, 7,757,089 Wittke Shares and no preferred shares were issued and outstanding. The Wittke Shares are fully participating voting shares.
3. As of July 31, 2002, options (“Wittke Options”) to acquire an aggregate of 539,090 Wittke Shares were outstanding under Wittke’s stock option plan.
4. The Wittke Shares are listed on the Toronto Stock Exchange (the “TSX”).
5. Wittke is a “reporting issuer” or the equivalent in British Columbia, Alberta, Ontario and Québec and, to its knowledge, is not in default of any of the requirements of the Legislation of any such jurisdiction.
6. FSC is a Delaware corporation and maintains its principal executive offices in Oak Brook, Illinois.
7. The authorized capital of FSC consists of 90,000,000 shares of common stock, US\$1 par value (“FSC Shares”), and 800,000 shares of preference stock, US\$1 par value. The FSC Shares are fully participating voting shares.
8. As of August 14, 2002, there were 45,247,450 FSC Shares issued and outstanding, of which less than 1% of the issued and outstanding FSC Shares are held of record by shareholders in Canada according to the latest information FSC has available to it.
9. As of August 1, 2002, options and other rights (“FSC Options”) to acquire an aggregate of 1,801,574 FSC Shares were outstanding under FSC’s stock benefit plans, of which less than 50,000 FSC Options (representing less than 4% of the total number of FSC Options) were held by approximately 55 persons in Canada.
10. The FSC Shares are listed on the New York Stock Exchange (the “NYSE”).
11. FSC is subject to the United States *Securities Exchange Act of 1934*, as amended but is not a “reporting issuer” or the equivalent in any province or territory of Canada.
12. Subco was incorporated under the ABCA on April 16, 2002 and is a wholly-owned subsidiary of FSC. Subco was organized for the sole purpose of being a party to the Arrangement.

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13. On August 15, 2002, Wittke, FSC and Subco entered into an agreement (the "Arrangement Agreement") pursuant to which Subco will, subject to the satisfaction of certain conditions, including the requisite approval of the Securityholders, directly or indirectly acquire all of the issued and outstanding Wittke Shares by way of an arrangement under the ABCA.
14. Under the Arrangement Agreement, Wittke has agreed to convene and hold a special meeting (the "Special Meeting") of Securityholders for the purpose of considering and, if deemed advisable, approving a special resolution to approve the Arrangement. The board of directors of Wittke has fixed September 30, 2002 as the date of the Special Meeting.
15. Following approval by the Securityholders at the Special Meeting of the special resolution approving the Arrangement, and the issuance by the Court of Queen's Bench of Alberta of a favourable order approving the Arrangement, Wittke will file Articles of Arrangement under the ABCA. The Arrangement will become effective upon the filing of the Articles of Amendment, which is expected to occur on or about October 1, 2002.
16. The consideration payable under the Arrangement to each holder of Wittke Shares (the "Consideration") shall be, at the election of the holder, either:
  - (a) the number of FSC Shares equal to the product of the Share Exchange Ratio and the number of Wittke Shares held by such holder; or
  - (b) 50% of the consideration in the form of FSC Shares (*i.e.*, that number of FSC Shares equal to the product of the Share Exchange Ratio and the number of Wittke Shares held by such holder divided by two) and 50% of the consideration in the form of cash (*i.e.*, C\$6.25 per Wittke Share),

where the Share Exchange Ratio is the ratio determined by dividing C\$12.50 by the volume-weighted average trading price of the FSC Shares on the NYSE for the twenty trading days preceding the fourth trading day before the date of the Special Meeting as specified in the Circular, converted to Canadian dollars as provided in the Arrangement Agreement (and subject to change to accommodate the possibility of an increase in the Consideration offered under the Arrangement).

17. More particularly, the Arrangement will provide for the following:
  - (a) every issued and outstanding Wittke Share that is held at the effective time of the Arrangement by a person that is not:

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- (i) a shareholder who validly exercises its dissent rights and is ultimately entitled to be paid fair value for its Wittke Shares, or
    - (ii) a holding company ("Holding Company") that satisfies certain conditions specified in the Arrangement Agreement (including the making of an election),
  - (b) shall be transferred to Subco in exchange for the Consideration elected by such person;
  - (c) all of the issued and outstanding shares in the capital of every Holding Company shall be transferred to Subco in exchange for the Consideration that such Holding Company would have received if its Wittke Shares were transferred directly to Subco as described in paragraph (a) above rather than indirectly as described in this paragraph (b);
  - (d) all Wittke Options that are outstanding at the effective time of the Arrangement shall be surrendered to Wittke in exchange for a cash payment equal to, for each Wittke Share issuable upon the exercise of that Wittke Option, the difference between C\$12.50 and the exercise price per share, following which the Wittke Options shall be cancelled; and
  - (e) the Holding Companies shall be amalgamated with Wittke.
18. The Circular will, in accordance with the Legislation, contain prospectus-level disclosure regarding Wittke and FSC (subject to such exemptive relief as may be granted by the appropriate securities regulatory authorities) and a description of the Arrangement.
19. In particular, the Circular is expected to contain the following historical financial statements (statements of income, retained earnings and cash flows) of Wittke and FSC:
- (a) audited annual financial statements of FSC for each of the fiscal years ended December 31, 2001, December 31, 2000 and December 31, 1999, together with balance sheets as at December 31, 2001 and December 31, 2000 and auditor's reports thereon, all in accordance with U.S. GAAP;
  - (b) unaudited interim financial statements of FSC for each of the six month periods ended June 30, 2002 and June 30, 2001, together with a balance sheet as at June 30, 2002, all in accordance with U.S. GAAP;

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- (c) audited annual financial statements of Wittke for each of the fiscal years ended September 30, 2001, September 30, 2000 and September 30, 1999, together with balance sheets as at September 30, 2001 and September 30, 2000 and auditor's reports thereon, all in accordance with Canadian GAAP; and
  - (d) unaudited interim financial statements of Wittke for each of the nine month periods ended June 30, 2002 and June 30, 2001, together with a balance sheet as at June 30, 2002, all in accordance with Canadian GAAP.
20. Certain Securityholders have entered into agreements ("Support Agreements") with FSC pursuant to which such Securityholders have agreed, among other things and subject to certain conditions, to vote in favour of the Arrangement at the Special Meeting and to elect to take 50% of their Consideration in cash and 50% in FSC Shares. An aggregate of 3,583,365 Wittke Shares are subject to Support Agreements.
21. Although the exact number of FSC Shares to be issued under the Arrangement will not be known until all Securityholders have made their elections as to the form of Consideration they wish to receive, even if all Securityholders elect to receive Consideration comprised entirely of FSC Shares it is expected that, upon completion of the Arrangement, less than 6% of the total number of issued and outstanding FSC Shares (on a fully diluted basis) will be held of record by persons resident in Canada.

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 Makers with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers pursuant to the Legislation is that the GAAP Reconciliation Requirements shall not apply to the Applicant with respect to disclosure pertaining to FSC in the Circular.

Dated at Edmonton, Alberta this 3rd day of September, 2002.

Agnes Lau, CA  
Deputy Director, Capital Markets