

2002 BCSECCOM 963

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief from registration and prospectus requirements for issuance of securities by foreign issuer to Canadian employees, former employees and permitted transferees and for related trades in connection with a long-term incentive plan and employee stock purchase plans

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61 and 76

IN THE MATTER OF THE SECURITIES LEGISLATION OF ONTARIO, BRITISH COLUMBIA, NOVA SCOTIA AND ALBERTA AND

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

AND

IN THE MATTER OF GUIDANT CORPORATION

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Ontario, British Columbia, Nova Scotia and Alberta (the “Jurisdictions”) has received an application from Guidant Corporation (“Guidant” or the “Company”) for a decision pursuant to 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 the requirement to file a prospectus and obtain a receipt (the “Prospectus Requirements”) (the Registration Requirement and the Prospectus Requirement are, collectively, the “Registration and Prospectus Requirements”) will not apply to certain trades in securities of Guidant made in connection with the 2001 Employee Stock Purchase Plan (the “Plan”); and (ii) the Registration Requirement will not apply to first trades of shares (“Shares”) acquired under the Plan executed on an exchange or market outside of Canada or to a person or company outside of Canada;

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 Guidant has represented to the Decision Makers as follows:

2002 BCSECCOM 963

1. Guidant is presently a corporation incorporated under the laws of the State of Indiana.
2. Guidant (and affiliates of Guidant (“Guidant Affiliates”) (Guidant and Guidant Affiliates are, collectively, the “Guidant Companies”)) is a global leader in the medical technology industry providing innovative, minimally invasive and cost-effective products and services for the treatment of cardiovascular and vascular disease. Guidant has its principal operations in the United States, Western Europe and Japan and markets its products in nearly 100 countries.
3. The Company is registered with the Securities Exchange Commission in the U.S. under the U.S. Securities Exchange Act of 1934 (“Exchange Act”) and is not exempt from the reporting requirements of the Exchange Act pursuant to Rule 12g 3-2.
4. Guidant is not a reporting issuer in the Jurisdictions and has no present intention of becoming a reporting issuer in the Jurisdictions.
5. The authorized share capital of Guidant consists of 1,000,000,000 shares of common stock (“Shares”), and 50,000,000 shares of preferred stock purchase rights (“Preferred Shares”). As of May 8, 2002, there were 305,969,188 Shares and no Preferred Shares issued and outstanding.
6. The Shares are listed for trading on the New York Stock Exchange (the “NYSE”) and the Pacific Stock Exchange.
7. Guidant intends to use the services of one or more agents/brokers in connection with the Plan (each an “Agent”). Salomon Smith Barney Inc. (“SSB”) has initially been appointed by Guidant to act as Agent for the Plan. SSB is not registered to conduct retail trades in any of the Jurisdictions. SSB is a corporation registered under applicable U.S. securities or banking legislation to conduct retail trades in securities and any other Agent appointed in addition to, or in replacement of, SSB will be a corporation registered under applicable U.S. securities or banking legislation and will be authorized by Guidant to provide services as an Agent under the Plan.
8. The role of the Agent may include: (a) disseminating information and materials to Participants (as defined below) in connection with the Plan; (b) assisting with the administration of and general record keeping for the Plan; (c) holding Shares on behalf of Participants, Former Participants (as defined below) and Permitted Transferees (as defined below) in limited purpose brokerage accounts; (d) facilitating the payment of withholding taxes, if any,

2002 BCSECCOM 963

by cash or the tendering or withholding of Shares; and (e) facilitating the resale of Shares issued in connection with the Plan.

9. As of June 3, 2002, there were 55 Participants in Canada eligible to purchase Shares under the Plan: 37 Participants in Ontario; 8 Participants in British Columbia; 2 Participants in Alberta; 7 Participants in Québec and 1 Participant in Nova Scotia.
10. The Plan was adopted by the board of directors of Guidant (the "Board") on February 19, 2001, and approved by shareholders on May 21, 2001.
11. The Plan is administered by the Board and/or one or more committees appointed by the Board.
12. The purpose of the Plan is to provide employees of the Guidant Companies an opportunity to purchase Shares at a discount through payroll deductions.
13. Subject to adjustments as provided for in the Plan, an aggregate of 5,000,000 Shares have been reserved for issuance under the Plan.
14. Under the Plan, employees of the Guidant Companies ("Participants") are offered an opportunity to purchase Shares by means of applying accumulated payroll deductions to the purchase of Shares at a discount price determined in accordance with the terms of the Plan.
15. Employees who participate in the Plan will not be induced to purchase Shares by expectation of employment or continued employment.
16. All necessary securities filings have been made in the U.S. in order to offer the Plan to Participants resident in the U.S.
17. A prospectus prepared according to U.S. securities laws describing the terms and conditions of the Plan will be delivered to each Canadian Participant who is eligible to participate in the Plan. The annual reports, proxy materials and other materials that Guidant provides to its U.S. shareholders will be provided or made available upon request to Canadian Participants who acquire and retain Shares under the Plan at substantially the same time and in the same manner as the documents are provided or made available to U.S. participants.
18. Purchase rights under the Plan are not transferable by a Participant other than by will or by the laws of intestacy.

2002 BCSECCOM 963

19. Following the termination of a Participant's relationship with the Guidant Companies for reasons of disability, retirement ("Former Participants"), and on the death of a Participant where rights have been transferred by will or the laws of intestacy ("Permitted Transferees"), the Former Participants and Permitted Transferees will continue to have rights in respect of the Plan ("Post-Termination Rights").
20. Post-Termination Rights may include, among other things: (a) the right to receive Shares under the Plan; (b) the right to receive payment of accumulated payroll deductions in his or her account, without interest under the Plan; and (c) the right to sell Shares acquired under the Plan through the Agent.
21. Post-Termination Rights will only be available if the awards or rights to which they relate are granted to the Participant while the Participant was an employee and no new awards or rights will be granted to Former Participants under the Plan.
22. Following the termination of a Participant's relationship with the Guidant Companies for any reason other than disability, retirement or death the Participant's participation in the Plan will terminate and all accumulated payroll deductions not already used to purchase Shares will be returned to the Participant without interest.
23. As of October 11, 2002, Canadian shareholders did not own, directly or indirectly, more than 10% of the issued and outstanding Shares and did not represent in number more than 10% of the shareholders of the Company. If at any time during the currency of the Plan Canadian shareholders of the Company 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 the Company, the Company will apply to the relevant Jurisdiction for an order with respect to further trades to and by Participants, Former Participants, Permitted Transferees in that Jurisdiction in respect of the Shares acquired under the Plan.
24. As there is no market for the Shares in Canada and none is expected to develop, it is expected that the resale by Participants, Former Participants and Permitted Transferees of the Shares acquired under the Plan will be effected through the NYSE.
25. The Legislation of all of the Jurisdictions does not contain exemptions from the Prospectus and Registration Requirements for all the intended trades in Shares under the Plan.

2002 BCSECCOM 963

26. When the Agents sell Shares on behalf of Former Participants and Permitted Transferees, the Agents, Former Participants and Permitted Transferees may not be able to rely upon the exemptions from the Registration Requirement contained in the Legislation of the Jurisdictions.

AND WHEREAS pursuant to the System, this 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 pursuant to the Legislation is that:

- (a) the Registration and Prospectus Requirements will not apply to any trade or distribution of Awards made in connection with the Plans, including trades or distributions involving the Guidant Companies, the Agents, Former Participants, and Permitted Transferees, provided that the first trade in any securities acquired through the Plans under this Decision will be deemed a distribution, or a distribution to the public under the Legislation; and
- (b) the first trade by Participants, Former Participants or Permitted Transferees in Shares acquired pursuant to this Decision, including first trades effected through the Agent, shall not be subject to the Registration and Prospectus Requirements, provided that the conditions in subsection 2.14(1) of Multilateral Instrument 45-102 - *Resale of Securities* (“MI 45-102”) are satisfied.

DATED this 25th day of October, 2002.

Robert W. Korthals

Harold P. Hands