

## 2005 BCSECCOM 26

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 114(2) Takeover Bids - Exemption from the formal take over bid requirements in Part 13 of the Act - Issuer requires relief from prohibition against certain collateral agreements in s. 107(2) of the Act - The offeror issuer has entered into a collateral agreement with a shareholder of the offeree issuer; the agreement is entered into for valid business reasons, and not for the purpose of providing the shareholder with a benefit beyond what other shareholders of the offeree issuer will receive under the offer

### Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 107(2) and 114(2)(a)

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New  
Brunswick, Nova Scotia and Newfoundland and Labrador (the Jurisdictions)

And

In the Matter of  
the Mutual Reliance Review System for Exemptive Relief Applications

And

In the Matter of  
Rogers Communications Inc. (the File)

### MRRS Decision Document

### Background

The Filer has offered to purchase all of the issued and outstanding Class B Restricted Voting Shares (RWCI Restricted Voting Shares) of Rogers Wireless Communications Inc. (RWCI) not owned by it (the RCI Offer). In connection with the RCI Offer, the Filer has offered to exchange (the Option Exchange) options to acquire RWCI Restricted Voting Shares (RWCI Options) for options (RCI Options) to acquire Class B Non-Voting shares of the Filer (RCI Non-Voting Shares).

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the proposed grant to holders of RCI Options issued upon the Option Exchange of a one-time

## 2005 BCSECCOM 26

right to require the Filer to repurchase such options for a cash payment equal to the “in the money” amount of such RCI Options (the Repurchase Right) is being granted for reasons other than to increase the value of the consideration paid to RWCI optionholders for their RWCI Restricted Voting Shares pursuant to the RCI Offer and may be entered into despite the prohibition on collateral benefits in the Legislation (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Autorité des marchés financiers is the Principal Regulator for this application, and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

Defined terms contained in National Instrument 14-101 Definitions have the same meaning in this decision unless they are defined in this decision.

### **Representations**

This decision is based on the following facts represented by the Filer:

1. The Filer is a British Columbia corporation and is a reporting issuer (or equivalent) in each of the provinces of Canada and, to the best of its knowledge, is not in default of any requirement of the Legislation.
2. The authorized share capital of the Filer consists of 56,235,394 Class A Multiple Voting Shares (the RCI Class A Shares), without par value, 1.4 billion RCI Non-Voting Shares with a par value of \$1.62478 per share and 400,000,000 Preferred Shares (the RCI Preferred Shares), issuable in one or more series. As at November 30, 2004 there were outstanding 56,235,394 RCI Class A Shares and 189,835,328 RCI Non-Voting Shares. The Filer has three authorized series of RCI Preferred Shares and Shares of the Series XXVII Preferred Shares, Series XXX Preferred Shares and Series XXXI Preferred Shares are currently outstanding.
3. The RCI Class A Shares are listed and traded on the Toronto Stock Exchange (the TSX). The RCI Non-Voting Shares are listed and traded on the TSX and the New York Stock Exchange (the NYSE).
4. RWCI is continued under the *Canada Business Corporations Act* and is a reporting issuer (or equivalent) in each of the provinces of Canada and, to the best of its knowledge, is not in default of any requirement of the Legislation.

## 2005 BCSECCOM 26

5. The authorized capital of RWCI consists of an unlimited number of Class A Multiple Voting Shares (the RWCI Class A Shares), without par value, an unlimited number of RWCI Restricted Voting Shares, without par value, and an unlimited number of First Preferred Shares (the RWCI Preferred Shares), issuable in series, without par value. As at November 30, 2004, 62,820,371 RWCI Class A Shares, 80,614,063 RWCI Restricted Voting Shares and no RWCI Preferred Shares were issued and outstanding.
6. The RWCI Restricted Voting Shares are listed and traded on the TSX and the NYSE.
7. Under the RCI Offer, the Filer has offered to purchase any and all of the RWCI Restricted Voting Shares not currently owned by the Filer or its affiliates which are tendered to the RCI Offer. As consideration for each RWCI Restricted Voting Share to be taken up pursuant to the RCI Offer, the Filer has offered 1.75 RCI Non-Voting Shares.
8. The RCI Offer was mailed to the holders of RWCI Restricted Voting Shares on November 25, 2004, together with a directors' circular of the Board of Directors of RWCI recommending that the holders of RWCI Restricted Voting Shares accept the RCI Offer and tender their RWCI Restricted Voting Shares to the RCI Offer. The RCI Offer will expire at midnight on December 30<sup>th</sup>, 2004 unless extended or varied.
9. Holders of RWCI Options have previously been granted the opportunity to exchange their existing vested and unvested RWCI Options for RCI Options with the same vesting date that entitle each holder to receive upon exercise, a number of RCI Non-Voting Shares equal to the holder's entitlement under the RWCI Options multiplied by 1.75, at an exercise price per RCI Non-Voting Share equal to the exercise price per share of the RWCI Option divided by 1.75 (the Replacement Options). These adjustments are applied separately to options with the same vesting dates and exercise prices and reflect the exchange ratio under the RCI Offer.
10. Following the Option Exchange, each holder of vested RCI Options will be granted the right, exercisable for a period of 20 days from the date of issue of the RCI Options, to require the Filer to repurchase the RCI Options in consideration for a cash payment equal to the "in the money" amount of such options. For this purpose, the "in the money" amount means the amount by which the market price of the RCI Non-Voting Shares (determined based on the average closing prices of the RCI Non-Voting Shares for the five trading days immediately prior to the exercise of the Repurchase Right) exceeds the

## 2005 BCSECCOM 26

exercise price of the relevant RCI Option. Any RCI Options so purchased will be cancelled.

11. The TSX has conditionally accepted notice of the proposed grant of the Replacement Options and approved the reservation for issuance under the RCI 2000 Stock Option Plan of the Replacement Options.
12. The RWCI Options are held by directors, officers and employees of RWCI.
13. As of November 30, 2004, there were vested RWCI Options outstanding to acquire 1,065,475 RWCI Restricted Voting Shares, and unvested options to acquire an additional 1,864,581 RWCI Restricted Voting Shares outstanding.
14. The Repurchase Right would be available only to former RWCI option holders who exchange their vested RWCI Options for vested RCI Options pursuant to the Option Exchange.
15. Directors and senior officers of RWCI who hold RWCI Options own or control approximately 24,000 RWCI Restricted Voting Shares, or less than 1% of the total outstanding RWCI Restricted Voting Shares. To the best of RCI's knowledge, other employees of RWCI own a *de minimus* number of RWCI Restricted Voting Shares. Holders of RWCI Options are not required to participate in the Option Exchange or, if they do, to exercise the Repurchase Right. No holder of RWCI Options is required to tender the RWCI Restricted Voting Shares they own, if any, to the RCI Offer in order to participate in the Option Exchange or to exercise the Repurchase Right.
16. There are two benefits to RCI of the grant of the Repurchase Right. First, no RCI Non-Voting Shares will be issued to holders of RCI Options who exercise the Repurchase Right resulting in no dilution to the position of existing shareholders of RCI and no need to sell those shares in the market. Second, for Canadian federal income tax purposes, RCI would be entitled to a deduction for the cash amount paid pursuant to the exercise of the Repurchase Right. In the view of RCI, it is preferable for RCI and its shareholders to obtain these benefits than for RCI to simply issue RCI Non-Voting Shares on the exercise of RCI Options.
17. The Repurchase Right is being granted to RWCI Option holders for valid business reasons unrelated to their holding of RWCI Restricted Voting Shares and not to increase the value of the consideration being paid by RCI pursuant to the RCI Offer for the RWCI Restricted Voting Shares held by such option holders.

## **2005 BCSECCOM 26**

### **Decision**

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 the Requested Relief is granted.

Signed December 30 2004.

Daniel Laurion  
Surintendant de la Direction de  
l'encadrement des marchés des valeurs