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Headnote

Mutual Reliance Review System for Exemptive Relief Application – issuer bids – relief granted from the valuation requirement in connection with an offer by the issuer for its out-of-the-money convertible debentures – conversion feature is of no material value and debentures trade only on the issuer’s underlying creditworthiness

Applicable British Columbia Provisions

Securities Rules, B.C. Reg. 194/97, ss. 162(2) and 162(3)

**IN THE MATTER OF THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA,
ONTARIO, QUÉBEC, 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 THE DESCARTES SYSTEMS GROUP INC.

AND

IN THE MATTER OF 3078393 NOVA SCOTIA COMPANY

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador (the “Jurisdictions”) has received an application (the “Application”) from The Descartes Systems Group Inc. (the “Corporation”) and 3079393 Nova Scotia Company, a wholly-owned subsidiary of the Corporation (the “Subsidiary” and, together with the Corporation, the “Applicants”), for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirement contained in the Legislation to obtain a valuation (the “Valuation Requirement”) shall not apply to the proposed purchase by the Subsidiary of a portion of the Corporation’s outstanding 5.5% Convertible Unsecured Subordinated Debentures due June 30, 2005 (the “Debentures”) pursuant to a formal issuer bid (the “Proposed Issuer Bid”);

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AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal regulator for the 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 the Applicants have represented to the Decision Makers that:

1. The Corporation was amalgamated under the *Business Corporations Act* (Ontario) on January 26, 1999. Its principal executive office is located in Waterloo, Ontario.
2. The Corporation is authorized to issue an unlimited number of common shares (the “Common Shares”). As of May 23, 2003, the Corporation had outstanding 52,231,711 Common Shares.
3. As of May 23, 2003 the Corporation had outstanding Debentures in the aggregate principal amount of U.S.\$71,995,000.
4. The Corporation is a reporting issuer or the equivalent in each of the Jurisdictions and is not in default of any requirements of the Legislation. The Common Shares are listed and posted for trading on the Toronto Stock Exchange (the “TSX”) under the trading symbol “DSG” and on the Nasdaq National Market under the trading symbol “DSGX” and its Debentures are listed and posted for trading on the TSX under the trading symbol “DSG.DB.U”.
5. The Subsidiary was incorporated on May 27, 2003 and is governed by the *Nova Scotia Companies Act*. It is a wholly-owned subsidiary of the Corporation. The Subsidiary is not a reporting issuer in any of the Jurisdictions.
6. The Debentures were issued pursuant to an indenture dated June 30, 2000 (the “Indenture”) between the Corporation and Montreal Trust Company of Canada (now Computershare Trust Company of Canada) and distributed pursuant to a short form prospectus dated June 26, 2000.
7. The Indenture provides that, unless an “Event of Default” (as defined in the Indenture) has occurred and is continuing under the Indenture, the Corporation may purchase for cancellation any or all of the Debentures by invitation for

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tenders or by private contract. No Event of Default has occurred under the Indenture. There are no other restrictions upon the Corporation's and no restrictions on the Subsidiary's ability to purchase the Debentures.

8. The Debentures are convertible at the Debentureholder's option into Common Shares at any time prior to the earlier of June 30, 2005 and the last business day immediately preceding the date specified for redemption by the Corporation. The conversion price for the Debentures is U.S.\$35.00 per Common Share, being a rate of approximately 28.57 Common Shares per U.S.\$1,000 principal amount of Debentures.
9. On August 1, 2002, the Corporation announced an offer to repurchase for cancellation by way of a substantial issuer bid expiring on September 6, 2002 (the "2002 Debenture Offer") up to an aggregate of U.S.\$51,428,571 principal amount of its outstanding Debentures at a price of U.S.\$700 for each U.S.\$1,000 principal amount of Debentures plus unpaid interest accrued to the date of purchase. The Corporation purchased for cancellation a nominal amount of Debentures pursuant to the 2002 Debenture Offer.
10. A significant holder of Debentures has agreed with the Corporation to tender U.S.\$30,856,500 aggregate principal amount of Debentures under the Proposed Issuer Bid at a purchase price of U.S.\$950 for each U.S.\$1,000 principal amount of Debentures. To the knowledge of the Corporation no other person or company holds more than 10% of the aggregate principal amount of outstanding Debentures.
11. The Corporation proposes to purchase, for a period concurrent with the Proposed Issuer Bid, up to 11,578,000 Common Shares at a single purchase price within the range of Cdn.\$3.00 to Cdn.\$3.85 using a "Dutch Auction" procedure.
12. The Corporation announced the intention to make the Proposed Issuer Bid and certain anticipated details of the Proposed Issuer Bid on May 12, 2003 (the "Announcement Date"). The purchase price is U.S.\$950 for each U.S.\$1,000 principal amount of Debentures.
13. Over the 12 complete months prior to the Announcement Date, the Debentures traded on the TSX on 158 out of 272 trading days, with an average daily trading value of U.S.\$48,596 on the days traded, and the price range over that period was U.S.\$680 to U.S.\$930 per U.S.\$1,000 principal amount of Debentures.

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14. As at May 12, 2003 and May 13, 2003 (one day after the Announcement Date), the closing price of the Debentures on the TSX was Cdn.\$850.00 and U.S.\$922.50 per U.S.\$1,000 aggregate principal amount outstanding respectively.
15. The Debentures are convertible into Common Shares at a conversion price which is significantly in excess of the current market price of the Common Shares. The Debenture conversion price of U.S.\$35.00 per Common Share for each U.S.\$1,000 in aggregate principal amount of Debentures outstanding is equivalent to Cdn.\$48.55 per Common Share based on the foreign exchange rates as of May 13, 2003. On May 13, 2003, the closing price of the Common Shares on the TSX was Cdn.\$3.20, which was approximately 6.4% of the conversion price of the Debentures at such time, based on the foreign exchange rates then in effect. Over the 12 months ended April 30, 2003, the Common Shares traded on the TSX in a range between Cdn.\$2.88 and Cdn.\$6.06 per Common Share.
16. In a letter (the "Opinion Letter") dated June 2, 2003, Griffiths McBurney & Partners ("GMP") advised the Corporation that, in GMP's opinion:
 - (i) the convertibility feature of the Debentures is of no material value; and
 - (ii) the Debentures trade on the TSX like non-convertible, subordinated, unsecured debt based on the Corporation's underlying creditworthiness.
17. The Proposed Issuer Bid is proceeding by way of an issuer bid circular dated June 2, 2003, which includes a summary and copy of the Opinion Letter. The Proposed Issuer Bid will expire on July 11, 2003, unless extended.
18. The Subsidiary intends to acquire the aggregate principal amount of U.S.\$45,000,000 of Debentures at the Purchase Price, representing approximately 62.5% of the outstanding principal amount of Debentures. The Corporation anticipates using cash on hand, cash equivalents and/or marketable securities to fund the Debenture acquisitions.
19. The Proposed Issuer Bid is an "issuer bid" within the meaning of the Legislation in the Jurisdictions because the Debentures are convertible debt securities.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

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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 in the Jurisdictions under the Legislation is that the Valuation Requirement shall not apply to Proposed Issuer Bid, provided that the Applicants comply with the other applicable provisions of the Legislation relating to formal issuer bids.

DATED this 25th day of June 2003.

Ralph Shay