

# 2002 BCSECCOM 161

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - exemption from the requirement to file and deliver an annual report and annual financial statements for the year ended September 30, 2001, and interim financial statements for the first quarter ended December 31, 2001.

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 91 and 119  
*Securities Rules*, B.C. Reg. 194/97, ss. 144, 145 and 184(2)

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

AND

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

AND

IN THE MATTER OF DC DIAGNOSTICARE INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Ontario, Alberta and British Columbia (the "Jurisdictions") has received an application from DC DiagnostiCare Inc. (the "Filer") for:

(i) a decision under the securities legislation of each of the Jurisdictions (the "Legislation") that the requirements contained in the Legislation to make up, certify, prepare, file and send and deliver to the registered holders of the Filer's common shares (the "Common Shares"), as the case may be, its:

(a) interim financial statements (the "Interim Financials") for the first quarter ended December 31, 2001 (the "First Quarter");

(b) comparative financial statements (the "Annual Financials") for the financial year ended September 30, 2001 (the "Year 2001"); and

(c) report (the "Annual Filing") for the Year 2001;

shall not apply to the Filer; and

(ii) in Ontario only, an order pursuant to Ontario Securities Commission Rule 51-501 - AIF and MD&A ("Rule 51-501"), that the requirements contained in Rule 51-501 to prepare, file and send and deliver to the registered holders of the Common Shares, as the case may be, its:

(a) annual information form (the "AIF") for the Year 2001;

(b) annual management's discussion and analysis of financial condition and results of operations (the "Annual MD&A") for Year 2001; and

## 2002 BCSECCOM 161

(c) interim management's discussion and analysis of financial condition and results of operations (the "Interim MD&A") for the First Quarter;

shall not apply to the Filer.

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 the Filer has represented to the Decision Makers as follows:

1. The Filer is a corporation formed under the laws of the Province of British Columbia on July 12, 1996 pursuant to the amalgamation of DC DiagnostiCare Inc. and Camelot Industries Inc.
2. The Filer's principal office is located at Suite 100 - 12220 Stony Plain Road, Edmonton, Alberta, T5N 3Y4 and its registered office is located at Suite 1600 - 609 Granville Street, Vancouver, British Columbia, V7Y 1C3.
3. Subsequent to the completion of the Offer (defined and more particularly described below), approximately 93.4% of the outstanding Common Shares are indirectly held by Canadian Medical Laboratories Limited ("CML"), a reporting issuer with its head office and principal place of business located at 6560 Kennedy Road, Mississauga, Ontario, L5T 2X4, through its wholly-owned subsidiary Diagnosticare Acquisition Limited (the "Offeror").
4. The Filer is a reporting issuer in each of the Jurisdictions and is not in default of any of the requirements of the Legislation.
5. The Common Shares are listed for trading on The Toronto Stock Exchange (the "TSE").
6. On October 22, 2001, the Offeror made a formal offer (the "Offer") by take-over bid to acquire all the issued and outstanding Common Shares for \$0.60 per Common Share.
7. The Offer was originally set to expire on November 28, 2001 but was extended to December 21, 2001 by a Notice of Extension dated December 7, 2001.
8. On November 28, 2001 and December 21, 2001, the Offeror acquired a total of 24,918,956 Common Shares, or approximately 93.4% of the 26,680,425 Common Shares outstanding as at December 21, 2001.
9. The Offeror intends to acquire as soon as possible, pursuant to section 255 of the *Company Act* (British Columbia) (the "Compulsory Acquisition Right"), all outstanding Common Shares which were not acquired by the Offeror under the Offer. Pursuant but subject to the *Company Act* (British Columbia), the Offeror has the absolute right to acquire all Common Shares not currently owned by it.
10. In order to exercise the Compulsory Acquisition Right, the Offeror must first be continued as a company under the *Company Act* (British Columbia).
11. Effective January 17, 2002, the Offeror has continued as a company under the *Company Act* (British Columbia) and is accordingly able to exercise the Compulsory Acquisition Right.
12. The Offeror intends to give written notice (the "Notice") of its intention to exercise the Compulsory Acquisition Right to each holder of Common Shares who did not accept the Offer

## 2002 BCSECCOM 161

(each a "Remaining Shareholder") very shortly, providing each Remaining Shareholder with the option of:

(a) transferring such holder's Common Shares to the Offeror for a purchase price of \$0.60 per Common Share; or

(b) making an application to the Supreme Court of British Columbia (the "Court"), within two months from the date of the giving of the Notice in accordance with section 255 of the *Company Act* (British Columbia) upon which, the Court may:

(i) set the price and terms of payment; and

(ii) make consequential orders and give directions the Court considers appropriate.

13. Upon the expiry of two months after the date on which the Notice was given, if no Remaining Shareholder has applied to the Court within such time, the Offeror must send a copy of the Notice to the Filer and pay or transfer to the Filer the amount representing the price payable by the Offeror for the Common Shares which the Offeror is entitled and bound to acquire (the "Payment Procedure"). Upon receipt of a copy of the Notice and the payment referred to in the preceding sentence, the Filer must thereupon register the Offeror as a shareholder with respect to such Common Shares and the Offeror will become the sole shareholder of the Filer.

14. Unless a Remaining Shareholder makes an application to the Court in accordance with section 255 of the *Company Act* (British Columbia), the Filer expects that the Offeror will, pursuant to the Compulsory Acquisition Right, become the sole shareholder of the Filer by the end of its second quarter ending March 31, 2002.

15. If a Remaining Shareholder makes an application to the Court in accordance with section 255 of the *Company Act* (British Columbia) and such application remains pending after the expiry of two months after the date on which the Notice was given, unless the Court has ordered otherwise, after that application has been disposed of, the Offeror must follow the Payment Procedure. Upon receipt of a copy of the Notice and the payment required by the Payment Procedure and/or the Court, the Filer must thereupon register the Offeror as a shareholder with respect to such Common Shares and the Offeror will become the sole shareholder of the Filer.

16. The Filer intends to seek to have the Common Shares de-listed from the TSE shortly.

17. Assuming the completion of the compulsory acquisition, the issuance of this decision will allow the Filer to apply for an order deeming it to have ceased to be a reporting issuer in each of the Jurisdictions.

18. Absent the granting of the relief requested hereby, the Filer would be required to make up, certify, prepare, file and send and deliver to the registered holders of the Common Shares, as the case may be, the Interim Financials and the Interim MD&A before March 1, 2002.

19. Absent the granting of relief requested hereby, the Filer would be required to make up, certify, prepare, file and send and deliver to the registered holders of the Common Shares, as the case may be, the Annual Financials, the Annual Filing, the AIF and the Annual MD&A before February 17, 2002.

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

## **2002 BCSECCOM 161**

AND WHEREAS each Decision Maker 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 the requirements contained in the Legislation to make up, certify, prepare, file and send and deliver to the registered holders of the Common Shares, as the case may be, the Interim Financials, the Annual Financials and the Annual Filing, shall not apply to the Filer.

DATED this 15<sup>th</sup> day of February, 2002.

Mary Theresa McLeod  
A Commissioner

H. Lorne Morphy  
A Commissioner

AND IT IS HEREBY ORDERED by the Director pursuant to section 5.1 of Rule 51-501 that the requirements contained in Rule 51-501 to file and send and deliver to the registered holders of the Common Shares, as the case may be, the AIF, the Annual MD&A and the Interim MD&A, shall not apply to the Filer.

DATED this 15th day of February, 2002

John Hughes  
Manager, Continuous Disclosure