

2003 BCSECCOM 713

Headnote

Mutual Reliance Review System for Exemptive Relief Application – relief from the requirement that an issuer have a class of equity securities listed or quoted on a qualified market as defined in MI 45-102 to be a qualifying issuer under MI 45-102 for issuers with securities quoted on CNQ

Applicable British Columbia Provisions

Multilateral Instrument 45-102 *Resale of Securities* - sections 1.1 and 4.1

IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA, BRITISH COLUMBIA, NEWFOUNDLAND AND LABRADOR, NORTHWEST TERRITORIES, NOVA SCOTIA, NUNAVUT AND SASKATCHEWAN

AND

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

AND

IN THE MATTER OF CANADIAN TRADING AND QUOTATION SYSTEM INC.

MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (Decision Maker) in each of Alberta, British Columbia, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut and Saskatchewan (Jurisdictions) has received an application from Canadian Trading and Quotation System Inc. (CNQ or Filer) for a decision under the securities legislation of the Jurisdictions (Legislation) that the requirement to have a class of equity securities listed or quoted on a “qualified market” as defined in Multilateral Instrument 45-102 *Resale of Securities* (MI 45-102) to be a “qualifying issuer” under MI 45-102 does not apply to issuers quoted on CNQ (CNQ Issuers);
2. AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (System), the Alberta Securities Commission is the principal regulator for this application;
3. AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions;

2003 BCSECCOM 713

4. AND WHEREAS the Filer has represented to the Decision Makers that:
 - 4.1 CNQ is incorporated under the *Business Corporations Act* (Ontario) and its head office is located in Toronto, Ontario;
 - 4.2 CNQ operates an electronic central limit order book auction market augmented with market maker liquidity. The electronic order book allows for full pre- and post-trade transparency, automatic application of trading priority rules (pure price and time priority) and effective trading surveillance;
 - 4.3 CNQ was recognized as a quotation and trade reporting system by the Ontario Securities Commission on February 28, 2003;
 - 4.4 CNQ has made application to the Ontario Securities Commission for recognition as an exchange operating in Ontario and to the Alberta and Québec Securities Commissions for exemption from the requirement to be recognized as an exchange carrying on business in those jurisdictions;
 - 4.5 securities traded on CNQ may have one or more market makers, who must post reasonable continuous two-sided markets to add liquidity and immediacy for public investors for stocks with market makers. Market makers enjoy limited exclusive orders entry privileges for the stocks in which they are approved as market makers, chiefly the ability to see the order flow from other dealers. Stocks without a market maker trade in a pure price and time auction market;
 - 4.6 CNQ has engaged Market Regulation Services Inc. (RS) to provide market regulation services to CNQ's marketplace, including market surveillance, trade desk compliance and investigations and enforcement. Dealers trading on CNQ (CNQ Dealers) must be members in good standing of the Investment Dealers Association of Canada or another recognized self-regulatory organization;
 - 4.7 trades on CNQ will be confirmed to the Canadian Depository for Securities Limited for settlement;
 - 4.8 in order to qualify for quotation on CNQ, a CNQ Issuer must
 - 4.8.1 be a reporting issuer in British Columbia, Alberta, Ontario or Québec;

2003 BCSECCOM 713

- 4.8.2 satisfy minimum standards for quotation, including having an active business or a plan to develop an active business;
- 4.8.3 agree to follow CNQ's policies and submit to CNQ's jurisdiction to suspend or disqualify its securities from quotation and trading;
- 4.8.4 post on the CNQ website a prospectus-like base disclosure document including management's discussion and analysis (the "Quotation Statement"); and
- 4.8.5 post an enhanced disclosure record on CNQ's website, which is updated through monthly progress reports, quarterly updates and a current Quotation Statement annually;
- 4.9 CNQ reviews the Quotation Statement to ensure it is complete and that the issuer meets the minimum standards for quotations but does not review and pre-clear transactions;
- 4.10 CNQ undertakes periodic compliance reviews to determine a CNQ Issuer's compliance with CNQ rules. CNQ Issuers that fail to comply with CNQ rules are subject to sanctions that include suspension and disqualification from quotation on CNQ;
- 4.11 once quoted, a CNQ Issuer is subject to the same timely disclosure requirements applicable to listed issuers on Canadian exchanges;
- 4.12 RS is responsible for monitoring compliance of timely disclosure rules and overall market integrity and will investigate potential instances of insider trading and market manipulation. RS will forward results of those investigations to CNQ and the relevant securities regulatory authority;
- 4.13 to be a "qualifying issuer" under MI 45-102, an issuer must have a class of equity securities listed or quoted on a "qualified market". CNQ is not a "qualified market" under MI 45-102;
- 5. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, Decision);
- 6. 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;

2003 BCSECCOM 713

7. THE DECISION of the Decision Makers under the Legislation is that the requirement in the Legislation to have a class of equity securities listed or quoted on a qualified market to be a qualifying issuer under MI 45-102 does not apply to a CNQ Issuer, provided that the CNQ Issuer
 - 7.1 has a class of equity securities quoted on CNQ,
 - 7.2 has not been notified by CNQ that it does not meet the requirements to maintain that quotation,
 - 7.3 has not been declared inactive, suspended or the equivalent by CNQ, and
 - 7.4 the CNQ Issuer, or selling security holder in the case of a control distribution, files a Form 45-102F2 on or before the tenth day after the distribution date of any securities certifying that the CNQ Issuer is a qualifying issuer except for the requirement that it have a class of equity securities listed or quoted on a “qualified market”.
8. The Decision will expire on the amendment or repeal of MI 45-102.

DATED this 21st day of October, 2003

Glenda A. Campbell, Q.C., Vice-Chair
Stephen R. Murison, Vice-Chair