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March 20, 2008

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 48, 76 Employees & Consultants - Exemption from s. 34(1)(a) requirement to be registered as a dealer in connection with a trade and s. 61 requirement to file a prospectus in connection with a distribution involving employees, consultants, past employees and similar persons - Trades by an issuer of its securities to employees, directors, officers, consultants, or similar persons, of another business that is related, but not technically a “related entity”, of the issuer - Option holders will receive replacement options that are on the same terms and conditions as the original options, except that they will entitle the holder to acquire shares of a different company under the reorganization that is no longer their employer; there is a de minimus connection to Canada; first trades in shares acquired on exercise of the replacement options will be subject to the same conditions as s. 2.14(1) of MI 45-102

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 34, 48, 61, 76

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Manitoba,  
Ontario, Quebec, New Brunswick, Nova Scotia,  
Prince Edward Island 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  
Cadbury Schweppes PLC, Cadbury PLC and  
Dr Pepper Snapple Group, Inc.

## MRRS Decision Document

## Background

The local securities regulatory authority or regulator (the “Decision Maker”) in each of the Jurisdictions has received an application from Cadbury Schweppes plc (“Cadbury”), New Cadbury and US Newco (each as defined below and, together

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with Cadbury, the “Filers”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirements contained in the Legislation to be registered to trade in a security (the “Registration Requirements”) and to file and obtain a receipt for a preliminary prospectus and prospectus (the “Prospectus Requirements”) shall not apply to:

- (a) the issuance by New Cadbury of New Cadbury Rollover Awards (as defined below) to Former Employees (as defined below) and Transferred Employees (as defined below);
- (b) the issuance by New Cadbury of New Cadbury Awards (as defined below) to Former Employees; and
- (c) the first trades by Former Employees and Transferred Employees resident in Canada of New Cadbury Shares (as defined below) issued on exercise of New Cadbury Rollover Awards and New Cadbury Awards.

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Ontario Securities Commission 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 otherwise set forth herein.

### **Representations**

The decision is based on the following facts represented by the Filers:

1. Cadbury is incorporated in England and Wales and has its registered head office in London, England.
2. The ordinary shares of Cadbury (the “Cadbury Shares”) have been admitted to trading on the London Stock Exchange (the “LSE”), with a secondary listing on the New York Stock Exchange (the “NYSE”) in the form of American Depositary Shares (“ADSs”) (whereby one ADS represents four Cadbury Shares).
3. Cadbury proposes to introduce a new holding company of the Cadbury Schweppes group and demerge its Americas Beverages business (the

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“Proposal”) by way of a court-sanctioned scheme of arrangement of Cadbury under Section 425 of the *Companies Act 1985* (United Kingdom) (the “U.K. Companies Act”) (the “Arrangement”) and a subsequent court-approved reduction of share capital under Sections 135 and 136 of the U.K. Companies Act (the “Reduction”). The Arrangement and Reduction will be subject to the approval of Cadbury shareholders.

4. Following implementation of the Proposal:
  - (a) Cadbury’s Americas Beverages business will be owned by a new company incorporated in the United States named Dr Pepper Snapple Group, Inc. (“US Newco”); and
  - (b) Cadbury’s confectionery business will be owned by a new holding company to be incorporated in England and Wales and named Cadbury plc (“New Cadbury”).
5. Cadbury’s shareholders will vote at a meeting convened by the English Court to approve the Arrangement. If the requisite number of shareholders vote in favour of the Arrangement, Cadbury will seek the sanction of the English Court to the Arrangement.
6. Pursuant to the Arrangement, each Cadbury Share will be cancelled and in consideration for the cancellation of the Cadbury Shares, holders thereof will receive new ordinary shares of New Cadbury (“New Cadbury Shares”) and new beverage shares (“Beverage Shares”). The New Cadbury Shares will be admitted to trading on the LSE and new ADSs representing the New Cadbury Shares will be listed on the NYSE. The Beverage Shares will not be listed and will not be transferable.
7. New shares in Cadbury will be issued to New Cadbury, which will become the parent company of Cadbury and the holding company of the Cadbury Schweppes group. Upon the Arrangement becoming effective, Cadbury will be re-registered as a private limited company and thereafter be known as Cadbury Schweppes Limited.
8. The initial subscribers of New Cadbury will pass a resolution to approve the Reduction. Cadbury shareholders will be asked to give their confirmatory approval to the Reduction at an extraordinary general meeting to be held on the same day as the meeting described in paragraph 5 above. Immediately following the Arrangement becoming effective and being fully implemented, an application will be made to the English Court to confirm the Reduction. If the requisite number of Cadbury and New Cadbury shareholders vote in

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favour of the Reduction and the Reduction is confirmed by the English Court: (i) the Beverage Shares will be cancelled, (ii) New Cadbury will transfer the Americas Beverages business to US Newco, and (iii) US Newco will issue shares in US Newco (the “US Newco Shares”) to the New Cadbury shareholders. The US Newco Shares will be listed on the NYSE only.

9. As at January 31, 2008, 2,109,538,137 Cadbury Shares were issued and outstanding, of which Canadian residents held 291,469 Cadbury Shares. As at January 31, 2008, 86,067,177 ADSs were issued and outstanding, of which Canadian residents held 93,620 ADSs.
10. The Cadbury Shares are not listed on any securities exchange in Canada. The New Cadbury Shares and US Newco Shares will not be listed on any securities exchange in Canada.
11. Cadbury is not, and has no current intention of becoming, a reporting issuer under applicable securities legislation in any of the Jurisdictions. Neither New Cadbury nor US Newco have any current intention of becoming a reporting issuer in any of the Jurisdictions.
12. Canadian employees, executive officers and directors of Cadbury participate in the following employee share schemes, which Cadbury has adopted to enable eligible employees, executive officers and directors of Cadbury and its affiliates to participate in Cadbury’s growth and financial success through options or rights to acquire Cadbury Shares: Cadbury Schweppes Share Option Plan 2004, the Cadbury Schweppes (New Issue) Share Option Plan 2004, the Cadbury Schweppes Bonus Share Retention Plan 2004, the Cadbury Schweppes plc Americas Employees Share Option Plan 2005, the Cadbury Schweppes Long Term Incentive Plans 2004, and the Cadbury Schweppes International Share Award Plan (collectively, the “Employee Share Schemes”).
13. Awards under the Employee Share Schemes consist of: (a) market value stock options, (b) nil-cost stock options, or (c) contingent awards (collectively, the “Existing Cadbury Awards”).
14. At the time of the Arrangement, the terms of the Employee Share Schemes will provide that where a company obtains control of Cadbury in pursuance of an arrangement under section 425 of the U.K. Companies Act, a participant may release his or her award in consideration for the grant to him or her of a replacement award over shares in the acquiring company or some other company, or the committee responsible for administering the Employee Share

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Plans (the “Committee”) may deem a participant to have agreed to release his or her old award in return for the grant of a new award.

15. In accordance with the terms of the Employee Share Schemes, under the Proposal participants in the Employee Share Schemes will generally be dealt with as follows:
  - (a) where Existing Cadbury Awards are already exercisable, or become exercisable as a result of the Arrangement, participants:
    - (i) may exercise their Existing Cadbury Awards and therefore participate in the Arrangement in the same way as all other holders of Cadbury Shares; or
    - (ii) may rollover their Existing Cadbury Awards so that they are replaced with equivalent options/awards over New Cadbury Shares (“New Cadbury Rollover Awards”); or
  - (b) where Existing Cadbury Awards are not already exercisable and do not become exercisable as a result of the Arrangement, or where Existing Cadbury Awards do not vest as a result of the Arrangement, participants will be granted replacement options/awards over New Cadbury Shares (“New Cadbury Awards”) by New Cadbury (if they are employees of Cadbury’s confectionery business or former employees of the Cadbury Schweppes group) or US Newco Shares (“US Newco Awards”) by US Newco (if they are employees of the Americas Beverages business).
16. Replacement awards/options will be held, in general, on the same terms and conditions as Existing Cadbury Awards (except that in most cases replacement awards/ options will not be subject to any future performance targets as these will have been measured at the time of implementation of the Proposal). If the participants do not voluntarily elect to exchange their Existing Cadbury Awards, pursuant to the terms of the applicable Employee Share Scheme, the Committee will deem the participant to have agreed to release his or her Existing Cadbury Awards in return for the grant of New Cadbury Rollover Awards, New Cadbury Awards or US Newco Awards, as applicable.
17. While the transactions relating to the Employee Share Schemes are not formally part of the Arrangement or Reduction, they are contingent on same being approved by Cadbury shareholders and will occur concurrently with the completion of the Proposal.

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18. Existing Cadbury Awards are not transferable other than in accordance with their terms.
19. Participation in the Employee Share Schemes is voluntary and the participants were not induced to participate in the Employee Shares Schemes by expectation of employment or continued employment.
20. Canadian participants in the Employee Share Schemes will receive a personalized letter outlining the key implications of the Proposal for participation in the relevant plan and what action, if any, needs to be taken by the participant.
21. At the time of the rollover of their Existing Cadbury Awards into New Cadbury Rollover Awards as described in paragraph 15(a)(ii) above, the participants in the Employee Share Schemes who are currently employees, executive officers or directors of the Americas Beverages business will be employees, executive officers or directors of US Newco ("Transferred Employees"). By nature of the demerger transaction, US Newco will no longer be a member of the New Cadbury group and as such will not, as a technical matter, be a related entity of New Cadbury.
22. Participants in the Employee Share Schemes who may receive New Cadbury Rollover Awards or New Cadbury Awards include former employees, executive officers and directors of Cadbury and its affiliates, including Canadian affiliates ("Former Employees").
23. Approximately 907 employees or Former Employees of Cadbury in Canada participate in the Employee Shares Schemes. The following table sets forth the number of participants in each of the Jurisdictions, as well as the number of Former Employees in respect of which relief is sought, as at February 6, 2008, and the number of Transferred Employees in respect of which relief is sought, as at February 1, 2008:

| Province                  | Total Number of Participants | Number of Transferred Employees who are Participants | Number of Former Employees who are Participants |
|---------------------------|------------------------------|--|---|
| Alberta                   | 24                           | 2  | 4   |
| British Columbia          | 11                           | 0  | 0   |
| Manitoba                  | 5                            | 0  | 0   |
| New Brunswick             | 0                            | 0  | 0   |
| Newfoundland and Labrador | 2                            | 0  | 0   |

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|              |     |    |     |
|--------------|-----|----|-----|
| Nova Scotia  | 7   | 0  | 0   |
| Ontario      | 820 | 57 | 117 |
| Québec       | 34  | 6  | 9   |
| Saskatchewan | 3   | 0  | 0   |
| Total        | 907 | 65 | 130 |

24. As there will be no market for the New Cadbury Shares or the US Newco Shares in Canada, it is expected that any resales of the New Cadbury Shares and US Newco Shares will be made through an exchange outside of Canada.

### **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 Registration Requirements and the Prospectus Requirements shall not apply to:

- (a) the issuance by New Cadbury of New Cadbury Rollover Awards to Former Employees and Transferred Employees;
- (b) the issuance by New Cadbury of New Cadbury Awards to Former Employees; and
- (c) the first trades by Former Employees and Transferred Employees resident in Canada of New Cadbury Shares issued on exercise of New Cadbury Rollover Awards and New Cadbury Awards, provided that in respect of such first trades the following conditions are met:
  - (i) New Cadbury:
    - (A) was not a reporting issuer in any jurisdiction of Canada at the date of the distribution of the New Cadbury Rollover Awards or New Cadbury Awards, or
    - (B) is not a reporting issuer in any jurisdiction of Canada at the date of the first trade of New Cadbury Rollover Awards or New Cadbury Awards;
  - (ii) at the date of the distribution of the New Cadbury Rollover Awards or New Cadbury Awards, after giving effect to the exercise of the New Cadbury Rollover Awards and New Cadbury Awards, residents of Canada:

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- (A) did not own directly or indirectly more than 10% of the outstanding New Cadbury Shares; and
- (B) did not represent in number more than 10% of the total number of owners directly or indirectly of New Cadbury Shares; and
- (iii) the first trade of New Cadbury Shares is made (A) through an exchange, or a market, outside of Canada, or (B) to a person or company outside of Canada.

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