

# 2003 BCSECCOM 708

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Relief granted from take-over bid requirements for a take-over bid made in compliance with laws of U.S. where bidder unable to determine the number of Canadian shareholders

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 45(2)(28), 61, 76, 105-8, 110 and 114(2)(c)

## IN THE MATTER OF THE SECURITIES LEGISLATION OF THE PROVINCES OF QUEBEC, ONTARIO, BRITISH COLUMBIA, ALBERTA, MANITOBA, NOVA SCOTIA AND NEWFOUNDLAND AND LABRADOR

AND

IN THE MATTER OF ALCAN INC.

## MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of the Provinces of Quebec, Ontario, British Columbia, Alberta, Manitoba, Nova Scotia and Newfoundland and Labrador (the “Jurisdictions”) has received an application from Alcan Inc. (the “Applicant”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) (a) exempting the unsolicited tender offer (the “Offer”) of the Applicant for all the issued and outstanding common shares of Pechiney, the Bonus Allocation Rights of Pechiney, the American Depositary Shares of Pechiney (“Pechiney ADS”), the OCEANes (*obligations à option de conversion en actions nouvelles et / ou d’échange en actions existantes*) of Pechiney (collectively the “Pechiney Securities”) from (i) the prospectus and registration requirements of the Legislation (in applicable Jurisdictions) and (ii) the take-over bid requirements of the legislation and (b) authorizing the Applicant to include in the documentation relating to the Offer, statements to the effect that the Applicant will apply to list Alcan Common Shares (defined below) on Euronext Paris and that Alcan will also apply for the supplemental listing of the Alcan Common Shares to be issued in connection with the Offer on the New York, Toronto, London and Swiss Exchanges (except for British Columbia);

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the *Commission des valeurs mobilières du Québec* is the principal regulator for this application;

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AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 – *Definitions* or in Quebec Commission Notice 14-101;

AND WHEREAS the Applicant has represented to the Decision Makers that:

- (a) the head office of the Applicant is located in Montreal, Quebec;
- (b) the Applicant is a company incorporated under the laws of Canada;
- (c) the Applicant is a reporting issuer in good standing in all Provinces and Territories of Canada;
- (d) the authorized capital of the Applicant consists of an unlimited number of common shares (the “Alcan Common Shares”) and an unlimited number of preference shares issuable in series (the “Alcan Preference Shares”) of which 321,739,502 Alcan Common Shares were outstanding and 5,700,000 Series C, and 3,000,000 Series E, redeemable non retractable Alcan Preference Shares were outstanding as of the close of business on June 30, 2003.
- (e) the common shares of the Applicant are listed on the New York Stock Exchange, the Toronto Stock Exchange, the London Stock Exchange and the SWX Swiss Exchange;
- (f) Pechiney is incorporated under the laws of France and its head office is located in Paris, France;
- (g) Pechiney does not have a reporting issuer or equivalent status in any of the Provinces du Canada;
- (h) according to Pechiney Notice No. 203 C0962 addressed to the *Conseil des Marchés Financiers* (the “CMF”) and dated June 26, 2003, there were 82,622,783 Common shares of Pechiney outstanding. According to the 2002 Annual Report of Pechiney filed with the *Commission des opérations de bourse* (the “COB”) on March 19, 2003, there were 7,908,636 OCEANEs outstanding. According to the Pechiney notice addressed to Euronext Paris No 2003-1572 dated May 28, 2003, there were 1,091,040 Bonus Allocation Rights outstanding.

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- (i) Pechiney Common Shares, Pechiney Bonus Allocation Rights and Pechiney OCEANEs are listed on Euronext Paris and Pechiney ADS are listed on the New York Stock Exchange;
- (j) the Applicant has announced its plan to launch the Offer on July 7, 2003;
- (k) the Offer consists of 60% in cash and 40% in new Alcan Common Shares. The main characteristics of the Offer include:
  - Principal mixed offer: €123 in cash and 3 Alcan Common Shares for every 5 Pechiney Common Shares or every 50 Pechiney Bonus Allocation Rights or every 10 Pechiney ADS;
  - Subsidiary cash offer: €41 per each Pechiney Common Share or each 2 Pechiney ADS or €4.1 in cash for each Pechiney Bonus Allocation Right;
  - Subsidiary share offer: 3 Alcan Common Shares for every 2 Pechiney Common Shares or each 20 Pechiney Bonus Allocation Rights or each 4 Pechiney ADSs;
  - These two subsidiary offers will need to respect the final portion of 60% in cash and 40% in Alcan Common Shares;
  - Cash offer on OCEANEs: €81.70 in cash for each OCEANE.
- (l) under the Legislation of the Jurisdictions, every person intending to make a distribution of securities, as the Applicant who is offering Alcan Common Shares, shall prepare a prospectus and shall be registered as a dealer;
- (m) under the Legislation of the Jurisdictions of Ontario, Nova Scotia, Alberta, Manitoba and Newfoundland and Labrador, a trade in security of an issuer that is exchanged with the security holders in connection with a take-over bid or an exempt take-over bid, as is the case in connection with the Offer, is automatically exempted from the prospectus and registration requirements;
- (n) under the Legislation of the Jurisdictions of Quebec and British Columbia only the trade in securities in connection with take-over bids that are exempt from the Take-Over Bid Requirements (as defined below) pursuant to specific provisions of the relevant Legislation are exempt from the prospectus and registration requirements;
- (o) the Applicant can not rely on specific provisions and is seeking discretionary relief from the Take-Over Bid Requirements (as explained

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below), therefore it is also seeking discretionary relief from the prospectus and registration requirements under the Legislation of the Jurisdictions of Quebec and British Columbia;

- (p) the preliminary Prospectus includes a section (“Listing of Alcan Common Shares”) where it is stated that: “Alcan will apply to list its Alcan Common Shares on Euronext Paris, subject to the successful completion of the Offers. Alcan will also apply for the supplemental listing of the Alcan Common Shares to be issued in these offers on the New York, Toronto, Paris, London and Swiss stock exchanges”;
- (q) under the Legislation of the Jurisdictions, except British Columbia which provides a blanket permission, it is an offence, to declare that the security will be listed or that an application will be made, except with the express authorization of the Decision Makers;
- (r) the Offer will be made through two separate offers : (i) a U.S. offer open to all holders of Pechiney securities who are located in the United States and Canada, and (ii) a French offer open to all holders of Pechiney securities who are located inside France and outside of France (except in the United States and Canada) if, pursuant to the local laws and regulations applicable to such holders, they are permitted to participate in the French offer.
- (s) the U.S. offer will be in compliance with the federal securities laws of the United States of America;
- (t) the Applicant will file a registration statement on form S-4 (the “Prospectus”) with the Securities and Exchange Commission (“SEC”) and the Offer will be made to holders of Pechiney securities once Alcan has received the following authorizations :
  - (i) approval decision of the CMF, which was obtained on July 16, 2003;
  - (ii) review of Offer documentation by the COB and SEC; and
  - (iii) approval decision made by French Ministry of Economy, Industry and Finance, which was obtained on September 5, 2003.
- (u) the Applicant has filed with the SEC on July 7, 2003, a preliminary Prospectus;
- (v) the Applicant anticipates that the Offer will be open for acceptance in the third quarter of 2003;

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- (w) the Prospectus discloses all information required under Federal securities laws of the United States including information as to (i) Alcan, (ii) Pechiney, (iii) the reasons for the Offer, (iv) the Terms of the Offer, and (v) Financial Information.
- (x) the Offer constitutes a take-over bid as defined in the Legislation and is therefore subject to the take-over bid requirements set out in the Legislation (the “Take-Over Bid Requirements”) unless otherwise exempt from those Take-Over Bid Requirements pursuant to (i) specific provisions of the Securities Act or (ii) discretionary relief from statutory requirements granted by the Decision Maker in each Applicable Province.
- (y) an offerer may use the exemption prescribed by the Securities Act (the “De Minimis Exemption”) in order to be relieved from the Take-Over Bid Requirements where :
  - (i) the number of holders in the Applicable Province of securities of the class subject to the bid is fewer than 50;
  - (ii) the securities held by such holders constitute, in the aggregate, less than 2% of the outstanding securities of that class;
  - (iii) the bid is made in compliance with the laws of a jurisdiction recognized by the securities regulatory authority in the Applicable Province; and
  - (iv) all material relating to the bid that is sent by the offeror to holders of securities of the class that is subject to the bid is concurrently sent to all holders in the Jurisdiction of such securities and filed with the securities regulatory authority in the Applicable Province.
- (z) Pechiney securities may be registered in the name of the holder or in the name of a nominee. Pechiney has no obligation to disclose the list of its registered security holders and the Applicant was not able to obtain such a list;
- (aa) according to the information that the Applicant was able to obtain, there are 254 holders who reside in the Jurisdictions and they hold, in the aggregate, 0.20% of the outstanding Pechiney securities, of these holders of Pechiney securities; 142 (holding 0.17% of Pechiney securities outstanding) are resident in the Province of Quebec, 76 (holding 0.02% of Pechiney securities outstanding) are resident in the Province of Ontario, 15

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are resident in the Province of British Columbia, 10 are resident in the Province of Alberta, 2 are resident in the Province of Manitoba, 3 are resident in the Province of Nova Scotia and 6 are resident in the Province of Newfoundland and Labrador;

- (bb) the Applicant cannot rely on the De Minimis Exemption because the Applicant cannot determine with absolute certainty the number of holders of Pechiney securities resident in the Jurisdictions or the percentage of Pechiney securities held by residents of the Jurisdictions and because there are more than 50 holders of Pechiney securities in the Province of Quebec and in the Province of Ontario;
- (cc) holders of Pechiney securities resident in the Jurisdictions will be treated equally with other holders of Pechiney securities;
- (dd) the Prospectus and all other documentation sent to holders of Pechiney securities who reside in the United States will concurrently be sent to all identified holders of Pechiney securities who reside in the Jurisdictions and be filed with the securities regulatory authority in the Jurisdictions;
- (ee) identified holders of Pechiney who reside in Quebec will be provided concurrently with a summary in French of the Prospectus;
- (ff) the Applicant will issue a press release and place an advertisement in an English newspaper and a French newspaper of general circulation in Canada advising of the Offer, describing its principal terms and conditions and describing how holders of Pechiney Securities can obtain copies of the Prospectus.

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

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers under the Legislation is that the Applicant is exempt from: (a) in the Jurisdictions of Quebec and British Columbia, the prospectus and registration requirements and (b) the take-over bid requirements of the Legislation in connection with the Offer, provided that the Applicant complies with the following conditions: (i) the Offer and any amendments thereto are made in compliance with the laws of the United States (ii) all material relating to the Offer sent by or on behalf of Alcan to holders of

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Pechiney securities resident in the United States be sent concurrently to all identified holders of Pechiney securities who reside in the Jurisdictions and be filed with the securities regulatory authority in the Jurisdictions (iii) in the case of the identified holders of Pechiney securities who reside in the Province of Quebec, a summary in French of the Prospectus be sent concurrently to such holders, and (iv) a press release be issued and an advertisement be placed in an English newspaper and a French newspaper of general circulation in Canada advising of the Offer, describing its principal terms and conditions and describing how holders of Pechiney Securities can obtain copies of the Prospectus. The Decision Makers (except for the Decision Maker of British Columbia) also authorize the Applicant to include in the documentation relating to the Offer, statements to the effect that the Applicant will apply to list Alcan Common Shares on Euronext Paris and that Alcan will also apply for the supplemental listing of the Alcan Common Shares to be issued in connection with the Offer on the New York, Toronto, London and Swiss Exchanges.

Dated September 19, 2003.

Mark M. Rosenstein

Jean-Marie Gagnon