

## **2003 BCSECCOM 338**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – Dutch auction issuer bid – offeror exempt from the requirement in the legislation to take up and pay for securities proportionately according to the number of securities deposited by each securityholder, the associated disclosure requirement, and the valuation requirement on the basis that there is a liquid market for the securities

### **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 105(g), 108(7), 114(2)(c)

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

Form 62-903F, item 9

### **IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUEBEC, NOVA SCOTIA, NEWFOUNDLAND & LABRADOR**

**AND**

### **IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEFS APPLICATION**

**AND**

### **IN THE MATTER OF QUEBECOR WORLD INC.**

### **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, Newfoundland and Labrador (the “Jurisdictions”) has received an application (the “Application”) from Quebecor World Inc. (“Quebecor World”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that, in connection with the proposed purchase by Quebecor World of a portion of its outstanding Subordinate Voting Shares (the “Shares”) pursuant to an issuer bid (the “Offer”), Quebecor World be exempt from the requirements in the Legislation to:

- (i) take-up and pay for securities proportionately according to the number of securities deposited and not withdrawn by each securityholder (the “Proportionate Take-up and Payment Requirement”);

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- (ii) provide disclosure in the issuer bid circular (the “Circular”) of such proportionate take-up and payment (the “Associated Disclosure Requirement”); and
- (iii) obtain a valuation of the Shares and provide disclosure in the Circular of such valuation, or a summary thereof (the “Valuation Requirement”).

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;

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 Quebecor World has represented to the Decision Makers that:

1. Quebecor World is a reporting issuer or the equivalent in each of the Jurisdictions.
2. Quebecor World is not in default of any requirement of the Legislation and is not on the list of defaulting reporting issuers maintained pursuant to such Legislation, where applicable.
3. The authorized share capital of Quebecor World consists of an unlimited number of Multiple Voting Shares, without par value, an unlimited number of Shares, without par value, and an unlimited number of first preferred shares, issuable in series, without par value (the “Preferred Shares”). As of April 24, 2003, 46,987,120 Multiple Voting Shares, 94,530,416 Shares and 27,000,000 Preferred Shares, comprised of 12,000,000 Series 3 Cumulative Redeemable First Preferred Shares, 8,000,000 Series 4 Cumulative Redeemable First Preferred Shares and 7,000,000 Series 5 Cumulative Redeemable Preferred Shares, were issued and outstanding. The Multiple Voting Shares, which are convertible at the holder’s option on a one-for-one basis into Shares, carry the right to ten votes each, while the Shares carry the right to one vote each.
4. The Shares are listed and posted for trading on The Toronto Stock Exchange (the “TSX”) and the New York Stock Exchange (the “NYSE”). On April 23, 2003, the closing prices of the Shares on the TSX and the NYSE were \$23.06 and US \$15.93 per Share, respectively. Based upon such closing prices, the

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Shares had an aggregate market value of approximately \$2.18 billion on such date.

5. To the knowledge of the directors and officers of Quebecor World, the only person who beneficially owns or exercises control or direction over more than 10% of the shares of any class of voting shares of Quebecor World is Quebecor Inc. (“Quebecor”), directly and through a wholly-owned subsidiary, namely 4032667 Canada Inc. As at the date hereof, Quebecor owns, directly and indirectly, 46,911,277 Multiple Voting Shares, which represents 99.84% of all outstanding Multiple Voting Shares. Quebecor World has been informed by Quebecor that the latter does not intend, directly or indirectly, to convert any of its Multiple Voting Shares into Subordinate Voting Shares prior to or during the course of Quebecor World’s proposed Issuer Bid.
6. Pursuant to the Offer, Quebecor World proposes to acquire up to 10,000,000 Shares, representing approximately 10.6% of the outstanding Shares.
7. The Offer will be made pursuant to a modified Dutch auction procedure (the “Procedure”) as follows:
  - (a) the Circular will specify that the aggregate number of Shares (the “Specified Number”) that Quebecor World intends to purchase under the Offer will be 10,000,000;
  - (b) the Circular will also specify that the range of prices (the “Range”) within which Quebecor World is prepared to purchase Shares under the Offer is from \$24.00 to \$27.00 per Share;
  - (c) holders of Shares (collectively, the “Shareholders”) wishing to deposit Shares under the Offer will have the right to either: (i) specify the lowest price within the Range at which the Shareholder is willing to sell some or all of their Shares (an “Auction Tender”); or (ii) elect to be deemed to have deposited some or all of their Shares at the Clearing Price determined in accordance with subparagraph 7(e) below (a “Purchase Price Tender”);
  - (d) all Shares deposited by Shareholders who fail to specify any deposit price for such deposited Shares and fail to indicate that they have deposited such Shares pursuant to a Purchase Price Tender will be considered to have been deposited pursuant to a Purchase Price Tender;
  - (e) the purchase price (the “Clearing Price”) of the Shares deposited under the Offer will be the lowest price that will enable Quebecor World to

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purchase the Specified Number and will be determined based upon the number of Shares deposited and not withdrawn pursuant to an Auction Tender at each price within the Range and deposited and not withdrawn pursuant to a Purchase Price Tender, with each Purchase Price Tender being considered a deposit at the lowest price within the Range for the purpose of calculating the Clearing Price;

- (f) the aggregate amount that Quebecor World will expend pursuant to the Offer will not be ascertained until the Clearing Price is determined;
- (g) all Shares deposited and not withdrawn at or below the Clearing Price pursuant to an Auction Tender and all Shares deposited and not withdrawn pursuant to a Purchase Price Tender will be taken up and paid for at the Clearing Price, subject to pro ration if the aggregate number of Shares deposited and not withdrawn at or below the Clearing Price pursuant to Auction Tenders and the number of Shares deposited and not withdrawn pursuant to Purchase Price Tenders exceeds the Specified Number;
- (h) all Shares deposited and not withdrawn at prices above the Clearing Price will be returned to the depositing Shareholders;
- (i) in the event more than the Specified Number of Shares are deposited at or below the Clearing Price (an “Over-Subscription”), the Shares to be purchased by Quebecor World will be pro rated from the Shares so deposited, except that “Odd Lot” deposits (“Odd Lots”) will not be subject to pro ration. For the purposes of the foregoing, an Odd Lot deposit is a deposit by a Shareholder who (x) owns in the aggregate less than 100 Shares as of the close of business on the expiration date of the Offer (the “Expiration Date”) (y) deposits all such Shares pursuant to an Auction Tender at or below the Clearing Price or pursuant to a Purchase Price Tender prior to the Expiration Date and (z) checks the Odd Lots box in either the letter of transmittal or the notice of guaranteed delivery accompanying the Circular. Odd Lot deposits will be accepted for purchase before any pro ration;
- (j) all Shares deposited and not withdrawn by Shareholders who specify a deposit price for such deposited Shares that falls outside the Range will be considered to have been improperly deposited, will be excluded from the determination of the Clearing Price, will not be purchased by Quebecor World and will be returned to the depositing Shareholders;

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- (k) depositing Shareholders who make either an Auction Tender or a Purchase Price Tender but fail to specify the number of Shares that they may wish to deposit to the Offer will be considered to have deposited all Shares held by such Shareholder; and
  - (l) if the aggregate number of Shares validly deposited, or deemed to have been deposited, under the Offer at or below the Clearing Price and not withdrawn is less than or equal to the Specified Number, Quebecor World will purchase all Shares so deposited.
- 8. Prior to the expiry of the Offer, all information regarding the number of Shares deposited and the prices at which such Shares are deposited will be kept confidential, and the selected depositary under the Offer will be directed by Quebecor World to maintain such confidentiality until the Clearing Price is determined.
- 9. Since the Offer is for less than all the Shares, if the number of Shares deposited to the Offer at or below the Clearing Price and not withdrawn exceeds the Specified Number, the Proportionate Take-Up and Payment Requirement would require Quebecor World to take-up and pay for deposited Shares proportionately, according to the number of Shares deposited by each Shareholder. In addition, the Associated Disclosure Requirement would require disclosure in the Circular that Quebecor World would, if Shares deposited to the Offer and not withdrawn exceeded the Specified Number, take up such Shares proportionately according to the number of Shares deposited and not withdrawn by each Shareholder.
- 10. During the 12 months ended April 23, 2003:
  - (a) the number of outstanding Shares was at all times at least 5,000,000, excluding Shares that either were beneficially owned, directly or indirectly, or over which control or direction was exercised, by related parties to Quebecor World or were not freely tradeable;
  - (b) the aggregate trading volume of the Shares on the TSX and the NYSE was at least 1,000,000, Shares;
  - (c) there were at least 1,000 trades in Shares on the TSX and the NYSE; and
  - (d) the aggregate trading value based on the price of the trades referred to in paragraph (c) above was at least \$15,000,000.

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11. The market value of the Shares on the TSX and the NYSE was at least \$75,000,000 for the month of March 2003.
12. As a result of the information contained in paragraphs 10 and 11 above and because it is reasonable to conclude that, following completion of the Offer, there will be a market for the beneficial owners of Shares who do not tender to the Offer that is not materially less liquid than the market that exists at the time the Offer is made, Quebecor World intends to rely upon the exemptions from the Valuation Requirement contained in subsection 3.4(3) of both Quebec Local Policy Statement Q-27 and Ontario Securities Commission Rule 61-501 (the "Presumption of Liquid Market Exemptions").
13. The Circular will:
  - (a) disclose the mechanics for the take-up and payment for, or return of, Shares as described in paragraph 7 above;
  - (b) explain that, by depositing Shares at the lowest price in the Range or pursuant to a Purchase Price Tender, a Shareholder can reasonably expect that Shares so deposited will be purchased at the Clearing Price, subject to pro ration as described in paragraph 0 above;
  - (c) describe the effect that the Offer, if successful, will have on the direct or indirect voting interest of Quebecor in Quebecor World;
  - (d) disclose the facts supporting Quebecor World's reliance on the Presumption of Liquid Market Exemptions, calculated with reference to the date of the announcement of the Offer; and
  - (e) except to the extent exemptive relief is granted by this decision, contain the disclosure prescribed by the Legislation for issuer bids.

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 Maker with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers under the Legislation is that, in connection with the Offer, Quebecor World is exempt from the Proportionate Take-up and Payment Requirement, the Associated Disclosure Requirement, and the Valuation Requirement, provided that Shares deposited under the Offer and

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not withdrawn are taken up and paid for, or returned to the Shareholders, in accordance with the Procedure.

DATED May 14<sup>th</sup>, 2003.

Josée Deslauriers  
Directrice du marché des capitaux