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### Headnote

*Securities Act* s. 114(2) Issuer Bids - Exemption from the issuer bid requirements and *Securities Rules* s. 162(3) - Exemption from the Valuation Requirements - An issuer conducting an issuer bid under a modified Dutch auction procedure requires relief from the requirements to disclose in its bid circular that it will take up and pay for shares on a pro rata basis, to disclose the exact number of shares it intends to purchase under the bid, to send a notice of variation, and to obtain a formal valuation - Issuer is conducting an issuer bid under a modified Dutch auction and so cannot comply with the requirement to disclose that it will take up and pay for shares deposited on a pro rata basis or to disclose the total number of shares to be acquired under the bid; the issuer is disclosing the maximum amount it will spend under the bid, and the minimum amount it will pay for shares tendered; the issuer may increase the maximum amount it may spend under the bid, if funds are available, to eliminate the need to take up shares on a pro rata basis; issuer will disclose the option to increase the amount it expends under the bid, and discuss its mechanics, in the circular; the issuer will send notice to its shareholders if it intends to exercise the option; exercising the option to increase the maximum amount it may spend under the bid will not affect the purchase price paid for the shares; issuer is not a reporting issuer and does not have its securities traded or quoted on any market; issuer has a de minimis connection to Canada; the issuer is not required to prepare a valuation under the laws of its home jurisdiction, where the majority of its shareholders reside

### Exemption Order

**360networks Corporation**  
(360)

**Section 114(2)(c) of the *Securities Act*, R.S.B.C. 1996, c. 418  
and**

**Section 162(3) of the *Securities Rules*, B.C. Reg. 194/97**

### Background

¶ 1 360 applied for an exemption from the following requirements (the issuer bid requirements) in connection with an issuer bid it intends to make for a portion of its outstanding common shares:

- (a) to take up and pay for securities proportionately according to the number of securities deposited by each securityholder;

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- (b) to provide disclosure in the bid circular of the proportionate take-up and payment;
- (c) to provide disclosure in the bid circular relating to the number of securities sought under the bid;
- (d) to obtain a formal valuation of 360 and to provide a summary of the valuation in the bid circular; and
- (e) in connection with the exercise of the issuer's option (as defined below), to deliver a notice of variation to every person to whom the bid circular was required to be delivered.

### **Representations**

¶ 2 360 represents that:

1. it is continued under the British Columbia *Business Corporations Act* and has its head office in Seattle, Washington, U.S.A.;
2. its authorized share capital consists of an unlimited number of common shares and an unlimited number of preferred shares, issuable in series, of which 13,390,021 common shares and no preferred shares were outstanding as of December 7, 2004;
3. to the best of its knowledge, as of December 7, 2004, it had
  - (a) 19 registered and beneficial shareholders in British Columbia, holding approximately 0.76% of its outstanding common shares, and
  - (b) 64 registered and beneficial shareholders in all of Canada, holding less than 2% of its outstanding common shares;
4. it is not a reporting issuer in British Columbia or in any other jurisdiction and it does not have any of its securities registered with, and it is not required to file reports with, the U.S. Securities and Exchange Commission;
5. it does not have any securities listed and posted for trading on any stock exchange or quoted on any other similar exchange or market;
6. it intends to launch the bid on or about January 5, 2005 to purchase less than all of its outstanding common shares for cash by delivering a bid circular to its shareholders;

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7. the bid will expire at 5:00 pm (Vancouver time) on or about February 9, 2005;
8. it will make the bid under a Dutch auction procedure as follows:
  - (a) the bid circular will specify the maximum aggregate amount of US\$7,000,000 (the maximum amount) that 360 is prepared to spend under the bid;
  - (b) the bid circular will specify a price range in increments of US\$0.10 (the price range), within which 360 is prepared to purchase the common shares under the bid;
  - (c) shareholders wishing to tender to the bid may
    - (i) specify the lowest price within the price range at which they are willing to sell their common shares (an auction tender), or
    - (ii) elect to receive the purchase price determined in accordance with section 8(d) below (a purchase price tender);
  - (d) the purchase price of the common shares tendered to the bid will be the lowest price that will enable 360 to purchase the maximum number of common shares that may be purchased with the maximum amount, and will be determined based on the number of common shares tendered under an auction tender at each price within the price range and the number of common shares tendered under a purchase price tender, with each purchase price tender being considered a tender at the lowest price in the price range for the purpose of calculating the purchase price;
  - (e) since the purchase price will only be determined after the expiry of the bid, the total number of common shares that 360 will purchase will not be known until after the expiry of the bid;
  - (f) all common shares tendered (and not withdrawn) at or below the purchase price will be taken up and paid for at the purchase price, subject to pro ration if the aggregate number of common shares tendered at or below the purchase price would require 360 to spend more than the maximum amount (an over-subscription);
  - (g) in the event of an over-subscription, 360 will purchase common shares on a pro rata basis from shareholders who deposited common shares at or below the purchase price, with multiple tenders by the same shareholder being aggregated for this pro ration;

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- (h) all common shares tendered under auction tenders at prices above the purchase price will be returned to the appropriate shareholders;
  - (i) all common shares tendered by shareholders who specify a tender price that falls outside the price range or who fail to specify any tender price and fail to indicate that they have tendered under a purchase price tender will be considered to have been improperly tendered, will be excluded from the determination of the purchase price, will not be purchased by 360, and will be returned to the tendering shareholders;
  - (j) all common shares tendered by shareholders who have specified a tender price for their tendered common shares that is within the price range, but who fail to specify a tender price in an increment of US\$0.10, will be deemed to have specified the next increment of US\$0.10 above the specified tender price;
  - (k) 360 will direct the depository for the bid to notify 360 after the expiry of the bid as to the final determination of the purchase price and the number of common shares validly deposited for take-up under the bid in consideration for the maximum amount;
  - (l) 360 may elect, on or before the 5<sup>th</sup> day before the bid expires, to purchase, pro rata, up to US\$3,000,000 worth of additional common shares validly deposited for take-up under the bid at the purchase price, determined in accordance with section 8(d) above, in order to cover over-subscriptions (the issuer's option);
  - (m) if 360 elects to exercise the issuer's option, it will, as soon as practicable, send a notice to all the shareholders that it sent the bid circular to; and
  - (n) whether or not 360 exercises the issuer's option, if, as a result of pro-rations, less than 1,000 common shares are to be returned to a tendering shareholder, 360 will purchase at the purchase price, at the same time it purchases the other common shares under the bid, all of the common shares tendered by that shareholder in order to avoid the creation of holdings of less than 1,000 common shares;
9. all information regarding the prices at which common shares are tendered to the bid will be kept confidential until the expiry of the bid, and 360 will direct the depository to maintain the confidentiality until the purchase price is finally determined; and

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10. the bid circular will:

- (a) disclose the mechanics for the take-up and payment for, or return of, common shares as described in section 8;
- (b) disclose the mechanics of the issuer's option, including how 360 may exercise the issuer's option; and
- (c) explain that, by tendering common shares at the lowest price in the price range, a shareholder can reasonably expect that the common shares it tendered will be purchased at the purchase price, subject to pro ration and subject to purchases described in section 8(n).

### **Order**

¶ 3 Because it is not prejudicial to the public interest, the Commission orders, under section 114(2)(c) of the Act, that 360 is exempt from the issuer bid requirements provided that 360 follows the procedure set out in section 8 and provides the disclosure set out in section 10.

¶ 4 December 31, 2004

Martin Eady, CA  
Director