

2008 BCSECCOM 292

April 18, 2008

Headnote

Mutual Reliance Review System for Exemptive Relief Applications

National Instrument 51-102 *Continuous Disclosure Obligations*, s. 13.1 – all continuous disclosure requirements - General - An issuer wants an exemption from having to file continuous disclosure documents to permit it to rely on the continuous disclosure documents of its parent issuer - The issuer is an exchangeable share issuer that complies with all of the conditions for continuous disclosure relief in section 13.3 of National Instrument 51-102 *Continuous Disclosure Obligations* except that it has issued securities other than those permitted in s. 13.3(2)(c); the issuer and its parent will comply with conditions that parallel substantially those in section 13.3; the issuer will provide alternative financial information that will enable holders of its exchangeable shares to value their liquidation rights

Multilateral Instrument 52-109 *Certification of Disclosure in Issuers Annual and Interim Filings*, s.4.5 – certification requirements - An issuer wants relief from the requirements in Parts 2 and 3 of MI 52-109 to file annual and interim certificates - The issuer has applied for and received an exemption from filing interim and annual financial statements

National Instrument 52-110 *Audit Committee Requirements* – audit committee requirements - An exchangeable share issuer wants an exemption from NI 52-110 *Audit Committees* - The issuer is an exchangeable share issuer; the issuer is exempt from continuous disclosure requirements provided it files the continuous disclosure of its parent and provides alternative financial information to holders of its exchangeable shares; the parent is subject to US audit committee requirements

National Instrument 58-101 *Disclosure of Corporate Governance Practices*, s.3.1 – corporate governance disclosure requirements - An exchangeable share issuer wants an exemption from NI 58-101 - The issuer is an exchangeable share issuer that complies with all of the conditions for continuous disclosure relief in section 13.3 of National Instrument 51-102 *Continuous Disclosure Obligations* except that it has issued certain securities other than those permitted under s. 13.3(2)(c); the additional securities are exchangeable shares that do not meet the definition of “designated exchangeable security” and certain rights granted under employee benefit plans to earn stock in the parent

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 85 and 91

Securities Rules, ss. 144 and 145

2008 BCSECCOM 292

National Instrument 51-102, s. 13.1 and 13.3

Multilateral Instrument 52-109, s.4.5

National Instrument 52-110, s. 8.1

National Instrument 58-101, s. 3.1

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba,
Ontario, Quebec, New Brunswick, Nova Scotia,
Newfoundland and Labrador, Prince Edward Island,
Yukon Territory, Northwest Territories and Nunavut
(the “Jurisdictions”)

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of
Xerox Canada Inc.
(the “Filer”)

and

Xerox Corporation
(“Xerox”)

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the “Decision Maker”) in each of the Jurisdictions has received an application from the Filer and Xerox for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the Filer be exempted from the requirements of:

- (a) National Instrument 51-102 - *Continuous Disclosure Obligations* (“NI 51-102”) in all the Jurisdictions where NI 51-102 has been adopted and from any comparable continuous disclosure requirements under the Legislation that have not yet been repealed or otherwise rendered ineffective as a consequence of the adoption of NI 51-102;

2008 BCSECCOM 292

- (b) Multilateral Instrument 52-109 - *Certification of Disclosure in Issuers' Annual and Interim Filings* ("MI 52-109") in all the Jurisdictions where MI 52-109 has been adopted;
 - (c) National Instrument 52-110 - *Audit Committees* ("NI 52-110") in all the Jurisdictions where NI 52-110 has been adopted; and
 - (d) National Instrument 58-101 - *Disclosure of Corporate Governance Practices* ("NI 58-101") in all the Jurisdictions where NI 58-101 has been adopted,
- (collectively, the "Requested Relief").

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

Unless otherwise defined, the terms used herein have the meaning set out in National Instrument 14-101 - *Definitions*.

Representations

The Filer has represented to the Decision Makers that:

1. The Filer is a corporation amalgamated under the OBCA pursuant to articles of amalgamation dated November 30, 1989, as amended. The head office of the Filer is located in Toronto, Ontario.
2. The Filer is a reporting issuer or the equivalent in each of the Jurisdictions and is a "venture issuer" as defined in NI 51-102, NI 52-110 and NI 58-101.
3. The authorized share capital of the Filer consists of an unlimited number of Class A Shares (the "Class A Shares"), an unlimited number of preference shares (the "Preference Shares") and an unlimited number of Non-Voting Exchangeable Class B Shares (the "Exchangeable Shares"). Following the filing of the articles of amendment for the Filer creating the Exchangeable Shares on February 14, 1990, there were approximately 7,950,086 Exchangeable Shares, 29,996,955 Class A Shares, and 160,000 Preference Shares outstanding. As of December 31, 2007, there were 684,584

2008 BCSECCOM 292

Exchangeable Shares, 29,996,956 Class A Shares, and 222,376 Preference Shares issued and outstanding.

4. The rights, privileges, restrictions and conditions attaching to the Class A Shares and the Preference Shares are set out in articles of amalgamation of the Filer filed on November 30, 1989, as amended by articles of amendment filed on February 14, 1990.
5. Holders of Class A Shares are entitled (i) to dividends if, as and when declared by the directors of the Filer, (ii) upon the liquidation, dissolution or winding-up of the Filer, to participate rateably with the holders of Exchangeable Shares in the assets of the Filer, and (iii) to one vote in respect of each Class A Share on matters brought before all meetings of holders of Class A Shares.
6. Holders of Preference Shares are entitled (i) to fixed preferential non-cumulative cash dividends as and when declared by the directors of the Filer, in priority to dividends paid on the Class A Shares and Exchangeable Shares, and (ii) upon the liquidation, dissolution or winding-up of the Filer, to receive only a sum equivalent to the amount paid up thereon plus all declared and unpaid dividends thereon. The Preference Shares are redeemable at the option of the Filer at a price equal to the amount paid up thereon plus all declared and unpaid dividends thereon, and are non-voting.
7. The rights, privileges, restrictions and conditions attaching to the Exchangeable Shares are set out in articles of amendment of the Filer filed on February 14, 1990. Holders of Exchangeable Shares are entitled:
 - (a) at any time without any conditions to exchange one Exchangeable Share for two common shares of Xerox (each a "Xerox Common Share");
 - (b) to receive notice of, to attend all meetings of shareholders of the Filer, and to speak thereat, but are not entitled to vote at any such meeting. However, in the event the Filer does not fulfill its obligations to exchange within 30 days following the exercise of the exchange condition by a holder of Exchangeable Shares, the Exchangeable Shares outstanding, shall on the expiry of such 30 day period, acquire the right to vote, at the rate of one vote per Exchangeable Share, until such time as the default is cured. Holders of Exchangeable Shares do not have voting rights with respect to Xerox, whether through a voting trust arrangement or otherwise;
 - (c) to dividends calculated by reference to the dividends, if any, declared from time to time on the Xerox Common Shares;

2008 BCSECCOM 292

- (d) upon the liquidation, dissolution or winding-up of the Filer or other distribution of assets of the Filer, to participate rateably with the holders of Class A Shares in any distribution of the assets of the Filer. Holders of Exchangeable Shares have no rights upon the liquidation, dissolution or winding-up of Xerox or other distribution of assets of Xerox; and
- (e) pursuant to customary “coat tail” provisions, to require the Filer to convert Exchangeable Shares into Class A Shares solely for purposes of tendering such shares taken up as part of a take-over bid. Any Class A Shares obtained upon such conversion that are not taken up as part of the take-over bid would be reconverted to Exchangeable Shares.

The Filer cannot purchase for cancellation any Exchangeable Shares unless there are less than 400,000 Exchangeable Shares outstanding. In such event, they may be purchased at a price equal to the fair market value of such shares. The articles do not provide for a date on which all remaining Exchangeable Shares are automatically exchanged into Xerox Common Shares.

- 8. The Exchangeable Shares satisfy the criteria of “designated exchangeable securities” within the meaning of section 13.3 of NI 51-102 except that (i) holders of Exchangeable Shares do not have voting rights with respect to matters upon which holders of Xerox Common Shares are entitled to vote, and (ii) the liquidation rights of the Exchangeable Shares are with respect to the assets of the Filer rather than Xerox.
- 9. In its financial statements, Xerox accounts for the Exchangeable Shares as Xerox Common Share equivalents and thus classifies the Exchangeable Shares as part of Xerox’s permanent capital and not as part of minority interests. Xerox also includes the Exchangeable Shares in the calculation of Xerox’s basic earnings per share, effectively treating the Exchangeable Shares as issued and outstanding Xerox Common Shares.
- 10. There are no outstanding securities of the Filer (debt or equity) held by anyone other than Xerox except for (i) the 684,584 issued and outstanding Exchangeable Shares, (ii) restricted stock units granted to employees from time to time pursuant to employee benefit plans which units permit the holder thereof to earn Xerox Common Shares over time, and (iii) stock rights granted to employees prior to 2005 pursuant to employee benefit plans which rights enable the holder, upon exercise, to acquire one Xerox Common Share on payment of an exercise price.
- 11. Other than the initial issuance of 7,950,086 Exchangeable Shares upon their creation and the issuance to eligible employees of 609,988 Exchangeable

2008 BCSECCOM 292

Shares up until the end of 1999 pursuant to its Executive Share Purchase Option Plan (the "ESPOP"), the Filer has not issued any Exchangeable Shares since their authorization and has no current intention to issue any further Exchangeable Shares whether pursuant to the ESPOP or otherwise.

12. The rate at which Exchangeable Shares have been exchanged into Xerox Common Shares has declined significantly since their original issuance, as follows:

<u>Year</u>	<u>Shares Exchanged</u>
1990 - 1995	5,172,078 shares
1996 - 2001	2,635,135 shares
2002 - 2007	68,030 shares

13. As at December 31, 2007, there were 634 registered holders of Exchangeable Shares. Based on enquiries made by it, the Filer understands that, as of such date, approximately 94.4% (646,515) of the 684,584 issued and outstanding Exchangeable Shares are beneficially held by two large institutional investors. As a result, the Filer understands that approximately 632 holders appear to hold approximately 5.6% (38,069) of the issued and outstanding Exchangeable Shares and that no individual holds more than 500 Exchangeable Shares.
14. The 684,584 issued and outstanding Exchangeable Shares represent approximately 2.2% of the total issued and outstanding equity securities of the Filer, being the Class A Shares and the Exchangeable Shares. Based on the Filer's understanding of the beneficial shareholdings as set forth above, approximately 2.1% of the total equity securities are held by two beneficial holders of Exchangeable Shares, leaving only 0.1% of the equity securities held by other holders of such shares.
15. The Exchangeable Shares were listed on the Toronto Stock Exchange and the Montreal Exchange until they were delisted on June 18, 1996 following applications for delisting filed by the Filer. Such delisting was sought by the Filer primarily due to significant declines in trading volume, a significant decline in the number of outstanding Exchangeable Shares due to shareholders' having exercised their exchange right and the high costs of continuing to list the Exchangeable Shares in the context of the number of such shares then outstanding.
16. As at the date hereof, the Exchangeable Shares are not listed or posted for trading on any securities exchange and the Filer has no intention of listing such shares on any securities exchange in the future.

2008 BCSECCOM 292

17. Exchangeable Shares trade very infrequently over the counter. The Filer's transfer agent, CIBC Mellon Trust Company, has informed the Filer that there have been no trades in Exchangeable Shares since 2005 (although there may have been some trades within the 3,529 Exchangeable Shares held by CDS that are not owned by the two largest beneficial owners).
18. The Filer has almost \$1.7 billion in assets and \$1.3 billion in shareholders' equity as of December 31, 2007 and over \$1.1 billion of revenue for the year ended December 31, 2007.
19. Xerox, a corporation existing under the laws of the State of New York, is the holder of all of the issued and outstanding Class A Shares (being all of the issued and outstanding voting securities of the Filer) and Preference Shares.
20. Xerox is a reporting issuer or the equivalent in each Jurisdiction. Pursuant to orders received by Xerox in 1990 from the securities regulatory authority in each of Ontario, British Columbia, Manitoba and Saskatchewan, in the context of an application for an exemption from the prospectus and registration requirements in connection with the issuance of the Exchangeable Shares, Xerox is required to deliver to holders of the Exchangeable Shares certain continuous disclosure documents that it is required to prepare and file in accordance with the securities legislation of those jurisdictions or the United States.
21. Xerox is a US domestic registrant under the United States *Securities Exchange Act of 1934*, as amended, (the "1934 Act") and the Xerox Common Shares are listed and posted for trading on the New York Stock Exchange and other stock exchanges outside of, but not in, Canada. Xerox is therefore subject to, among other things, the requirements of section 302(a) of the *Sarbanes-Oxley Act of 2002*. Xerox therefore has in place detailed internal controls over financial reporting and, as a subsidiary of Xerox, the Filer is required to implement and follow similar internal controls over financial reporting regardless of whether the Filer itself is required to prepare audited financial statements.
22. As of December 31, 2007, there were 917,176,350 Xerox Common Shares issued and outstanding. If the exchange rights in respect of the 684,584 issued and outstanding Exchangeable Shares were fully exercised, 1,369,168 Xerox Common Shares would be issued, representing approximately 0.15% of the issued and outstanding Xerox Common Shares after giving effect to such issuance.
23. Neither the Filer nor Xerox is in default of any of their continuous disclosure filing and reporting obligations as reporting issuers in any of the Jurisdictions.

2008 BCSECCOM 292

24. The board of directors of the Filer is comprised of four directors, three of whom comprise the audit committee. As a venture issuer, the Filer is exempt from Part 3 of NI 52-110.

Decision

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 Requested Relief is granted, provided that:

1. Xerox is the direct or indirect beneficial owner of all of the issued and outstanding voting securities of the Filer;
2. Xerox is either (i) an SEC issuer (as defined in NI 51-102) with a class of securities listed or quoted on a U.S. marketplace (as defined in NI 51-102) that has filed all documents it is required to file with the United States Securities and Exchange Commission (the "SEC"); or (ii) a reporting issuer in a designated Canadian jurisdiction (as defined in NI 51-102) and has filed all documents it is required to file under NI 51-102;
3. the Filer does not issue any securities, and does not have any securities outstanding, other than:
 - (a) the Exchangeable Shares previously issued;
 - (b) securities issued to and held by Xerox or an affiliate of Xerox;
 - (c) debt securities issued to and held by banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches, savings or credit unions, financial services cooperatives, insurance companies or other financial institutions; or
 - (d) securities issued under exemptions from the registration requirement and prospectus requirement in:
 - (i) section 2.24 of National Instrument 45-106 - *Prospectus and Registration Exemptions*, provided such securities are issued pursuant to employee incentive plans of the Filer and consist solely of a right to the holder thereof to purchase or otherwise acquire securities of affiliates of the Filer but not shares of the Filer itself, or

2008 BCSECCOM 292

- (ii) section 2.35 of National Instrument 45-106 - *Prospectus and Registration Exemptions*;

4. the Filer files in electronic format:

- (a) on or before the 90th day after the end of the Filer's financial year:
 - (i) a consolidated income statement, statement of retained earnings and cash flow statement for:
 - (A) the most recently completed financial year, and
 - (B) the financial year immediately preceding the most recently completed financial year, and
 - (ii) a consolidated balance sheet as at the end of each of the periods referred to in (i) above,

in each case unaudited and without notes or management's discussion and analysis of operations and financial condition ("MD&A"), but otherwise prepared in accordance with the accounting principles as utilized by Xerox for the relevant period and accompanied by a notice indicating that the information has not been reviewed by an auditor (the "Alternative Annual Financial Information"), provided that, notwithstanding the foregoing, the Filer may file the Alternative Annual Financial Information in respect of its financial year ended December 31, 2007 on or before April 29, 2008;

- (b) on or before the 45th day after the end of each interim period of the Filer:
 - (i) a consolidated balance sheet as at the end of the interim period and a balance sheet as at the end of the immediately preceding financial year,
 - (ii) a consolidated income statement, statement of retained earnings and cash flow statement, all for the year-to-date interim period, and comparative financial information for the corresponding year-to-date interim period in the immediately preceding financial year, and
 - (iii) for interim periods other than the first interim period in the Filer's financial year, a consolidated income statement and cash flow statement for the three month period ending on the last day of the

2008 BCSECCOM 292

interim period and comparative financial information for the corresponding period in the preceding financial year,

in each case unaudited and without notes or MD&A, but otherwise prepared in accordance with the accounting principles as utilized by Xerox for the relevant period and accompanied by a notice indicating that the information has not been reviewed by an auditor (the “Alternative Interim Financial Information”);

- (c) if Xerox is not a reporting issuer in a designated Canadian jurisdiction, copies of all documents Xerox is required to file with the SEC under the 1934 Act, at the same time as, or as soon as practicable after, the filing by Xerox of those documents with the SEC; or
 - (d) if Xerox is a reporting issuer in a designated Canadian jurisdiction:
 - (i) a notice indicating that, except for the Alternative Annual Financial Information and the Alternative Interim Financial Information, the Filer is relying on the continuous disclosure documents filed by Xerox and setting out where those documents can be found in electronic format, if Xerox is a reporting issuer in the local jurisdiction; or
 - (ii) copies of all documents Xerox is required to file under securities legislation, other than in connection with a distribution, at the same time as, or as soon as practicable after, the filing by Xerox of those documents with a securities regulatory authority or regulator;
5. the Filer includes with the Alternative Annual Financial Information and the Alternative Interim Financial Information (i) a statement that (A) the financial information of the Filer and its consolidated subsidiaries is consolidated into the financial statements of Xerox, (B) certain amounts reflected in the financial information relate to transactions between the Filer or its consolidated subsidiaries and Xerox or its subsidiaries other than the Filer, (C) such transactions are eliminated in the preparation of the audited consolidated financial statements of Xerox, and (ii) a summary reference to the types of such transactions as are considered by the Filer to be material to the Alternative Annual Financial Information or the Alternative Interim Financial Information, as applicable, for the periods presented;
6. the Filer sends or provides the Alternative Annual Financial Information and the Alternative Interim Financial Information to holders of Exchangeable Shares in accordance with the procedures prescribed by applicable law at the

2008 BCSECCOM 292

relevant time with respect to the sending of financial statements to shareholders;

7. the Filer or Xerox concurrently sends to all holders of Exchangeable Shares all disclosure materials that are sent to holders of Xerox Common Shares in the manner and at the time required by: (i) U.S. laws and any U.S. marketplace on which the securities of Xerox are listed, if Xerox is not a reporting issuer in a designated Canadian jurisdiction, or (ii) securities legislation, if Xerox is a reporting issuer in a designated Canadian jurisdiction;
8. Xerox complies with U.S. laws and the requirements of any U.S. marketplace on which the securities of Xerox are listed if Xerox is not a reporting issuer in a designated Canadian jurisdiction, or securities legislation if Xerox is a reporting issuer in a designated Canadian jurisdiction, in respect of making public disclosure of material information on a timely basis;
9. the Filer issues a news release and files a material change report in accordance with Part 7 of NI 51-102 for all material changes in respect of the affairs of the Filer that are not also material changes in the affairs of Xerox; and
10. Xerox includes in all proxy solicitation materials sent to holders of Exchangeable Shares a clear and concise statement that:
 - (a) explains the reason the mailed material relates solely to Xerox;
 - (b) states that the Exchangeable Shares carry a right to dividends calculated by reference to the dividends, if any, declared from time to time on the Xerox Common Shares; and
 - (c) includes a statement that the Exchangeable Shares do not provide any voting rights with respect to Xerox.

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Ontario Securities Commission