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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – distribution of shares of a foreign company which is not a reporting issuer as a dividend in kind is not subject to the registration and prospectus requirements – de minimis Canadian shareholders – first trade is deemed to be a distribution unless such trade is conducted through a stock exchange outside of Canada

Applicable British Columbia Provisions

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

**IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA,
BRITISH COLUMBIA, SASKATCHEWAN, MANITOBA, ONTARIO,
QUEBEC, NEW BRUNSWICK, PRINCE EDWARD ISLAND, NUNAVUT,
NOVA SCOTIA AND NEWFOUNDLAND AND LABRADOR**

AND

**IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM
FOR EXEMPTIVE RELIEF APPLICATIONS**

AND

IN THE MATTER OF MERCK & CO., INC.

MRRS DECISION DOCUMENT

WHEREAS the securities regulatory authority or regulator (collectively, the “Decision Makers”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Prince Edward Island, Nunavut, Nova Scotia and Newfoundland and Labrador (collectively, the “Jurisdictions”) has received an application from Merck & Co., Inc. (“Merck”) for a decision, pursuant to the securities legislation (the “Legislation”) of each of the Jurisdictions that the prospectus and dealer registration requirements (respectively, the “Prospectus Requirements” and the “Registration Requirements”) shall not apply to the proposed distribution of all issued and outstanding common shares (the “Medco Shares”) of Medco Health Solutions Inc. (“Medco”) to holders of common shares of Merck (the “Merck Shareholders”) resident in Canada (the “Merck Canadian Shareholders”) by way of pro rata dividend in kind, provided that the first trade of Medco Shares shall be deemed to be a distribution or primary distribution to the public unless certain conditions are met;

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AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Application (the “System”), the Commission des valeurs mobilières du Québec (the “CVMQ”) is the Principal Regulator for this application;

AND WHEREAS, unless otherwise defined, the terms herein have the same meaning set out in National Instrument 14-101 Definitions or in CVMQ Notice 14-101;

AND WHEREAS Merck has represented to the Decision Makers that:

1. Merck is a corporation constituted pursuant to the law of the State of New Jersey. Merck discovers, develops, manufactures and markets a broad range of products to improve human and animal health, directly and through its joint ventures. Its headquarters are located in Whitehouse Station, New Jersey.
2. Medco, a wholly-owned subsidiary of Merck, is the largest U.S. provider of pharmacy benefit management services based on 2002 revenues.
3. Merck’s direct or indirect wholly-owned Canadian subsidiaries are Merck Frosst Canada & Co., Merck Enterprises Canada, Ltd. and Merck Frosst Canada Ltd., which collectively carry on business through offices located in Québec, British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, and Nova Scotia.
4. Merck is not a reporting issuer under the securities laws of any province or territory of Canada and Merck has no intention of becoming a reporting issuer under the securities laws of any province or territory of Canada.
5. The common shares of Merck (the “Merck Shares”) are listed on the New York and Philadelphia stock exchanges. The Merck Shares are not listed on any Canadian stock exchange and Merck has no intention of listing its securities on any Canadian stock exchange.
6. As of June 15, 2003, Merck had 1,353 Merck Canadian Shareholders of record (584 in Ontario, 323 in Québec, 94 in Alberta, 232 in British Columbia, 23 in Manitoba, 50 in Nova Scotia, 17 in New Brunswick, 22 in Saskatchewan, 3 in Newfoundland, 4 in Prince Edward Island and 1 in Nunavut), which constituted approximately 0.557% of the approximately 242,692 holders of record of Merck Shares worldwide on June 6, 2003. As of June 15, 2003, persons resident in Canada collectively held 832,663 Merck Shares, constituting approximately 0.0371% of the approximately 2,239,647,140 issued and outstanding Merck Shares on June 6, 2003. As such, the proportion

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of issued and outstanding Merck Shares held by Canadian residents is *de minimis*.

7. Subject to obtaining necessary approvals, on a distribution date to be fixed by Merck's board of directors, the separation of Medco from Merck will be accomplished through a pro rata distribution of all of Medco Shares to Merck Shareholders (the "Spin-Off"). The Spin-Off consists of the following steps:
 - (a) the general terms and conditions relating to the distribution will be set forth in a master separation and distribution agreement between Merck and Medco.
 - (b) as a result of the distribution, each Merck Shareholder will receive one Medco Share for a number of Merck Shares to be fixed by Merck's board of directors.
 - (c) Merck Shareholders will not be required to pay for Medco Shares received in the distribution or to surrender or exchange Merck Shares in order to receive Medco Shares or to take any other action in connection with the distribution.
 - (d) fractional shares of a Medco Share will not be issued to Merck Shareholders as part of the distribution nor credited to book-entry accounts. Instead, Medco's distribution agent will aggregate Medco fractional shares into whole shares, sell them into the open market at the prevailing market prices and then distribute the aggregate sale proceeds ratably to Merck Shareholders who would otherwise be entitled to receive fractional shares.
8. The board of directors of Merck has determined that the spin-off of Medco from Merck will enhance the success of both Merck and Medco, and thereby maximize stockholder value over the long term for each company, by:
 - enabling each company to continue to pursue its unique and focused strategy; and
 - enabling investors to evaluate the financial performance, strategies and other characteristics of each of Merck and Medco separately in comparison to companies within their respective industries.

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9. After the Spin-Off, Merck Shares will continue to be listed and traded on the New York Stock Exchange (the “NYSE”) and Medco Shares will be a separately-traded public company listed and traded on the NYSE.
10. It is not intended that Medco will list its shares on any stock exchange in Canada.
11. It is not intended that Medco will become a reporting issuer in any province of Canada.
12. Medco has no and will, immediately after the Spin-Off, have no employees in Canada.
13. The dividend and Spin-Off will be effected in compliance with the laws of the State of New Jersey.
14. In May 2003, Medco filed a Form 10 Registration Statement with the *United States Securities and Exchange Commission* (the “SEC”) detailing the planned Spin-Off.
15. After the SEC has completed its review, Merck Shareholders will receive a copy of the information statement included in the Form 10 (the “Information Statement”).
16. Because the Spin-Off of Medco Shares will be by way of dividend to the Merck Shareholders, no shareholder approval of the proposed transaction is required under the law of the State of New Jersey.
17. All materials relating to the Spin-Off and the dividend sent by or on behalf of Merck or Medco in the United States (including the Information Statement) have and will be sent, concurrently to the Merck Canadian Shareholders.
18. Following the Spin-Off, each of Medco and Merck respectively will send, concurrently to the Merck Canadian Shareholders, the same disclosure materials that it sends to holders of Medco Shares and Merck Shares with addresses, as shown on its books to be, in the United States.
19. The Merck Canadian Shareholders who receive Medco Shares as a dividend pursuant to the Spin-Off will have the benefit of the same rights and remedies in respect of the disclosure documentation received in connection with the dividend and Spin-Off that are available under the laws of the United States to Medco and Merck Shareholders with addresses in the United States.

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20. The proposed distribution of Medco Shares pursuant to the Spin-Off to the Merck Canadian Shareholders would be exempt from the Prospectus Requirements and Registration Requirements (in all Jurisdictions except Québec where exemptions would be available upon the filing of the prescribed information and the non-objection of the CVMQ within 15 days of filing such information) but for the fact that Medco is not a reporting issuer or equivalent under the Legislation.

AND WHEREAS under the System, this MRRS Decision document evidences the decision of each of Decision Makers (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 the Prospectus Requirements and Registration Requirements shall not apply to trades by Merck of Medco Shares in connection with the Spin-Off provided that the first trade of Medco Shares acquired under this Decision in a Jurisdiction shall be deemed to be a distribution or primary distribution to the public under the Legislation of such Jurisdiction unless:

- (a) except in Québec, the conditions in section 2.14(1) of Multilateral Instrument 45-102 Resale of Securities are satisfied; or
- (b) in Québec, the alienation is made through an exchange, or a market, outside of Canada or to a person or company outside of Canada.

DATED this fifteenth day of August, 2003

Daniel Laurion