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Headnote

Mutual Reliance Review System for Exemptive Relief Application – employment agreements between offeror and six senior officers or directors of the target company – decision that agreements entered into for reasons other than to increase the value of the consideration paid to the security holders for their shares and may be entered into despite the prohibition against collateral benefits

Applicable British Columbia Provisions

Securities Act, R.S.B.C.1996, c. 418, ss. 107 and 114(2)(a)

IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA, BRITISH COLUMBIA, ONTARIO AND QUÉBEC

AND

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

AND

IN THE MATTER OF FIRST TECHNOLOGY PLC, FIRST TECHNOLOGY ACQUISITION CANADA INC. AND BW TECHNOLOGIES LTD.

MRRS DECISION DOCUMENT

WHEREAS First Technology plc (“First Technology”), through its indirect subsidiary First Technology Acquisition Canada Inc. (the “Offeror”), has made a take-over bid (the “Offer”) to acquire all of the outstanding common shares (the “BWT Shares”) of BW Technologies Ltd. (“BWT”);

AND WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Alberta, British Columbia, Ontario and Québec (the “Jurisdictions”) has received an application from First Technology and the Offeror (collectively, the “Filers”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that, in connection with the Offer, certain retention agreements (the “Retention Agreements”) between First Technology and each of Cody Slater, Bryan D. Bates, Thomas A. Jones, Barry D. Moore, Kevin J. Meyers, and Gerry M. Robitaille (collectively, the “Executives”) may be entered into notwithstanding the requirement contained in the Legislation which prohibits, in the context of a take-over bid, the entering into of any collateral agreement with any holder of securities of the offeree issuer that has the effect of providing to the

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holder a consideration of greater value than that offered to the other holders of the same class of securities (the “Prohibition on Collateral Agreements”);

AND WHEREAS the Decision Maker in each of Ontario and Québec has received an application from the Filers for a decision under section 9.1 of Ontario Securities Commission (the “OSC”) Rule 61-501 and section 9.1 of Agence nationale d’encadrement du secteur financier (“AMF”) Policy Statement Q-27 (collectively, the “Rules”) that the votes attached to the BWT Shares that may be tendered by the Executives under the Offer may be included as votes in favour of a subsequent going private transaction in the determination of whether the requisite minority approval has been obtained, notwithstanding the entering into of the Retention Agreements by the Executives;

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the OSC 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 AMF Notice 14-101;

AND WHEREAS the Filers have represented to the Decision Makers that:

1. The Offeror is a corporation formed under the *Business Corporations Act* (Alberta) and is headquartered in Surrey, United Kingdom with a registered office in Calgary, Alberta. The Offeror is 100% indirectly owned by First Technology.
2. First Technology is a company incorporated pursuant to the laws of England and Wales. First Technology is a public company whose shares are listed on the London Stock Exchange.
3. Neither the Offeror nor First Technology is a reporting issuer in any jurisdiction in Canada and no securities of either of them are listed on any stock exchange in Canada.
4. BWT is a corporation amalgamated under the *Business Corporations Act* (Alberta) with its head and registered offices in Calgary, Alberta.
5. BWT has represented to the Offeror that its authorized capital consists of an unlimited number of common shares and an unlimited number of preferred shares, issuable in series. As at May 5, 2004, 6,885,230 BWT Shares and no preferred shares were outstanding. In addition, as at May 5, 2004, there were outstanding options (“BWT Options”) granted under the stock option plan of

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BWT providing for the issuance of 337,066 BWT Shares on the exercise of those options, all of which have an exercise price per common share less than the price per BWT Share under the Offer. On a fully diluted basis there would be 7,222,296 BWT Shares outstanding.

6. The BWT Shares are listed on the Toronto Stock Exchange.
7. Neither the Offeror nor First Technology nor any of its subsidiaries currently holds any BWT Shares.
8. Mr. Slater is President, Chief Executive Officer and a director of BWT. Mr. Slater has represented to the Offeror that he holds 385,780 BWT Shares and BWT Options to acquire an additional 87,500 BWT Shares. The aggregate BWT Shares held by Mr. Slater on a fully diluted basis represent approximately 6.553% of the outstanding BWT Shares on a fully diluted basis.
9. Pursuant to his employment agreement, Mr. Slater's base salary is \$360,000/year with a maximum annual potential bonus of \$180,000. In the employment agreement, BWT and Mr. Slater have agreed to negotiate a reasonable severance package if Mr. Slater's employment were to be terminated without cause.
10. Mr. Bates is Executive Vice-President, Chief Operating Officer and a director of BWT. Mr. Bates has represented to the Offeror that he holds 136,300 BWT Shares and BWT Options to acquire an additional 37,500 BWT Shares. The aggregate BWT Shares held by Mr. Bates on a fully diluted basis represent approximately 2.406% of the outstanding BWT Shares on a fully diluted basis.
11. Pursuant to his employment agreement, Mr. Bates' base salary is US\$205,000/year with an annual potential bonus of US\$145,000 if BWT achieves certain sales and profit targets. In the employment agreement, BWT and Mr. Bates have agreed to negotiate a reasonable severance package if Mr. Bates' employment were to be terminated without cause.
12. Mr. Jones is Senior Vice-President, Chief Financial Officer and a director of BWT. Mr. Jones has represented to the Offeror that he holds 94,685 BWT Shares and BWT Options to acquire an additional 27,500 BWT Shares. The aggregate BWT Shares held by Mr. Jones on a fully diluted basis represent approximately 1.692% of the outstanding BWT Shares on a fully diluted basis.
13. Pursuant to his employment agreement, Mr. Jones' base salary is \$205,000/year with a maximum annual potential bonus of \$105,000. In the employment agreement, BWT and Mr. Jones have agreed to negotiate a

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reasonable severance package if Mr. Jones' employment were to be terminated without cause.

14. Mr. Moore is Vice-President, Product Development of BWT. Mr. Moore has represented to the Offeror that he holds 8,500 BWT Shares and BWT Options to acquire an additional 20,000 BWT Shares. The aggregate BWT Shares held by Mr. Moore on a fully diluted basis represent approximately 0.395% of the outstanding BWT Shares on a fully diluted basis. Mr. Moore's annual salary is \$150,000 and he does not have a written employment agreement with BWT.
15. Mr. Meyers is Vice-President, Operations of BWT. Mr. Meyers has represented to the Offeror that he does not hold any BWT Shares and that he holds BWT Options to acquire 7,000 BWT Shares. The aggregate BWT Shares held by Mr. Meyers on a fully diluted basis represent approximately 0.097% of the outstanding BWT Shares on a fully diluted basis. Mr. Meyers' annual salary is \$155,000 and he does not have a written employment agreement with BWT.
16. Mr. Robitaille is Vice-President, Corporate Development of BWT. Mr. Robitaille has represented to the Offeror that he does not hold any BWT Shares and that he holds BWT Options to acquire 15,000 BWT Shares. The aggregate BWT Shares held by Mr. Meyers on a fully diluted basis represent approximately 0.207% of the outstanding BWT Shares on a fully diluted basis. Mr. Robitaille's annual salary is \$165,000 and he does not have a written employment agreement with BWT.
17. The intention of the Offeror to make the Offer was publicly announced on May 6, 2004. The Offer was mailed to holders of BWT Shares (the "Shareholders") on May 6, 2004 and, unless withdrawn or extended, will expire on June 11, 2004.
18. The Offer is subject to conditions, including that more than 66 2/3% of the outstanding BWT Shares (calculated on a fully diluted basis) be deposited to the Offer and not withdrawn, and that all required regulatory approvals are obtained on terms and conditions satisfactory to the Offeror.
19. The Offeror, First Technology and BWT are parties to an agreement (the "Pre-Acquisition Agreement") under which, among other things, the Offeror agreed to make the Offer on the terms and conditions set forth in the Pre-Acquisition Agreement. The Pre-Acquisition Agreement also includes representations and warranties by BWT that its board of directors has determined, after reviewing, among things, a fairness opinion from its independent financial adviser, that the price offered under the Offer is fair from a financial point of view to the

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Shareholders and that the Offer is in the best interests of the Shareholders and that its board of directors recommends that Shareholders accept the Offer.

20. The principal terms of each of the Retention Agreements are as follows:

- (a) in addition to the Executive's current annual base salary and potential bonus (if any), in the event that:
 - (i) the Offeror acquires more than 50% of the BWT Shares under the Offer, and
 - (ii) BWT achieves certain threshold levels of annual profitability, and
 - (iii) the Executive remains employed on the relevant dates,

BWT will pay the Executive 20% of his current annual base salary on the first anniversary of the Effective Date, 30% of his current annual base salary on the second anniversary of the Effective Date and 50% of his current annual base salary on the third anniversary of the Effective Date. The "Effective Date" is the date on which the Offeror's nominees constitute a majority of the board of directors of BWT;

- (b) in consideration of the retention payments (the "Retention Payments") to be made pursuant to section (a) above, each Executive represents and warrants to First Technology that it is his bona fide current intention to remain in the employment of BWT and not to voluntarily resign from his employment at least until the third anniversary date of the Effective Date and that he will devote his full-time earnest commitment to BWT and the First Technology group through such period, consistent with his past commitment to BWT;
- (c) if the Executive's employment is terminated by BWT other than for cause, the Executive is entitled to receive 100% of the Executive's current annual base salary less Retention Payments already made to the Executive and less required statutory deductions; and
- (d) if the Executive's employment terminates other than as described in section (c) above, the Executive shall not be entitled to receive any further Retention Payments except for amounts then due and owing.

21. Neither First Technology nor the Offeror has any operations in Canada and it is currently intended that all of the existing employees will remain with the

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business and that the business will continue to be managed by the Executives as a team which has a demonstrated successful track record.

22. The Offeror would not have agreed to make the Offer unless satisfactory arrangements had been entered into in respect of the ongoing employment of the Executives with BWT, the Offeror or First Technology following completion of the Offer. The lending syndicate providing part of the funding for the Offer specifically requested that retention agreements with key management personnel be put in place.
23. The terms of each of the Retention Agreements were negotiated at arm's length and are reasonable in light of:
 - (a) the unique knowledge, experience and reputation of each of the Executives; and
 - (b) the significant possibility that in the absence of the incentives provided by the Retention Agreements the Executives might be inclined to leave the employ of BWT taking with them such knowledge, experience and reputation and thereby reducing the value of the BWT Shares to the Offeror and First Technology.
24. The Retention Payments relate solely to the Executives' value and contributions as employees.
25. All Executives were treated the same, without regard to their shareholdings and the Retention Payments are only payable if budget targets approved by First Technology are met each applicable year.
26. The Retention Agreements are entered into for valid business reasons and not for the purpose of conferring an economic or collateral benefit on the Executives that other Shareholders do not enjoy.
27. None of the Retention Agreements were entered into for the purpose, in whole or in part, of increasing the value of the consideration paid for BWT Shares tendered under the Offer.
28. The receipt by the Executives of compensation pursuant to any of the Retention Agreements is not conditional on any of the Executives supporting the Offer in any manner.
29. Full particulars of the Retention Agreements are disclosed in the BWT directors' circular.

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30. Each of Barry D. Moore, Kevin J. Meyers and Gerry M. Robitaille beneficially owns or exercises control or direction over less than one per cent of the BWT Shares.
31. The value of the net benefit to each of Cody Slater, Thomas A. Jones and Bryan D. Bates pursuant to his respective Retention Agreement is minimal in comparison to the value that each is entitled to receive under the Offer in exchange for his BWT Shares.

AND WHEREAS pursuant to 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 pursuant to the Legislation is that the Retention Agreements are being made for reasons other than to increase the value of the consideration to be paid to the Executives for their BWT Shares and that the Retention Agreements and may be entered into or paid notwithstanding the Prohibition on Collateral Agreements.

DATED this 10th day of June, 2004.

Robert W. Davis

Paul M. Moore

THE DECISION of the OSC and the AMF pursuant to the Rules is that, notwithstanding the entering into of the Retention Agreements, the votes attached to the BWT Shares tendered by the Executives under the Offer may be included as votes in favour of a subsequent going private transaction in the determination of whether the requisite minority approval has been obtained, provided that the Offeror complies with the other applicable provisions of the Rules.

DATED this 10th day of June, 2004.

Ralph Shay

Director, Take-over Bids, Mergers & Acquisitions