

2003 BCSECCOM 769

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – tacking relief granted for the hold period of control persons after a plan of arrangement

Applicable British Columbia Provisions

Multilateral Instrument 45-102 *Resale of Securities*, ss. 2.8 and 4.1

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

AND

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

AND

**IN THE MATTER OF ASSANTE CORPORATION AND LORING WARD
INTERNATIONAL LTD.**

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (each, a “Decision Maker”) in each of Ontario, British Columbia, Alberta, Manitoba, Saskatchewan, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, the Northwest Territories, the Yukon Territory and Nunavut (the “Jurisdictions”) has received an application from Assante Corporation (“Assante”) and Loring Ward International Ltd. (formerly Assante Newco III Ltd.) (“US Co”) (together, the “Filers”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirements contained in the Legislation to file and obtain a receipt for a preliminary prospectus and a prospectus (the “Prospectus Requirement”) shall not apply to control distributions of common shares of US Co (the “US Co Common Shares”) acquired in connection with the proposed plan of arrangement (the “Arrangement”) involving Assante, US Co and CI Fund Management Inc. (“CI”) provided that the conditions in section 2.8(3) of Multilateral Instrument 45-102 of the Canadian Securities Administrators (“MI 45-102”) are satisfied, except that for the purpose of determining the period of time that a holder of the US Co Common Shares has held US Co Common Shares under section 2.8 of MI 45-102, such holders be permitted to include the period of time that the holder held the

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common shares of Assante (the “Assante Common Shares”) immediately before the effective time (the “Effective Time”) of the Arrangement.

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Manitoba Securities Commission is the principal regulator for this application;

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

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

1. Assante is a corporation amalgamated under the laws of Canada. The Assante Common Shares are listed and posted for trading on the Toronto Stock Exchange (the “TSX”) under the symbol “LMS”.
2. Assante is, and has been for a period of time in excess of twelve months, a reporting issuer, or the equivalent, under the securities laws of each of the provinces and territories of Canada and is not on the list of defaulting reporting issuers maintained by the applicable securities regulatory authorities therein.
3. Assante’s head office is located at the Commodity Exchange Tower, 15th Floor, 360 Main Street, Winnipeg, Manitoba, Canada.
4. Assante offers its clients in Canada and the United States a large range of products and services which encompass a multidisciplinary approach to financial planning, investment advice, wealth management, estate and succession planning, insurance, business management services, and sports and marketing representation services. Collectively, these products and services form the basis of personalized “Life Management Solutions™”.
5. Assante’s principal business is the provision of Life Management Solutions™ tailored to meet the specific objectives of Assante’s clients. Life Management Solutions™ are a range of products and services that encompass the financial planning and financial management needs of the client. These products and services are developed and/or distributed through Assante’s wholly-owned subsidiaries, which include investment counselling firms, portfolio managers, mutual fund managers, securities dealers, mutual fund dealers, life insurance agents, business managers and sports agents. Commencing with 2002, these subsidiaries were organized into two strategic business units on geographical lines: Canada and the

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United States, which for financial reporting purposes, form Assante's two reportable operating segments.

6. Assante's Canadian subsidiaries provide a wide range of products and services, including the manufacture of investment products such as mutual funds, portfolio management, investment advisory services, distribution of securities (including mutual funds), insurance products, banking and mortgage services and wealth management, including financial, tax and estate planning services.
7. Primarily in the United States, Assante provides business management services, sports representation services, consulting, endorsement and marketing services and tax and estate planning services. Limited sports representation services are also provided in Canada. The term "US operations" refers to this business, even if partly carried on in Canada.
8. As at September 25, 2003, (a) there were 86,709,800 Assante Common Shares issued and outstanding; and (b) up to a maximum of 4,362,726 Assante Common Shares were issuable in connection with the exercise of Assante options ("Assante Options").
9. US Co is a corporation incorporated under the laws of Canada and is a wholly-owned direct subsidiary of Assante. US Co is not currently a reporting issuer, or the equivalent, in any jurisdiction in Canada.
10. US Co's head office is expected to be located at the Commodity Exchange Tower, 15th Floor, 360 Main Street, Winnipeg, Manitoba, Canada following the Effective Time.
11. US Co is a holding company that will, prior to the Effective Time, own Assante's US operations.
12. The authorized share capital of US Co consists of an unlimited number of US Co Common Shares, of which there will be outstanding at the Effective Time that number of US Co Common Shares as there are outstanding Assante Common Shares immediately prior to the Effective Time. Assante owns all of the issued and outstanding US Co Common Shares.
13. It is not expected that the US Co Common Shares will be listed or quoted on any stock exchange or other marketplace at the Effective Time, although they are expected to be qualified to trade in the Canadian over-the-counter market. Each year, US Co shareholders are expected to be

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asked to decide whether US Co should seek a stock exchange listing or other quotation and, if a majority of those voting vote in favour of seeking a stock exchange listing or other quotation, US Co intends to do so. Management of Assante considers that a listing would be premature and that US Co would likely be better able to enhance shareholder value by deferring a listing at this time.

14. CI is a corporation incorporated under the laws of Ontario. The common shares of CI (the “CI Common Shares”) are listed and posted for trading on the TSX under the symbol “CIX”. CI is a reporting issuer, or the equivalent, in each of the provinces in Canada and is not on the list of defaulting reporting issuers maintained by the applicable securities regulatory authorities therein.
15. CI’s head office is located at CI Place, 151 Yonge Street, Eleventh Floor, Toronto, Canada M5C 2W7.
16. The principal business of CI is the management, marketing, distribution and administration of mutual funds, segregated funds and other fee-earning investment products for Canadian investors through its wholly-owned subsidiary, CI Mutual Funds Inc. In addition, through its money management subsidiaries, CI manages institutional assets for clients on a global basis.
17. At August 31, 2003, CI’s fee-earning assets totalled \$35.4 billion, represented by \$30.3 billion in mutual and segregated funds, \$710 million in labour-sponsored funds, \$193 million in closed-end and other funds and \$4.2 billion in institutional assets. CI markets its funds to Canadian retail investors through over 43,000 financial advisers representing over 2 million retail investment accounts owning CI’s funds. CI’s share of total Canadian mutual fund assets as reported by the Investment Funds Institute of Canada was 7.1% at May 31, 2003, compared with 4.7% at May 31, 2002.
18. As of September 15, 2003, the authorized and issued capital of CI consisted of the following: an unlimited number of CI Common Shares and an unlimited number of preferred shares, of which 234,573,418 CI Common Shares and no preferred shares were issued and outstanding.
19. As the first step under the Arrangement, persons who hold Assante Common Shares indirectly through a holding company may choose to have such holding company (and if desired a wholly-owned subsidiary of such holding company) amalgamate with Assante in accordance with the

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terms of a holdco amalgamation agreement and the Arrangement and thereby be issued by Assante the same number of Assante Common Shares that was formerly held by the holding company.

20. Under the terms of the Arrangement, unexercised outstanding Assante Options will be terminated at the Effective Time in exchange for the following and then subsequently cancelled: (a) an option of US Co (“US Co Replacement Option”); and (b) a new option of Assante (“New Assante Option”), in each case with exercise prices such that each such new option has an “in-the-money” value proportionate to the values ascribed to US Co and Assante Canada by Assante as at the date of the arrangement agreement (the “Arrangement Agreement”).
21. Immediately prior to CI’s acquisition of the Assante Common Shares, Assante will, subject to the terms and conditions of the Arrangement Agreement, spin-off US Co by distributing the US Co Common Shares to shareholders of Assante (“Assante Shareholders”) by way of a return of capital. The US Co Common Shares will be issued to each Assante Shareholder, with no necessity to make any election in respect thereof.
22. In respect of the spin-off of US Co, Assante Shareholders are entitled, upon completion of the Arrangement, to receive one US Co Common Share for each Assante Common Share. While uncertain, the board of directors of Assante has estimated, based on a number of factors, and after consultation with its investment bankers, that when spun off as a stand-alone entity without the financial and other support of Assante Canada, the enterprise value of US Co, as at the date of entering into of the Arrangement Agreement, to be within a range of \$118 million to \$136 million, and the equity value to be within a range of \$1.20 to \$1.40 per US Co Common Share.
23. The New Assante Options will, depending on their exercise prices, subsequently be treated under the Arrangement as follows: (x) those that were more than \$0.05 “in-the-money” at the date of the Arrangement Agreement (based on a \$9.55 Assante Common Share value), will be exchanged for Assante Common Shares equal to the net value of each New Assante Option based on the agreed transaction price of \$8.25 per Assante Common Share (after deducting the \$1.30 per share value attributed to US Co, based on the mid-point of the range of the estimated values of a US Co Common Share); and (y) those that were “in-the-money” by \$0.05 or less or that were “out-of-the-money” as at the date of the Arrangement Agreement (based on a \$9.55 Assante Common Share value), for cash settled share appreciation rights in respect of CI. All US Co Replacement

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Options and CI share appreciation rights will be fully vested when issued on the exchange.

24. After the spin-off of US Co, pursuant to the terms of the Arrangement, for every Assante Common Share, Assante Shareholders will be able to elect to receive all cash (based on \$8.25 per Assante Common Share) or all CI Common Shares (based on an exchange ratio of 0.61543 of a CI Common Share per Assante Common Share), or a combination of the two, in each case subject to pro-ration. If all Assante Shareholders elected to receive only cash or if all Assante Shareholders elected to receive only CI Common Shares, all Assante Shareholders would receive \$1.87 in cash and approximately 0.47574 CI Common Shares per Assante Common Share.
25. The transaction, including the US Co spin-off, is proposed to be accomplished through the Arrangement under section 192 of the *Canada Business Corporations Act*, as amended (the “CBCA”), and is subject to a number of conditions, including, among others, approval by applicable regulators, the Superior Court of Justice (Ontario) (the “Court”) and the holders of Assante Common Shares and Assante Options (collectively, the “Assante Securityholders”).
26. The management information circular to be prepared and mailed to Assante Securityholders in connection with a special meeting of Assante Securityholders (currently anticipated to be held on or about November 7, 2003) for the purpose of approving the Arrangement (the “Meeting”), and filed with the Canadian securities regulatory authorities, will contain prospectus-level disclosure of US Co and CI (incorporated by reference in the case of CI).
27. An interim order (the “Interim Order”) of the Court pursuant to the CBCA will be sought to set out certain requirements relating to the approval of the Arrangement by Assante Securityholders. The Interim Order is expected to provide, among other things, that:
 - (a) the approval of not less than 66 2/3% of Assante Securityholders present or voting by proxy (with holders of Assante Common Shares and Assante Options voting together) at the Meeting; and
 - (b) the final approval of the Court;must be obtained in order for the Arrangement to be completed.

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28. Upon the completion of the Arrangement, (a) all of the issued and outstanding Assante Common Shares will be held, directly or indirectly, by CI, (b) all Assante Options will have been cancelled and replaced by US Co Replacement Options, and either CI Common Shares and/or cash or CI share appreciation rights; and (c) each Assante Shareholder (other than Assante Shareholders exercising their dissent rights pursuant to the Interim Order) will hold one US Co Common Share and 0.61543 of a CI Common Share (and/or cash) for each Assante Common Share held by them at the Effective time (unless all Assante Shareholders elect to receive only cash or if all Assante Shareholders elected to receive only CI Common Shares, then each Assante Shareholder would receive, in addition to one US Co Common Share, \$1.87 in cash and approximately 0.47574 CI Common Shares per Assante Common Share).

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 is that the Prospectus Requirement shall not apply to control distributions (as defined in MI 45-102) of US Co Common Shares acquired in connection with the Arrangement provided that the conditions in section 2.8(3) of MI 45-102 are satisfied, except that for the purpose of determining the period of time that a holder of the US Co Common Shares has held US Co Common Shares under section 2.8 of MI 45-102, such holders be permitted to include the period of time that the holder held Assante Common Shares immediately before the Effective Time of the Arrangement:

DATED at Winnipeg, Manitoba this 5th day of November, 2003.

Douglas Brown
Director – Legal