

## 2002 BCSECCOM 300

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief granted from the registration and prospectus requirements for certain trades in securities in connection with an arrangement where exemptions unavailable for technical reasons – first trades deemed to be a distribution unless made in accordance with specified provisions of Multilateral Instrument 45-102 *Resale of Securities*

### Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61 and 76

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

**AND**

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

**AND**

**IN THE MATTER OF ADOBE SYSTEMS INCORPORATED,  
ADOBE SYSTEMS INTERNATIONAL LIMITED PARTNERSHIP, AND  
ACCELIO CORPORATION**

### MRRS DECISION DOCUMENT

- ¶ 1 WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Saskatchewan, Manitoba, Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island, Québec and The Northwest Territories, Nunavut and The Yukon Territory (the “Jurisdiction”) has received an application from Adobe Systems Incorporated (“Adobe”) for a decision under the securities legislation of the Jurisdiction (the “Legislation”) that the requirement to be registered to trade in a security (the “Registration Requirement”) and the requirement to file and obtain a receipt for a preliminary prospectus and a prospectus (the “Prospectus Requirement”) shall not apply to certain trades in securities to be made in connection with the proposed indirect acquisition by Adobe of all of the issued and outstanding shares of Accelio Corporation (“Accelio”) by way of a statutory plan of arrangement involving Adobe, Adobe Systems International Limited Partnership (“Adobe LP”) and

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- ¶ 2 AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the British Columbia Securities Commission is the principal regulator for this application;
- ¶ 3 AND WHEREAS Adobe has represented to the Decision Makers that:
1. Adobe’s principal executive offices are located in San Jose, California;
  2. Adobe’s authorized capital stock is (i) 900,000,000 shares of common stock (“Adobe Common Shares”) and (ii) 2,000,000 shares of preferred stock (Adobe Preferred Shares”); as of February 25, 2002, 236,763,372 Adobe Common Shares and no Adobe Preferred Shares were issued and outstanding;
  3. the Adobe Common Shares are quoted on the Nasdaq National Market;
  4. Adobe is currently subject to the reporting requirements of the *United States Securities Exchange Act of 1934*, as amended (the “1934 Act”), and is not a reporting issuer or the equivalent in any province or territory of Canada;
  5. Adobe LP is a limited partnership formed under the laws of the Cayman Islands and is directly or indirectly wholly-owned by Adobe; Adobe LP is not a reporting issuer or the equivalent in any province or territory of Canada;
  6. Accelio is a corporation incorporated under the CBCA on June 10, 1982, with its registered head and principal office located in Ottawa, Ontario;
  7. Accelio’s authorized capital is an unlimited number of common shares (“Accelio Common Shares”) of which 24,969,598 were issued and outstanding as of February 5, 2002, and 2,236,782 convertible preference of which none were issued and outstanding as of said date; as of February 21, 2002, 4,865,668 Accelio Common Shares were subject to issuance pursuant to options (“Accelio Options”) granted under Accelio’s 1995 Employee Stock Option Plan (the “Option Plan”) and warrants issued to underwriters in connection with a public offering of Accelio Common Shares in the fall of 2000 (“Accelio Warrants”); in addition, approximately 22,600 Accelio Common Shares were issued on February 28, 2002 in connection with the termination of Accelio’s Employee Share Purchase Plan (the “ESPP”);
  8. the Accelio Common Shares are quoted on the Nasdaq National Market and are listed and posted for trading on The Toronto Stock Exchange Inc. and on the Pacific Stock Exchange;

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9. Accelio is subject to the reporting requirements of the 1934 Act and is a reporting issuer or the equivalent in each province of Canada;
10. the Acquisition is to be effected pursuant to an arrangement (the “Arrangement”) under the Canada Business Corporations Act (the “CBCA”), which will result in Adobe acquiring, through Adobe LP, all of the issued and outstanding shares of Accelio;
11. on application of Accelio, the Ontario Superior Court of Justice issued an interim order on March 8, 2002 (the “Interim Order”) setting the terms of and permitting (i) a special meeting (the “Meeting”) of Accelio shareholders to seek approval of the Arrangement; and (ii) the mailing of the requisite management proxy circular (the “Circular”) and related materials;
12. at the Meeting, Accelio will seek the requisite shareholder approval (of 66-2/3% of the votes attached to the Accelio Common Shares represented at the Meeting) for the special resolution approving the Arrangement;
13. in connection with the Meeting, Accelio mailed to each Accelio shareholder on March 15, 2002 (i) a notice of the Meeting and a notice of application to the Ontario Superior Court of Justice seeking the final order (the “Final Order”), (ii) a form of proxy, and (iii) the Circular, containing prospectus level disclosure (except with respect to the requirement to reconcile certain financial information to Canadian generally accepted accounting principles, for which regulatory relief was granted) of the Acquisition, the Arrangement and the business and affairs of Adobe and Accelio;
14. following approval by the Accelio shareholders of the special resolution approving the Arrangement and issuance by the Ontario Superior Court of Justice of a favourable Final Order, Accelio will effect the Arrangement by filing Articles of Arrangement; under the Arrangement, the following shall be deemed to occur in the following order without any further act or formality commencing on the date of the issuance of the certificate of arrangement (the “Effective Date”):
  - (a) Accelio’s Shareholder Rights Plan (the “Rights Plan”) and all of the rights issued or issuable under the Rights Plan shall terminate for no consideration (and, without limiting the generality of the foregoing, the Arrangement shall be deemed not to be a Flip-In Event (as defined in the Rights Plan) and no Separation Time (as defined in the Rights Plan) shall be considered to have arisen as a result of the Arrangement);
  - (b) Adobe LP will purchase from Accelio, and Accelio will sell to Adobe LP certain assets in return for a purchase price payable by the delivery by

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Adobe LP of a certain number of Adobe Common Shares to or to the order of Accelio;

- (c) Adobe will purchase from Accelio, and Accelio will sell to Adobe, certain other assets in return for a purchase price payable by the delivery by Adobe of Adobe Common Shares to or to the order of Accelio;
- (d) Accelio will purchase from each holder of Accelio Common Shares (other than Accelio Common Shares held by dissenting shareholders, Adobe, or any entities which are, directly or indirectly, wholly-owned by Adobe) and each holder of Accelio Common Shares will be deemed to have transferred to Accelio a certain percentage of the number of Accelio Common Shares held by such holder, in exchange for a number of Adobe Common Shares calculated based on the Exchange Ratio, and the register of holders of Accelio Common Shares shall be adjusted to provide that the number of Accelio Common Shares registered in the name of each holder shall be reduced by the number of Accelio Common Shares repurchased in respect of such holder and the repurchased shares shall be cancelled;
- (e) each remaining outstanding Accelio Common Share (other than Accelio Common Shares held by dissenting shareholders, Adobe, or any entities which are, directly or indirectly, wholly-owned by Adobe) will be transferred by the holder thereof to Adobe LP in exchange for a fraction of an Adobe Common Share equal to the Exchange Ratio, and the name of each such holder will be removed from the register of holders of Accelio Common Shares, and Adobe LP will be recorded as the registered holder of such Accelio Common Shares so exchanged and will be deemed to be the legal and beneficial owner thereof;
- (f) if any Accelio Common Shares outstanding immediately prior to the Effective Time are unvested or are subject to a repurchase option, risk of forfeiture or other condition under any applicable restricted stock purchase agreement or other agreement with Accelio or under which Accelio has any rights, then any Adobe Common Shares issued in exchange for Accelio Common Shares will also be unvested and subject to the same repurchase option, risk of forfeiture or other condition, and the certificates representing such Adobe Common Shares may accordingly be marked with appropriate legends; and
- (g) each Accelio Option and Accelio Warrant shall terminate for no consideration (except as set forth in paragraphs 17 and 18 ) without any act or formality on the part of a holder thereof;

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15. in accordance with the terms of the Option Plan, Accelio was required to give notice of the Acquisition to all holders of Accelio Options, which notice was provided on March 8, 2002; upon the giving of such notice, all Accelio Options became exercisable, whether or not then vested, for a period of 30 days from the date of the notice; any right of an option holder to exercise an Accelio Option terminates upon the expiration of the 30 day period and all unexercised Accelio Options will be cancelled without consideration (except as set forth in paragraphs 19 and 20) immediately prior to the closing of the Acquisition; the accelerated exercise period provides option holders with an opportunity to exercise all of their outstanding vested and unvested Accelio Options prior to but conditional on the closing of the Acquisition;
16. option holders who exercise their Accelio Options will be entitled to elect to receive either a cash payment from Adobe representing the “in-the-money” amount of the Accelio Option or the appropriate number of Accelio Common Shares;
17. Accelio will pay a cash amount to those option holders with out-of-the-money Accelio Options who have employment agreements providing that upon a change in control of Accelio their Accelio Options may become exercisable into shares of the acquirer, in consideration of the surrender of such rights;
18. Accelio will pay a cash amount to the holders of the Warrants in consideration of the early expiry of such Warrants;
19. dissenting shareholders who have validly exercised their dissent rights shall be deemed not to have participated in the Arrangement and shall cease to have any rights as a holder of Accelio Common Shares other than the right to be paid the fair value of such shares in accordance with the dissent procedures; such dissenting shareholders shall be deemed to have transferred their Accelio Common Shares to Adobe LP immediately prior to the Effective Date, to the extent the fair value therefor is paid by Adobe LP, and Adobe LP will be recorded as the registered holder of such Accelio Common Shares as of the Effective Date, or to Accelio immediately prior to the Effective Date, to the extent the fair value therefor is paid by Accelio, and such shares will be cancelled as of the Effective Date;
20. Adobe intends to make application to NASDAQ in order that the Adobe Common Shares issued pursuant to the Arrangement be quoted for trading on NASDAQ;
21. upon the completion of and as a consequence of the Arrangement, Adobe and Adobe LP will become reporting issuers in certain Jurisdictions;

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22. it is anticipated that Accelio and Adobe LP will make application to be deemed to have ceased to be a reporting issuer (or the equivalent) in those jurisdictions in which they will be a reporting issuer (or the equivalent) following the Arrangement;
  23. Adobe intends to cause Accelio to seek to delist the Accelio Common Shares from the TSE, NASDAQ and the PSE upon the consummation of the Arrangement or shortly thereafter. Adobe does not, at present, intend to list any of its shares on any stock exchange in Canada following completion of the Acquisition;
  24. the Acquisition will involve a number of trades and distributions of securities (collectively, the “Trades”) for which there may be no registration and prospectus exemptions available;
  25. the fundamental investment decision to be made by the Accelio shareholders is made at the time of the Meeting when such holder votes in respect of the special resolution approving the Arrangement;
  26. upon the completion of the Arrangement, it is expected that Canadian residents will hold less than 1% of the issued and outstanding Adobe Common Shares; in addition, the number of holders of Adobe Common Shares resident in Canada will represent less than 10% of the total number of holders of Adobe Common Shares;
  27. following the Arrangement, holders of Adobe Common Shares resident in Canada will be provided with the same continuous disclosure materials as are provided to holders of Adobe Common Shares resident in the United States; and
  28. there is no market for the Adobe Common Shares in Canada and none is expected to develop; Adobe does not presently intend to access the public markets in Canada for financing;
- ¶ 4 AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);
- ¶ 5 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;
- ¶ 6 THE DECISION of the Decision Makers under the Legislation is that the Trades shall not be subject to the Registration Requirement and Prospectus Requirement provided that:

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- (a) except in Québec, the first trade in Adobe Common Shares acquired in connection with the Arrangement shall be deemed to be a distribution or a primary distribution to the public under the Legislation of the Jurisdiction in which the trade takes place unless, at the time of the trade:
  - (i) if Adobe is a reporting issuer in any Jurisdiction listed in Appendix B to Multilateral Instrument 45-102 Resale of Securities (“MI 45-102”), the conditions in subsections (3) or (4) of section 2.6 of MI 45-102 are satisfied; and for the purpose of determining the period of time that Adobe has been a reporting issuer under section 2.6, the period of time that Accelio was a reporting issuer prior the Arrangement may be included; and
  - (ii) if Adobe is not a reporting issuer in any jurisdiction, such first trade is made through an exchange, or a market, outside of Canada or to person or company outside of Canada; and
- (b) in Québec, to the extent that there is no exemption available from the Registration and Prospectus Requirement in respect of the first trades, the trades are not subject to the Registration Requirement and the Prospectus Requirement, provided that Adobe or one of the parties to the Arrangement (including, for greater certainty, Accelio) is and has been a reporting issuer in Québec and has complied with the applicable requirements for the twelve months immediately preceding the trade (and for the purpose of determining the period of time that Adobe or one of the parties to the Arrangement has been a reporting issuer in Québec, the period of time that Accelio was a reporting issuer may be included), and no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade.

¶ 7 April 10, 2002

Brenda Leong  
Director