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December 29, 2005

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Application – Securities Act s. 48 Dealer Obligations - Exemption from obligations in Part 5 of the Act and Rules for registered dealers - A person not registered as a dealer in BC wants to do a trade that requires a BC registered dealer - The person administers distribution reinvestment plans for issuers; the person is appropriately licensed to carry on business as a trust company or is an affiliate of an appropriately licensed trust company; the person receives sell orders from plan participants; the person passes sell orders to registered dealers to be executed; the person does not solicit orders; the person does not provide any investment advice to plan participants.

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C.1996, c. 418, ss. 34(1)(a), 45(2)(20) and 48

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

**and**

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

**and**

**In the Matter of  
Computershare Trust Company of Canada (Computershare Trust  
Company) and  
Computershare Investor Services Inc. (Computershare Investor Services)**

## **MRRS Decision Document**

## **Background**

The local securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions has received an application from Computershare Trust Company and Computershare Investor Services (collectively, the **Filers** and, individually, a **Filer**) for a decision (the **Requested Relief**) under the securities legislation (the **Legislation**) of each of the Jurisdictions that, where a Filer has been appointed to act as a Plan Agent for a DRIP Plan of an issuer that is not an

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investment fund, the dealer registration requirement shall not apply to the trade made by the Filer with a Plan Participant when the Filer accepts a direction (a **Sale Order**) from the Participant to sell, on behalf of the Participant, securities of the issuer, that are held under the Plan for the Participant, through an appropriately registered dealer.

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**

Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

In this Decision:

**DRIP Plan** or **Plan** means, for an issuer, a plan which provides for the purchase of additional securities of the issuer by a Plan Participant, using dividends or distributions out of earning, surplus, capital or other sources that are payable in respect of the securities of the issuer that are held by the Participant in the Plan, and depending upon the Plan, may also provide for the purchase by the Participant of additional securities of the issuer, using optional cash payments;

**investment fund** has the same meaning as in NI 41-506;

**NI 45-106** means National Instrument 45-106 *Prospectus and Registration Exemptions*;

**Plan Agent** means, for the DRIP Plan of an issuer, a person or company that has been appointed by the issuer to act as trustee, custodian or administrator of the Plan; and

**Plan Participant** or **Participant** means, for a DRIP Plan of an issuer, an holder of securities of the issuer who is a participant in the Plan.

### **Representations**

This decision is based on the following facts represented by the Filer:

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1. Computershare Trust Company is a trust company organized under the laws of Canada and authorized to carry on business as a trust company in each Jurisdiction.
2. Computershare Investor Services is a corporation incorporated under the laws of Canada.
3. Each of Computershare Trust Company and Computershare Investor Services has their head offices in Toronto, Ontario.
4. Each of the Filers acts as Plan Agent to a number of DRIPs which are maintained by Canadian issuers. The Filers are one of the two major providers of these services in Canada. The administration of DRIP Plans is typically provided by an issuer's transfer agent.
5. A substantial portion of the transfer agency business of the Computershare organization is carried out through Computershare Investor Services.
6. Computershare Investor Services, like Computershare Trust Company, is an approved transfer agent by the TSX Group and the New York Stock Exchange and is registered with the Securities and Exchange Commission in the U.S.A. Computershare Investor Service is an indirectly wholly-owned subsidiary of a global company, Computershare Limited, which is a publicly listed company that trades on the Australian stock exchange. Computershare Investor Service and Computershare Trust Company operate from the same computer and systems platform, and many Computershare employees perform functions for both entities.
7. Neither Computershare Trust Company nor Computershare Investor Services is registered under the Legislation of any of the Jurisdictions as a dealer, adviser or otherwise.
8. The Filer's services as a Plan Agent of a DRIP Plan principally involve:
  - (a) general maintenance of accounts and records for the Plan;
  - (b) maintenance of a call centre and Internet website to service Plan Participants;
  - (c) distribution of materials to Plan Participants;
  - (d) handling payments and flows of funds;

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- (e) reporting to the issuer and Plan Participants on a periodic basis; and
  - (f) facilitating certain securities transactions that are necessary to ensure the smooth and cost-efficient operation of the Plans.
9. As part of the operation of Plan, the Filers will facilitate or otherwise assist in respect of the following securities transactions:

(a) *Treasury Issue of Securities*, in which a Filer arranges for the reinvestment of a distribution made by the issuer as subscription for the securities issued by the issuer under the Plan; following which the Filer then holds the issued securities as Plan Agent and maintains records setting out the allocation of such securities to each individual Plan Participant;

(b) *Market Purchases of Securities*, undertaken in respect of DRIP Plans that permit the issuer to designate whether a particular dividend or other distribution will be used to purchase treasury securities or securities in the open-market. Under Plans that contemplate open market purchases, a Filer arranges for the purchase of securities on the open market through appropriately registered dealers. In such circumstances, the Filer forwards an order to an appropriately registered dealer for such a purchase and make arrangements with the dealer for the settlement of the trade and the delivery of funds in connection therewith. As is the case with securities issued from treasury, the Filer holds any purchased securities as Plan Agent and maintains records setting out the allocation of such securities to each Plan Participant.

All Plans contemplate either or both of treasury issues and market purchases of securities.

(c) *Share Selling Service for a Non-Terminating Plan Participant*, undertaken in respect of Plans under which a Plan Participant that wishes to sell securities acquired under the Plan may direct a Filer as Plan Agent to arrange for the sale of the number of securities designated by the Plan Participant. In such circumstances, the Filer arranges for the sale of such securities on behalf of the Plan Participant through an appropriately registered dealer. The Filer effects such transaction by forwarding instructions for such sale to the dealer and attending to the settlement arrangements on behalf of the Plan Participant. After the transactions, the Filer remits the corresponding proceeds, less any applicable fees or charges, to the Plan Participant. In effecting such transactions, the Filer does not provide investment advice of any kind to the Plan Participant;

(d) *Share Selling Service for a Terminating Plan Participant*, undertaken in respect of Plans that provide for the sale of securities of a Plan Participant in the

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event of the termination of a Plan Participant from the DRIP Plan on a voluntary basis or upon the termination of the Plan. In such circumstances, the terminating Plan Participant may be able to choose between requesting the sale of its securities by a Filer, or having the Filer deliver securities then held for the Plan Participant under the Plan. (Generally, a Plan Participant whose participation in a Plan is terminated by an issuer will receive its securities, and will not have the option of requesting the Filer to sell such securities on its behalf.) Sales of securities in this context are facilitated by the Filer in the same manner as described in the preceding paragraph; and

(e) *Normal Course Accumulation and Sale of Fractional Interests*, undertaken during the normal operation of most DRIP Plans. A Plan Participant's allocation of securities in a Plan typically includes an interest in some fraction of securities. In order to accommodate full payment to Plan Participants of their entire interest in the securities, including fractions, as required from time to time, a Filer typically accumulates all of the fractional interests held by Plan Participants, and sells such accumulated interests through an appropriately registered dealer. This transaction typically takes place as part of the normal course of the operation under the terms of the Plan, and not necessarily pursuant to specific instructions from the Plan Participants. Plan Participants receive payment for fractions out of the proceeds of such sales as provided for by the Plan.

10. Where a Filer acts as a Plan Agent for a DRIP Plan the Filer does not provide investment advice to any Plan Participant concerning decisions by the Plan Participant to purchase, sell or hold securities under the Plan.
11. With respect to any of the sale transactions described above, any Sale Orders made to a Filer must be in writing.
12. In DRIP Plans in which Sale Orders are accepted by a Filer, the selling Plan Participant always pay their pro rata share of the selling dealer's sales commissions. In addition, the Filer receiving the Sale Order will, typically, charge an administrative fee for its services in processing the sale. Depending upon the DRIP Plan, this fee is paid by the issuer, by the selling Plan Participant or partially by the issuer and partially by the Plan Participant.
13. The details of the share selling services under any DRIP Plan for which a Filer is Plan Agent, and information concerning the fees or charges applicable to the service, are contained in documents which are distributed or made available to all Plan Participants.

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14. With respect to any of share selling services described above, only Sale Orders at the market price are accepted by a Filer and no advice regarding the decision to sell or hold the securities is given to any Plan Participant. Any Plan Participant who wishes to sell his or her securities in another manner (for example, by transferring their holdings to a dealer with whom they have a brokerage relationship) may do so. Any information distributed to Plan Participants regarding the Filer's administrative services does not contain any investment advice as to the desirability of Plan Participants holding or selling securities.
15. For any trades made by a Filer with a Participant under a DRIP Plan that are not the subject of the Requested Relief, including any purchases that are made by the Filer on behalf of a Participant through an appropriately registered dealer, the Filer intends to rely upon the exemptions from the dealer registration requirement contained in section 2.2 of NI 45-106.

### **Decision**

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 for each Jurisdiction is that the Requested Relief is granted for each of the Filers, provided that:

- (A) where the Filer is Computershare Trust Company, the Filer is, at the relevant time, appropriately licensed or otherwise permitted to carry on the business of a trust company in the Jurisdiction;
- (B) where the Filer is Computershare Investor Services, the Filer is, at the relevant time, an affiliate of Computershare Trust Company and Computershare Trust Company is then appropriately licensed or otherwise permitted to carry on the business of a trust company in the Jurisdiction;
- (C) the Sale Order is not solicited, but for this purpose such sale will not be considered "solicited" by reason of the issuer, or either Filer on behalf of the issuer, distributing from time to time to Plan Participants disclosure documents, notices, brochures, statements of account, or similar documents advising of the ability under the Plan of a Filer to facilitate sales of securities or by reason of the issuer or a Filer advising Participants of that ability, and informing Participants of the details of the operations of the Plan in response to enquiries from time to time from Plan Participants by telephone or otherwise; and

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- (D) for each Jurisdiction, this decision will terminate on the earlier of:
- (i) 90 days after the coming into force of:
    - (A) any rule or other regulation under the Legislation of the Jurisdiction that amends NI 45-106 and relates to the sale of securities by an administrator on behalf of participants in a dividend reinvestment plan, or
    - (B) a blanket order or ruling under the Legislation of the Jurisdiction that provides an alternative exemption; and
  - (ii) December 31, 2008; and
- (E) in the case of Ontario and Newfoundland and Labrador, where the Filer is Computershare Investor Services, the Filer is, at the relevant time, either registered as a limited market dealer or the Filer has obtained an exemption that permits the Filer to rely on the dealer registration exemption contained in section 3.1 of NI 45-106, notwithstanding clause 3.9(b) of NI 45-106, for the trade made between the Filer and the purchaser or a prospective purchaser of the securities which are the subject matter of the Sale Order, where that trade is made solely through an appropriately registered dealer.

Paul M. Moore  
Commissioner  
Ontario Securities Commission

Susan Wolburgh Jenah  
Commissioner  
Ontario Securities Commission