

# 2005 BCSECCOM 580

August 8, 2005

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications – National Instrument 51-102 *Continuous Disclosure Obligations*, s. 13.1 - An issuer wants relief from the requirements to deliver its financial statements and related MD&A to a securityholder that requests them, by the filing deadline - The issuer is an SEC issuer as defined in NI 51-102; the issuer must file its financial statements with the Commission when it files them with the SEC; the issuer prepares and files its financial statements with the SEC before it would otherwise be required to file them with the Commission; the issuer will deliver the financial statements by the later of the day it would be required to file them with the Commission if it did not file the financial statements with the SEC, and 10 days after receiving the request for the financial statements

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, s. 91

*Securities Rules*, B.C. Reg. 194/97, ss. 144 and 145

National Instrument 51-102 *Continuous Disclosure Obligations*, ss. 4.6, 5.6 and 13.1

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New  
Brunswick, Nova Scotia and Newfoundland and Labrador  
(the Jurisdictions)

and

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

and

In the Matter of  
Nortel Networks Corporation (NNC)

and

Nortel Networks Limited (NNL)  
(each, a Filer and Collectively, the Filers)

MRRS Decision Document

## 2005 BCSECCOM 580

### Background

The local securities regulatory authority or regulator (the “Decision Maker”) in each of the Jurisdictions has received an application from each of the Filers for a decision under the securities legislation (the “Legislation”) of the Jurisdictions for an exemption from the requirement to deliver its interim financial statements and annual financial statements (collectively, the “Financial Statements”) and interim MD&A and annual MD&A (collectively, “MD&A”) by the date each Filer files its Financial Statements and related MD&A with the SEC to any securityholder that requests a copy of the Financial Statements and related MD&A (the “Requested Relief”).

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.

### Representations

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

1. Each Filer is incorporated under the *Canada Business Corporations Act* with its head office located in Brampton, Ontario. NNL is the principal operating subsidiary of NNC in Canada.
2. Each Filer is a “reporting issuer” in each of the Jurisdictions in which such concept exists, and is an “SEC issuer” within the meaning given to such term in National Instrument 51-102 – *Continuous Disclosure Obligations* (“NI 51-102”) and *National Instrument 52-107 - Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (“NI 52-107”).
3. Each Filer is up-to-date with its current continuous filing obligations under the Legislation and is not on the list of defaulting reporting issuers maintained by any of the Decision Makers.
4. The outstanding common shares of NNC are listed on the Toronto and New York stock exchanges. The outstanding preferred shares of NNL are listed on the Toronto Stock Exchange.

## **2005 BCSECCOM 580**

5. As permitted by Part 4 of NI 52-107, each Filer prepares its Financial Statements in accordance with United States generally accepted accounting principles.
6. In the United States, interim financial statements and related interim MD&A for each Filer are included in its Quarterly Report on Form 10-Q (the “Form 10-Q”) prepared pursuant to the applicable requirements of the 1934 Act and filed with the SEC. Annual financial statements and related annual MD&A for each Filer are included in its Annual Report on Form 10-K (the “Form 10-K”) prepared pursuant to the applicable requirements of the 1934 Act and filed with the SEC.
7. Each Filer is currently required to file its Form 10-Q with the SEC within 40 days after the end of each fiscal quarter. Commencing with the quarter beginning January 1, 2006, each Filer will be required to file its Form 10-Q within 35 days after the end of each fiscal quarter. For the fiscal year ended December 31, 2005, each Filer will be required to file its Form 10-K with the SEC within 60 days after the end of such fiscal year and for each subsequent fiscal year.
8. The Filer files its Financial Statements and related MD&A with the securities regulatory authorities in each of the Jurisdictions concurrently with filing such materials with the SEC.
9. In Canada, each Filer has historically prepared a quarterly report to shareholders that includes its interim financial statements and related interim MD&A and an annual report to shareholders that includes its annual financial statements and related annual MD&A. Such shareholder reports have been filed with the securities regulatory authorities in each of the Jurisdictions and delivered to the relevant shareholders and are substantially equivalent in content to the Form 10-Qs and Form 10-Ks for the relevant reporting period. In an effort to expedite the delivery process, the Filers are considering delivering their entire Form 10-Q to their respective shareholders (rather than creating an additional quarterly report) in satisfaction of their delivery obligations under NI 51-102.
10. Under the Legislation, each Filer is required to deliver to its securityholders who have previously responded through the request form procedure contemplated by NI 51-102 or who have otherwise made a request of the Filer (“Requesting Securityholders”), copies of the requested Financial Statements and related MD&A. Further, pursuant to the proxy solicitation rules under the 1934 Act, in connection with the solicitation of proxies in respect of an annual

## 2005 BCSECCOM 580

(or special) shareholders' meeting at which directors are to be elected, NNC must furnish to all holders of its common shares (both registered and beneficial), with or in advance of its proxy solicitation materials, an annual report that includes its annual financial statements and related annual MD&A. As such, NNC cannot rely upon the request-based system contemplated by NI 51-102 with respect to its annual financial statements and must send its annual financial statements and related annual MD&A to all registered holders and beneficial owners of its common shares.

11. In accordance with the Legislation, each Filer is required to send a copy of the Financial Statements and related MD&A requested to the Requesting Securityholders by the later of:
  - (i) the “filing deadline” for such Financial Statements and MD&A (the “Delivery Deadline”), and
  - (ii) 10 calendar days after the Filer receives the request.
12. The “filing deadline” for each Filer is determined pursuant to provisions in the Legislation which state that the Financial Statements and MD&A must be filed:
  - (i) in the case of the Filer's annual financial statements and related annual MD&A, on or before the earlier of:
    - (1) the 90<sup>th</sup> day after the end of the applicable financial year; and
    - (2) the date of filing of the Filer's annual financial statements with the SEC; or
  - (ii) in the case of the Filer's interim financial statements and related interim MD&A, on or before the earlier of:
    - (1) the 45<sup>th</sup> day after the end of the applicable interim period; and
    - (2) the date of filing of the Filer's interim financial statements with the SEC.
13. Accordingly, in light of the earlier filing deadlines under the 1934 Act, the Delivery Deadline for each Filer's Financial Statements and related MD&A is normally determined by reference to the date of filing its Financial Statements with the SEC.

## 2005 BCSECCOM 580

14. Under the Legislation, reporting issuers who are not SEC issuers (and who do not otherwise file financial statements with a foreign regulatory authority) have until 45 days, in the case of interim financial statements and related interim MD&A, or 90 days, in the case of annual financial statements and related annual MD&A, following the applicable reporting period to deliver their Financial Statements and related MD&A to securityholders regardless of when such Financial Statements and related MD&A are filed with the Canadian securities regulatory authorities.

### **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 in each of the Jurisdictions under the Legislation is that the Requested Relief is granted provided that each Filer delivers the Financial Statements and related MD&A requested to a Requesting Securityholder:

- (i) in the case of annual financial statements and related annual MD&A, by the later of:
  - (1) 90 days after the end of the applicable financial year; and
  - (2) 10 calendar days after the Filer receives the request; and
- (ii) in the case of interim financial statements and related interim MD&A, by the later of:
  - (1) 45 days after the end of the applicable interim period; and
  - (2) 10 calendar days after the Filer receives the request.

Erez Blumberger  
Assistant Manager, Corporate Finance  
Ontario Securities Commission