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Headnote

Mutual Reliance Review System for Exemptive Relief Applications - registration and prospectus relief for grants of stock options to Canadian employees by founder, director and CEO of U.S. incorporated company – registration relief for transfer of common shares by the same individual to the Canadian employees upon exercise of the options by the employees – company has *de minimis* Canadian market for its securities

Applicable British Columbia Provisions

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

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

AND

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

AND

IN THE MATTER OF ROBERT A. KIERLIN

MRRS DECISION DOCUMENT

WHEREAS the Canadian securities regulatory authority or regulator (the “Decision Maker”) in each of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia, Newfoundland and Labrador, New Brunswick, Prince Edward Island and Québec (the “Jurisdictions”) has received an application (the “Application”) from Mr. Robert A. Kierlin (“Mr. Kierlin”) for a decision pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that:

- (a) the requirements contained in the Legislation to be registered to trade in a security and to file and obtain a receipt for a preliminary prospectus and a prospectus (the “Registration and Prospectus Requirements”) shall not apply to certain trades to be made by or on behalf of Mr. Kierlin or his Agent (as defined below) of options (the “Options”) to employees of Fastenal Company (the “Company”) who are resident in the Jurisdictions (collectively, the “Canadian Employees”) pursuant to the terms of the Robert A. Kierlin Stock Option Plan (the “Plan”); and

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- (b) the Registration Requirements in the Legislation, and the Prospectus Requirements in Quebec, shall not apply to certain trades by or on behalf of Mr. Kierlin or his Agent to (i) Canadian Employees, or to (ii) former Canadian Employees during the 90 day period immediately following the termination of their employment (collectively, the “Exercising Employees”) of any common shares of the Company upon the exercise of Options granted under the Plan pursuant to this Decision (as defined below) by such Canadian Employees (the “Option Shares”);

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

AND WHEREAS Mr. Kierlin has represented to the Decision Makers that:

Fastenal Company

1. The Company is a public (Nasdaq listed) Minnesota company based in Winona, Minnesota with operations in the United States, Puerto Rico, Canada, Mexico and Singapore. Mr. Kierlin is the founder, Chairman of the Board and Chief Executive Officer of the Company.
2. The Company is not a reporting issuer (or its equivalent) in any of the provinces of Canada.
3. As of March 5, 2002, the Company had 37,938,688 common shares (\$0.01 par value) issued and outstanding (the “Common Shares”). As of March 5, 2002, the largest shareholder was Ruane, Cunniff & Co., Inc., an institutional investor.
4. As of March 5, 2002, Mr. Kierlin, the second largest shareholder, held approximately 3,903,036 Common Shares (or 10.31%) of the Company. Mr. Kierlin’s holdings include the 2,000,000 Common Shares that have been set aside as Option Shares under the Plan, 100 Common Shares that are held by his wife and 2,200 Common Shares held by a local secondary school (the “School”), of which Mr. Kierlin is a director and member of the investment committee. Mr. Kierlin shares voting and investment power with respect to the Common Shares held by the School. Mr. Kierlin disclaims beneficial ownership of the Common Shares held by the School.
5. On April 15, 2002, the board of directors of the Company approved a two-for-one stock split for the Company’s outstanding Common Shares. The Company issued the additional share for each Common Share held to each

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holder of record of Common Shares at the close of business on April 29, 2002. The stock split took effect at the close of business on May 10, 2002. After the split there were 75,877,376 Common Shares outstanding.

The Plan

6. Mr. Kierlin adopted the Plan on December 30, 1999 for the purpose of “advancing the interests of the Company, its shareholders and its subsidiaries by encouraging and enabling selected employees ... to acquire and retain a proprietary interest in the Company”. The Plan was effective January 3, 2000. While the Plan is administered by the Board of Directors of the Company, such role is administrative and ministerial only and the Board has no authority to grant any option under or change any provisions of the Plan. Accordingly, the Plan is not created or administered by or on behalf of the Company.
7. Currently, up to 2,000,000 Options may be issued under the Plan. Options may be issued to eligible employees (the “Employees”) for as long as Options are available for granting under the Plan. Options that are cancelled prior to their exercise (e.g., on the termination of the Employee) may be re-issued under the Plan. The holder of an Option will, for each Option exercised, receive one of the 2,000,000 Option Shares that are currently registered in the name of Mr. Kierlin and held by Merchants National Bank of Winona, Minnesota (the “Agent”) pursuant to the terms of the Plan. Pursuant to the Plan, each time that an Option is issued to an Employee, documentation evidencing the Options granted is to be forwarded to the recipient Employee.
8. The Option Shares are registered under the United States Securities Exchange Act of 1934 but not the United States Securities Exchange Act of 1933 (the “1933 Act”). As a result, the Option Shares are included in, and obtain the benefit of, the Company’s public disclosure but they are not publicly traded. Prior to the vesting of any of the Options that are issued under the Plan (the first of such vestings are expected to occur this July 1, 2002), the Company will file a registration statement under the 1933 Act. For the purposes of United States securities laws, the Option Shares will then be freely tradable on the Nasdaq Stock Market by Employees who have exercised their Options.
9. The exercise price of an Option will be determined and stated by Mr. Kierlin at the time of the grant of the Option provided, however, that such price shall not be less than the closing price of the Common Shares on Nasdaq on the most recent trading day preceding the grant.
10. The Plan has not been and is not required to be approved by Nasdaq.

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11. The Options are not transferable other than by will or the laws of descent and distribution.
12. Upon the grant of Options, Canadian Employees will receive (i) a certificate of stock option which sets out, among other things, the name of the recipient, the number of Options issued, the date of grant, the exercise period, the exercise price and the expiration date; and (ii) a Stock Option Plan Information Guide, which sets out commonly asked questions and answers (including tax consequences associated with exercising Options) and information regarding how to obtain a copy of the plan itself.
13. Mr. Kierlin intends to donate the net proceeds, after payment of applicable taxes and expenses, to charity.

The Company's Employees

14. As of February 1, 2002, there were 6,535 employees in the Company. No more than 762,200 Options are currently available to be issued under the Plan to the Canadian Employees.
15. The Company will concurrently provide to its securityholders resident in Canada the same disclosure materials provided to the securityholders resident in the United States. Currently, residents of Canada do not own directly or indirectly more than 10 percent of the outstanding Common Shares of the Company, and do not represent in number more than 10 percent of the total number of owners directly or indirectly of Common Shares.

Mr. Kierlin

16. While Mr. Kierlin is the largest individual shareholder of the Company and has the ability to materially influence votes, corporate decisions and actions by virtue of his positions as Chairman of the Board, Chief Executive Officer and founder of the Company, he does not hold a sufficient number of shares to entitle him to elect directors or block any significant corporate actions. Therefore, while his shareholdings are sufficient to have Mr. Kierlin considered an "affiliate", and therefore a "controlling person", for various purposes under U.S. securities laws, Mr. Kierlin does not own or control a sufficient number of shares to affect materially the control of the Company for Canadian securities laws purposes.
17. Mr. Kierlin is not in the business of trading Options, Option Shares (or any other securities) in Canada.

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AND WHEREAS pursuant to the System this MRRS Decision Document evidences the decision of the Decision Makers (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:

- (a) the Registration and Prospectus Requirements contained in the Legislation shall not apply to the trades of Options to be made by or on behalf of Mr. Kierlin or his Agent to Canadian Employees pursuant to the Plan provided that the first trade in any such Option acquired pursuant to this Decision shall be deemed to be a distribution or primary distribution to the public; and
- (b) the Registration Requirements in the Legislation, and the Prospectus Requirements in Quebec, shall not apply to trades of Option Shares by or on behalf of Mr. Kierlin or his Agent to Exercising Employees (or their successor in the event of the death of the Exercising Employee) upon the exercise of Options granted under the Plan pursuant to this Decision by such Exercising Employees (or their successor in the event of the death of the Exercising Employee), provided that in Quebec, the first trade in any such Option Shares acquired upon the exercise of Options granted under the Plan pursuant to this Decision shall be deemed to be a distribution unless such trade is executed through the facilities of a stock exchange outside of Canada.

DATED June 4, 2002.

Harold P. Hands

Robert W. Korthals