

2002 BCSECCOM 891

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Exemption granted from requirement to include prospectus level disclosure in an information circular where redeemable preferred shares to be issued under a merger effected by way of plan of arrangement – preferred shares used for tax purposes only and will be redeemed on 2nd business day following arrangement and issuer has cash on hand to fund the redemption

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 117(2)(a), 119(2)(b)

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA AND ONTARIO

AND

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

AND

IN THE MATTER OF OPEN TEXT CORPORATION AND CENTRINITY INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Makers”) in British Columbia and Ontario (collectively, the “Jurisdictions”) has received an application from Open Text Corporation (“Open Text”) and Centrinity Inc. (“Centrinity” and together with Open Text, the “Filers”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the prospectus level disclosure requirements contained in Sections 2.1, 2.2 and 2.3 of Ontario Securities Commission Rule 54-501, *Prospectus Disclosure in Certain Information Circulars*, and Section 11 of British Columbia Form 54-901F (collectively, the “Prospectus Level Disclosure Requirements”) shall not apply to a management proxy circular (the “Circular”) to be sent to all shareholders of Centrinity in connection with the proposed amalgamation (the “Amalgamation”) of Centrinity and 3801853 Canada Inc. (“Subco”), a wholly-owned subsidiary of Open Text, pursuant to section 181 of *Canada Business Corporations Act* (the “CBCA”) (the amalgamated company to be formed by the amalgamation of Centrinity and Subco being referred to as “Amalco”);

2002 BCSECCOM 891

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

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

1. Open Text is a corporation amalgamated under the *Business Corporations Act* (Ontario). The common shares in the capital of Open Text are listed on the Toronto Stock Exchange (the “TSX”) and the Nasdaq National Market. Open Text is a reporting issuer in each province of Canada.
2. Centrinity is a corporation continued under the CBCA. The Class A common shares in the capital of Centrinity (the “Centrinity Shares”) are listed on the TSX. Centrinity is a reporting issuer in British Columbia, Alberta and Ontario.
3. Subco is a corporation incorporated under the CBCA and is a wholly-owned subsidiary of Open Text. Subco is not a reporting issuer in any province of Canada. Subco will be used for the sole purpose of effecting the Amalgamation.
4. Pursuant to a merger agreement dated as of September 19, 2002 (the “Merger Agreement”) between Open Text, Subco and Centrinity, Open Text intends to acquire all of the issued and outstanding Centrinity Shares, including Centrinity Shares issuable upon the exercise of outstanding stock options, pursuant to the Amalgamation.
5. The Amalgamation will result in each holder of Centrinity Shares (a “Centrinity Shareholder”) receiving one redeemable preferred share in the capital of Amalco (the “Preferred Shares”) for each Centrinity Share. Pursuant to the Amalgamation, Open Text will receive common shares in the capital of Amalco in exchange for its shares of Subco. On the second business day following completion of the Amalgamation, each Preferred Share will be redeemed for \$1.26 in cash (the “Redemption”). Upon completion of the Redemption, Open Text will own all of the shares of Amalco.
6. The Preferred Shares will be used so that rollovers provided for under section 87 of the *Income Tax Act* (Canada) will be available to Centrinity. No new certificates evidencing the Preferred Shares will be issued to the Centrinity Shareholders who will continue to hold their Centrinity Share certificates until the Redemption. The Filers are of the view that the Circular is subject to

2002 BCSECCOM 891

the Prospectus Level Disclosure Requirements due to the issuance of the Preferred Shares.

7. The aggregate proceeds of redemption payable pursuant to the Redemption is approximately \$31.9 million, representing less than 5% of the market capitalization of Open Text. Open Text has in excess of US \$110 million in cash and cash equivalents as at its year ended June 30, 2002.

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 under the Legislation is that the Prospectus Level Disclosure Requirements shall not apply to the Circular.

DATED October 3, 2002.

Ralph Shay