

## **2002 BCSECCOM 509**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – issuer bid - relief granted from the valuation requirement in connection with an offer by the issuer for its out-of-the-money convertible debentures - convertibility feature of the debentures is of no material value - offer to be made in compliance with all other issuer bid requirements - offer to include summary of financial opinion on convertibility feature

### **Applicable British Columbia Provisions**

*Securities Rules*, B.C. Reg. 194/97, ss. 162(2) and 162(3)

### **IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA, BRITISH COLUMBIA, ONTARIO AND QUEBEC**

**AND**

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

**AND**

### **IN THE MATTER OF WESTERN FINANCIAL GROUP INC.**

### **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, British Columbia, Ontario and Quebec (the "Jurisdictions") has received an application from Western Financial Group Inc. ("Western" or the "Corporation") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that in connection with Western's offer to acquire all of its issued and outstanding 10% convertible redeemable subordinated debentures (the "Original Debentures"), which were issued on June 17, 1998, in exchange for either: (i) cash (subject to a maximum amount of \$2,000,000 in cash), (ii) the issuance of 9% convertible unsecured subordinated debentures (the "New Debentures"), or (iii) a combination of cash and New Debentures, that Western shall be exempted from the requirements in the Legislation to obtain a formal valuation of the Original Debentures and the New Debentures (the "Valuation Requirements").

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

## 2002 BCSECCOM 509

AND WHEREAS Western has represented to the Decision Makers that:

1. Western was incorporated as 674658 Alberta Inc. under the *Business Corporations Act* (Alberta) on November 14, 1995 and its name was changed to Hi-Alta Capital Inc. on January 22, 1996, after which it commenced active business operations. The name of the Corporation was then changed to Western Financial Group Inc. on May 27, 2002.
2. The common shares in the capital of Western (the "Common Shares") and a series of 9% convertible unsecured subordinated debentures which were issued on February 26, 2002 (the "February Debentures") are listed and posted for trading on the Toronto Stock Exchange.
3. Western is a reporting issuer in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Quebec. To the best of its knowledge, Western is not in default of any requirement of the securities legislation of these provinces and the rules and regulations thereunder. The authorized capital of Western consists of an unlimited number of common shares, an unlimited number of first preferred shares, and an unlimited number of second preferred shares. Western has created and authorized the issuance of 500 First Preferred Shares, Series One. As at April 4, 2001, 11,539,775 Common Shares of the Corporation were issued and outstanding and there were no first preferred shares or second preferred shares issued and outstanding. In addition, as at the same date, Western has \$28,000,000 in aggregate principal amount of convertible debentures outstanding (this includes \$6,000,000 in Original Debentures and \$7,000,000 in February Debentures).
4. The Common Shares closed at \$2.35 per Common Share at the close of business on April 17, 2002 and the February Debentures closed at \$96.00 per Debenture at the close of business on April 8, 2002, the last day of which the Debentures traded.
5. Western issued \$6,000,000 in aggregate principal amount of Original Debentures on June 17, 1998. The interest rate on such debentures is 10% per annum which is payable semi-annually in arrears on June 30 and December 31 in each year. These Original Debentures are convertible at any time at the option of the holder into Common Shares at a deemed price of \$3.80 (subject to adjustment) per share. The Original Debentures are redeemable by the Corporation in the event that the Common Shares are trading at \$6.00 per share (on a 20 day weighted average basis) for cash or Common Shares. The maturity date of the Original Debentures is June 30, 2003. The Original Debentures are not listed on any stock exchange. The Original Debentures are

## 2002 BCSECCOM 509

subordinated to senior indebtedness of the Corporation, which includes bank indebtedness, and are secured.

6. Western intends to issue up to \$6,000,000 in aggregate principal amount of New Debentures which will have terms identical to the February Debentures. Accordingly, the New Debentures will bear interest at 9% per annum which will be payable semi-annually in arrears on June 30 and December 30 in each year. These New Debentures will be convertible at any time at the option of the holder into Common Shares at a deemed price of \$2.50 (subject to adjustment) per share. The New Debentures will be redeemable by the Corporation in the event that the Common Shares are trading at 124% of the conversion price of \$2.50 per share (on a 20 day weighted average basis) for cash or Common Shares. The maturity date of the New Debentures is February 28, 2007. The principal will be repayable at the option of the Corporation in Common Shares on maturity. Western intends to apply to have the New Debentures listed and posted for trading on the Toronto Stock Exchange. The New Debentures will be subordinate to senior indebtedness of the Corporation, including bank indebtedness, and will not be secured.
7. Western intends to make a securities exchange issuer bid (the "Bid") for all of the issued and outstanding Original Debentures. Western would offer to acquire the Original Debentures in exchange for: (i) an amount of cash equal to the principal of the Original Debentures, (ii) an equal principal amount of New Debentures, or (iii) a combination of cash and New Debentures equal to the principal amount of the Original Debentures.
8. To the best of the Corporation's knowledge, information and belief, none of the Original Debentures are currently owned by any insiders of the Corporation.
9. The acquisition of the Original Debentures pursuant to the Bid is permissible under the terms of the trust indenture governing such Original Debentures.
10. The Bid is being made to provide holders of Original Debentures with an opportunity to realize an immediate cash return for all or a portion of their investment in the Corporation and to provide holders which elect to receive New Debentures, an opportunity to extend their investment in the Corporation, with improved liquidity and a conversion feature at a price closer to the current market price of the Common Shares.
11. In a letter (the "Opinion Letter") dated June 4, 2002, J. D. McCormick Financial Services, Inc. advised the Corporation that in its opinion the convertibility feature of the Original Debentures is of no material value.

## **2002 BCSECCOM 509**

12. The Bid will be made in compliance with all applicable securities laws and will include prospectus level disclosure on Western and the New Debentures.
13. The issuer bid circular provided to the holders of the Original Debentures in connection with the Bid will include a summary of the Opinion Letter.
14. Pursuant to the Legislation, subject to certain exceptions, in the context of an issuer bid, the issuer must obtain a valuation of its securities, and the issuer bid circular must, subject to any waiver or variation consented to in writing by the Executive Director (or his or her counterpart in the other provinces), contain a summary of the valuation of its securities.

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 Western is exempt from the Valuation Requirements contained in the Legislation with respect to the Bid provided that Western complies with all applicable securities laws in making the Bid, which would include providing prospectus level disclosure on Western and the New Debentures to the holders of Original Debentures.

DATED at Edmonton, Alberta on June 11, 2002.

Agnes Lau, CA  
Deputy Director, Capital Markets