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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from the requirement to be registered to trade in a security for an administrator of employee share incentive plans

Applicable British Columbia Provisions

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

**IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA,
BRITISH COLUMBIA, MANITOBA, ONTARIO AND SASKATCHEWAN**

AND

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

AND

IN THE MATTER OF FASSTRAK SYSTEMS INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Makers”) in each of Alberta, British Columbia, Manitoba, Ontario and Saskatchewan (the “Jurisdictions”) has received an application from Fastrak Systems Inc. (“Fastrak”) for a decision pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that the requirement contained in the Legislation to be registered to trade in a security (the “Registration Requirement”) shall not apply to Fastrak’s activities as administrator of employee share incentive plans (“ESPs”) of client companies which permit employees, officers and directors resident in any of the Jurisdictions (“Plan Participants”) to purchase securities, as more fully described below;

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

AND WHEREAS Fastrak has represented to the Decision Maker that:

1. Fastrak is a corporation incorporated under the laws of Ontario, with its head office in Ontario. It is not registered to trade in securities in any capacity under the laws of any jurisdiction.

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2. Fastrak is in the business of administering ESPs. Fastrak enters into administration agreements (“Administration Agreements”) with companies that have previously established, or will hereafter establish, ESPs (individually a “Company” and collectively the “Companies”). The distribution of securities under ESPs, and the first trade of such securities, will be exempt from the registration and prospectus requirements of the Legislation, as applicable, pursuant to available exemptions or, where required, exemption orders granted under applicable Legislation in the Jurisdictions.
3. ESPs may include:
 - (i) share purchase plans, share bonus plans, restricted share plans, share award plans and similar plans, each of which involve, or may potentially involve, the issuance of shares of a Company to a Plan Participant; and
 - (ii) share option plans which involve, or may potentially involve, the issuance of options to purchase shares of a Company to a Plan Participant and, on exercise of such options, the issuance of shares of the Company to the Plan Participant.
4. Plan Participants may include registered retirement savings plans, registered retirement income funds and registered education savings plans of which employees, officers and directors of a Company or its affiliates are beneficiaries.
5. Under an ESP, only employees, directors and officers of the relevant Company and its affiliates will be eligible to acquire securities pursuant to the ESP. Participation in the ESP is voluntary and employees are not required to purchase securities nor are they induced to purchase securities by expectation of employment with the Company or its affiliates.
6. Fastrak’s services as administrator of ESPs will principally involve:
 - (a) maintaining accounts for Plan Participants which will provide information on holdings, purchases, sales, option values and vesting schedules, option exercises, dividends and asset values;
 - (b) maintaining an Internet website, interactive voice response facilities and a “1-800” call centre;
 - (c) distributing annual reports, quarterly financial statements and management proxy circulars of the applicable Company to Plan Participants;

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- (d) facilitating option exercises;
- (e) facilitating sales of shares; and
- (f) reporting to Companies and Plan Participants on a periodic basis.

7. Each Company (or its Canadian affiliate) will establish and maintain a trading account (“ESP Account”) for and on behalf of Plan Participants with a dealer who is registered under applicable Legislation (the “Plan Broker”). Fastrak will have access and authority to deal with the Plan Broker regarding the ESP Account so as to permit Fastrak to perform its duties under the Administration Agreements.

8. Each Company (or its Canadian affiliate) will arrange with the Plan Broker to have payroll deductions and additional Company contributions, if applicable, delivered directly from the Company to the Plan Broker. Alternatively, Plan Participants may contribute funds directly to the Plan Broker.

9. Upon receipt of the contributed funds from the Company and/or Plan Participants, the Plan Broker will aggregate the amounts from such contributions for each designated investment period and will purchase shares in the secondary markets for and on behalf of the Plan Participants.

10. Options and shares (through option exercises or otherwise) may be issued directly by the Company from treasury to Plan Participants if the ESP so provides.

11. Shares will be registered in the name of the Company, as nominee for the Plan Participants, and will be held in the ESP Account. Plan Participants who have personal investment accounts with a broker may request, at any time, to have their ESP securities moved from the ESP Account to their personal brokerage account. Thereafter, the Plan Participant will deal directly with his or her personal broker.

12. The Company and/or the Plan Broker will communicate the number of securities issued from treasury or acquired in the secondary markets to Fastrak. Fastrak will then record these acquisitions on a *pro rata* basis for each contributing Plan Participant.

13. If and when they so desire, Plan Participants may communicate sell orders and cashless option exercises with respect to ESP securities to Fastrak by means of the Internet, interactive voice response facilities (“IVR”) or facsimile. In addition, Fastrak will maintain a “1-800” call centre (the “Call Centre”) to assist Plan Participants with general inquiries concerning Plan Participants’ account information. Fastrak has established a policy prohibiting its customer service

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representatives from accepting oral sell orders from Plan Participants over the telephone. No advice will be offered or available from Fastrak to Plan Participants concerning the purchase or sale of ESP securities.

14. In respect of each Company, Fastrak will aggregate sell orders received from Plan Participants (other than Plan Participants who have elected to execute transactions through a personal broker) over a time period designated by the Company (a business day or days). At the end of the time period, Fastrak will place a single aggregate sell order with the Plan Broker for each Company. The Plan Broker will then execute sales of shares in the secondary markets for and on behalf of the Plan Participants.

15. The Plan Broker will remit the aggregate proceeds of sales (net of brokerage commissions) directly to the Plan Participants or directly into a segregated bank account maintained by Fastrak with a Canadian financial institution for each ESP, whereupon Fastrak will then remit the proceeds (net of administration fees with respect to the sale which may be charged by Fastrak to the Plan Participant or the Company in accordance with the fee arrangement between Fastrak and the Company) to each Plan Participant that placed a sell order on a *pro rata* basis.

16. Cash and non-cash dividends paid on shares acquired under ESPs will be credited to the applicable ESP Account. Subject to the terms of the Plan, cash dividends will be automatically reinvested by the Plan Broker in additional securities in the manner described above. Similarly, stock dividends and/or stock splits are deposited into each ESP account and allocated *pro rata* to each Plan Participant, where applicable. Stock rights cannot be exercised, and may be sold and the proceeds reinvested by the Plan Broker in the manner described above. An administration fee may be charged to the Company on reinvestment purchases in accordance with the fee arrangement between Fastrak and the Company.

17. If a Plan Participant ceases to be qualified to participate in an ESP, by reason of termination of employment with the Company or otherwise, such person shall cease to be a Plan Participant. Upon the occurrence of such an event and upon the Company's instructions, Fastrak will direct the Plan Broker to transfer the former Plan Participant's securities, sell the securities, or deliver share certificates representing the securities together with a cheque for the former Plan Participant's fractional interest, if any. Administration fees and commissions, where applicable with respect to sales and/or withdrawals are typically borne by the Plan Participant.

18. Plan Participants may at all times review the real-time status of their holdings of ESP securities through Fastrak's Internet website, IVR or the Call Centre.

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AND WHEREAS pursuant to the system, this MRRS Decision Document evidences the decision of each 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 each Decision Maker with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers pursuant to the Legislation is that the Registration Requirement shall not apply in respect of the services provided by Fastrak as administrator of ESPs and the activities of Plan Participants in connection with the provision of such services by Fastrak provided that:

- (a) in connection with the administration of ESPs pursuant to an Administration Agreement, Fastrak limits its activities to those described in the representations above as being undertaken by it;
- (b) the sale of securities by a Plan Participant under each ESP is made through the Plan Broker;
- (c) Fastrak does not provide any advice to any Plan Participant concerning the decision to purchase or sell securities;
- (d) all funds received by Fastrak from the sale of securities by a Plan Participant under an ESP are deposited promptly into a segregated bank account with a Canadian financial institution and then promptly remitted to the applicable Plan Participants net of Fastrak’s fees as set out in the applicable Administration Agreement;
- (e) Fastrak maintains bonding or insurance with respect to its activities in an amount of not less than \$200,000;
- (f) Fastrak sends to each Plan Participant a statement of account showing any debit or credit balance and the details of any securities held, purchases, sales, option values and vesting schedules, option exercises, dividends and asset values, not less than once every three months;
- (g) Fastrak, in respect of each ESP for which it has entered into an Administration Agreement, maintains books and records necessary to record properly all transactions for which it is responsible pursuant to the Administration Agreement; and

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- (h) Fastrak provides to each Plan Participant who uses Fastrak's services in connection with an ESP a written statement which states that the Plan Participant is receiving no investment advice from Fastrak with respect to the purchase or sale of securities under the ESP and that if the Plan Participant wishes to receive investment advice in connection with the ESP then the Plan Participant should contact a broker or dealer.

Dated the 24th day of February, 2003.

H. Lorne Morphy

Robert L. Shirriff