

2002 BCSECCOM 668

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from the registration and prospectus requirements in connection with the distribution, from time to time, of securities to Associates (licensee pharmacists) or RRSPs of Associates – relief from the issuer bid requirements with respect to the repurchase of securities under certain agreements entered into concurrently with the distribution – revocation of portions of previous decisions

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61, 76, 105-110, 114(2)(c) and 171

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

AND

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

AND

IN THE MATTER OF SHOPPERS DRUG MART CORPORATION

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, New Brunswick, Northwest Territories, Yukon and Nunavut (the “Jurisdictions”) has received an application from Shoppers Drug Mart Corporation (the “Company” or “Shoppers”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirements contained in the Legislation to be registered to trade in a security (the “Registration Requirement”) and to file and receive a receipt for a prospectus (the “Prospectus Requirement” and, together with the Registration Requirement, the “Prospectus and Registration Requirements”) do not apply to certain proposed distributions, from time to time, of securities of the Company issued by it pursuant to its Share Incentive Plan dated November 21, 2001 (the “Plan”), including options, shares, performance shares and other share-based awards not inconsistent with the Plan, that the Prospectus Requirement does

2002 BCSECCOM 668

not apply to first trades of securities acquired upon the conversion of non-voting shares of the Company (the “Non-Voting Shares”) previously acquired under exemptions from the Prospectus and Registration Requirements or pursuant to the Previous Orders (as defined below), that the Prospectus Requirement does not apply to first trades in Ontario of employees of the Company of securities acquired under the Plan or under predecessor employee stock purchase and option plans of the Company (the “Predecessor Plans”), that the requirement contained in the Legislation to comply with the rules governing issuer bids (the “Issuer Bid Requirement”) does not apply to the Company with respect to certain repurchases by the Company of securities issued under the Plan or prior to the adoption of the Plan, and that certain relief from the Issuer Bid Requirement previously granted be rescinded;

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 Shoppers has represented to the Decision Makers that:

1. Shoppers is a corporation continued under the laws of Canada.
2. Shoppers is a reporting issuer or the equivalent in each of the Jurisdictions, and is not in default of any of the requirements contained in the Legislation.
3. The authorized capital of Shoppers consists of an unlimited number of common shares (“Shares”) and an unlimited number of preferred shares issuable in series.
4. The Shares are listed on The Toronto Stock Exchange.
5. Shoppers is a holding company whose only business is holding the securities of the entities which operate the Shoppers Drug Mart/Pharmaprix business.
6. The Shoppers Drug Mart/Pharmaprix business includes the licensing of retail operations consisting of approximately 830 drug stores. Each drug store is operated by a pharmacist (an “Associate”) who, through a wholly-owned corporation, has entered into a licensing agreement with a wholly-owned subsidiary of the Company. Each such licensing agreement requires that the Associate devote their full time and attention to the operation and management of the drug store that is the subject of the license. As a result, each Associate has detailed knowledge of the Shoppers Drug Mart/Pharmaprix business.

2002 BCSECCOM 668

7. Shoppers proposes to issue securities from time to time pursuant to the Plan to directors and employees of the Company and to Associates.
8. Shoppers also proposes to allow Associates to purchase securities through a Registered Retirement Savings Plan ("RRSP") of which they are the beneficiary.
9. Associates who acquire securities, either directly or through an RRSP of which they are the beneficiary, will be required to enter into certain agreements (the "Governing Agreements") which will restrict their ability to deal with the securities so acquired. Among other things, the Governing Agreements will place certain transfer restrictions on the securities and will give the Company the right to repurchase the securities from the Associate in certain circumstances, including in the event that the licensing agreement respecting the Associate is terminated. The Governing Agreements will also provide drag-along rights to certain institutional holders of Shares and will provide certain "piggy-back" rights to holders of the securities. Generally, these securities may only be transferred or sold after a prescribed period of time from the date of issue unless transferred or sold pursuant to various exceptions, which include sales pursuant to the exercise of drag-along rights or "piggy-back" rights.
10. Prior to any purchase of securities by Associates, Associates will be provided with a full description of the attributes of the securities, copies of the Governing Agreements, a summary of the provisions of the Governing Agreements and full information concerning the contractual transfer restrictions applicable to the securities.
11. Prior to the adoption of the Plan, Non-Voting Shares were issued to Associates (or their RRSPs) under exemptions from the Prospectus and Registration Requirements or pursuant to the Previous Orders (as defined below), and Shares were issued to employees under exemptions from the Prospectus and Registration Requirements. In connection with such issuances Associates and employees were required to enter into certain agreements, substantially similar to the Governing Agreements, which imposed restrictions on the transferability of their securities.
12. On January 14, 2000, prior to the Company's initial public offering of Shares (the "IPO"), an MRRS Decision Document was issued by the Alberta Securities Commission on behalf of all Decision Makers (the "First Order") granting relief to the Company (a) except in Ontario, from the Prospectus and Registration Requirements with respect to a one time distribution of Non-Voting Shares to Associates (or to their RRSPs), and (b) from the Issuer Bid

2002 BCSECCOM 668

Requirement with respect to any repurchases by the Company of Non-Voting Shares from Associates (or their RRSPs), provided that at the time of the repurchase there was no published market for the Non-Voting Shares.

13. On March 14, 2001, prior to the Company's IPO, an MRRS Decision Document was issued by the Alberta Securities Commission on behalf of all Decision Makers (the "Second Order" and, together with the First Order, the "Previous Orders") granting relief to the Company, from time to time, (a) from the Prospectus and Registration Requirements with respect to the distribution of Non-Voting Shares to Associates (or to their RRSPs), and (b) from the Issuer Bid Requirement with respect to any repurchases by the Company of Non-Voting Shares from Associates (or their RRSPs), provided that at the time of the repurchase there was no published market for the Non-Voting Shares.
14. On November 12, 2001, Shoppers filed a prospectus in connection with the IPO and its Shares became listed for trading on The Toronto Stock Exchange on November 21, 2001, the date of closing.
15. Pursuant to provisions in the articles of the Company, on the closing of the IPO, all of the Non-Voting Shares were automatically converted into Shares.
16. The Predecessor Plans were repealed on November 9, 2001 and replaced by the Plan. Following such date, no securities were issued or will be issued pursuant to such Predecessor Plans.
17. The participation of directors and employees of the Company and Associates in any distribution of securities pursuant to the Plan will be voluntary. No such person will be induced, directly or indirectly, to purchase securities by expectation of maintaining or continuing their status with the Company or as an Associate.
18. Currently, there are Associates resident in each of the Jurisdictions except Nunavut.
19. As Associates are not employees of the Company, no exemption from the Prospectus and Registration Requirements exists under the Legislation to allow the Company to issue securities to Associates.
20. By the terms of the Previous Orders, the Non-Voting Shares issued to Associates thereunder were subject to resale restrictions contained in the Legislation, where applicable. A first trade by Associates in the Shares issued to Associates on the automatic conversion of Non-Voting Shares into Shares

2002 BCSECCOM 668

on the closing of the IPO may be subject to the resale restrictions in the Legislation, where applicable.

21. There have been no trades of Shares issued by the Company to Associates (or their RRSPs) as of the date hereof, except for trades made to the Company as described below or trades made pursuant to a prospectus filed under the Legislation in the Jurisdictions.
22. The issuer bid relief granted under the Previous Orders in respect of repurchases by the Company of Non-Voting Shares issued to Associates (and their RRSPs) is no longer available because the Non-Voting Shares have been converted into Shares and there is a published market for the Shares.
23. The Company may, or may be required to, repurchase securities issued to Associates (or their RRSP's) under the Plan or prior to the adoption of the Plan upon the terms set out in the applicable Governing Agreements on the occurrence of certain events, including termination of an Associate's licensing agreement, or death or disability of the security holder. In addition, the applicable Governing Agreements permit the Company and the security holder to enter into a negotiated settlement with respect to such repurchases of securities. Any repurchase by the Company of the securities will constitute an issuer bid under the Legislation. The exemption from the Issuer Bid Requirement under the Legislation may not be available with respect to such repurchases.
24. As of the date hereof, there have been no repurchases by the Company of (a) securities issued under the Plan, or (b) Shares issued to Associates (or their RRSPs) under exemptions from the Prospectus and Registration Requirements or pursuant to the Previous Orders, except for purchases made pursuant to an exemption to the Issuer Bid Requirements under the Legislation, since the Company became a reporting issuer.

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 and Registration Requirements shall not apply to the distribution, from time to time, by the Company of securities under the Plan to Associates or to RRSPs of which an Associate is the beneficiary provided that:

2002 BCSECCOM 668

- (a) except in Québec, the first trade of securities acquired pursuant to this Decision will be a distribution or a primary distribution to the public, unless the conditions in subsection 2.6(3), 2.6(4) or 2.6(5) of Multilateral Instrument 45-102 are satisfied;
- (b) in Québec, a French-language offering notice which describes in detail the operation of the Plan must be furnished to Associates; and
- (c) in Québec, the alienation of the securities acquired pursuant to this Decision is a distribution and cannot take place without a prospectus unless Shoppers is and has been a reporting issuer in Québec and has complied with the applicable requirements for the twelve months immediately preceding the alienation;

AND THE FURTHER DECISION of the Decision Makers under the Legislation is that:

- (a) except in Québec, the Prospectus Requirement shall not apply to the first trades by current and former Associates of Shares acquired upon the conversion of Non-Voting Shares previously acquired under exemptions from the Prospectus and Registration Requirements or pursuant to the Previous Orders, provided that the conditions contained in subsection 2.6(3), 2.6(4) or 2.6(5) of Multilateral Instrument 45-102 are satisfied;
- (b) in Québec, the alienation by current and former Associates and employees of the Company of (i) Shares acquired upon the conversion of Non-Voting Shares previously acquired under exemptions from Prospectus and Registration Requirements, in the case of current and former Associates, and (ii) Shares acquired at or after the time of the acquisition of the Shoppers Drug Mart/Pharmaprix business and directly or indirectly pursuant to the Predecessor Plans in the case of current and former employees, cannot take place without a prospectus or a prospectus exemption prior to the expiry of a 12-month period following the initial distribution of the securities, except between the holder of the securities and his or her associates, provided, in the latter case, that the Commission is advised five days prior to the distribution. After the 12-month period, the alienation may take place without a prospectus or a prospectus exemption provided that the issuer is a reporting issuer. Furthermore, if the seller is an insider, the reporting issuer must have complied with the applicable disclosure requirements during the 12 months preceding the alienation.

2002 BCSECCOM 668

AND THE FURTHER DECISION of the Decision Maker in Ontario under the Legislation in Ontario is that the Prospectus Requirement shall not apply to the first trades in Ontario by current and former employees of the Company of Shares acquired under the Plan or the Predecessor Plans provided that the conditions contained in subsection 2.6(3), 2.6(4) or 2.6(5) of Multilateral Instrument 45-102 are satisfied;

AND THE FURTHER DECISION of the Decision Makers under the Legislation is that paragraph 6.2 of the First Order and paragraph 6.2 of the Second Order are rescinded as of the date hereof;

AND THE FURTHER DECISION of the Decision Makers under the Legislation is that the Issuer Bid Requirement shall not apply to any repurchase by the Company of securities issued (a) under the Plan to current and former Associates (or their RRSPs), or (b) to current or former Associates (or their RRSPs) under exemptions from the Prospectus and Registration Requirements or pursuant to the Previous Orders, provided that:

- (a) the value of the consideration paid for the securities acquired does not exceed the market price (as determined pursuant to the applicable Legislation, where defined) of the securities at the date of the acquisition; and
- (b) the aggregate number of securities acquired by the Company within a period of twelve months does not exceed 5% of the securities that are issued and outstanding at the commencement of the period.

DATED July 12, 2002.

Robert L. Shirriff
H. Lorne Morphy