2005 BCSECCOM 709

November 18, 2005

Headnote
Mutual Reliance Review System for Exemptive Relief Applications - *Securities Act*, sections 48, 76 and 84 registration and prospectus requirements - Registration relief - A lender under an equity line of credit wants relief from the requirement to register as an underwriter - The lender will not solicit any offers to purchase the securities it acquires from the issuer and will resell any securities through an exchange, using a registered dealer unaffiliated with the issuer or the lender

Prospectus relief - An issuer and a lender under an equity line of credit want relief from the requirements to include an underwriter's certificate in the prospectus and provide statutory rights against the lender to purchasers from the lender in the secondary market - The lender also wants relief from the requirement to deliver the prospectus to purchasers in the secondary market - The issuer will provide statutory rights to first purchasers of its securities from the lender; the issuer will publicly disclose the first purchasers' rights and direct first purchasers to the prospectus on SEDAR

Applicable British Columbia Provisions
Securities Act, R.S.B.C. 1996, c. 418, ss. 48, 76 and 84

In the Matter of
the Securities Legislation
of Alberta, British Columbia, Nova Scotia and Ontario (the Jurisdictions)

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of MedMira Inc. (MedMira) and
Cornell Capital Partners, LP
(Cornell, and collectively with MedMira, the Filer)

MRRS Decision Document

Background
The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that in connection

with the distribution of MedMira Shares (as hereinafter defined) by MedMira under the Prospectus (as hereinafter defined) through Cornell, as underwriter, pursuant to a proposed equity line arrangement between Cornell and MedMira (the Equity Line):

(a) the requirements of the Legislation requiring Cornell to be registered as a dealer and its officers, directors and certain of its employees to be registered as officers, directors or salespersons of a registered dealer in connection with acting as an underwriter on the Equity Line (the Registration Requirements) do not apply to Cornell and its officers, directors and employees; and

(b) the requirements of the Legislation, in particular:

(i) those requiring MedMira to include and Cornell to execute a certificate as part of the Prospectus do not apply to MedMira or Cornell, as the case may be;

(ii) those requiring Cornell to send or deliver to a First Purchaser (as hereinafter defined) the Prospectus, as amended, within two business days of a sale do not apply to Cornell;

(iii) those granting First Purchasers the statutory right to withdraw from a purchase of MedMira Shares resold by Cornell within two business days after receipt by the First Purchaser of the Prospectus, as amended, do not apply;

(iv) those granting First Purchasers the statutory right to elect to rescind a purchase of MedMira Shares resold by Cornell if the Prospectus, as amended, contains a misrepresentation do not apply to Cornell; and

(v) those requiring that Cornell have statutory liability to First Purchasers do not apply, but MedMira will have statutory liability to First Purchasers of MedMira Shares from Cornell within 40 days from each Settlement Date (as hereinafter defined), on the modified basis as provided herein,

(such requirements, the Prospectus Requirements and the relief in paragraphs (a) and (b) above, the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

(a) the Nova Scotia Securities Commission is the principal regulator for this application, and

(b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation
Defined terms contained in National Instrument 14-101 Definitions have the same meaning in this decision unless they are defined in this decision.

Representations
This decision is based on the following facts represented by the Filer:

1. Cornell is an exempted limited partnership and is resident in Delaware, United States. The head office of Cornell is located at 101 Hudson Street, Suite 3700, Jersey City, New Jersey USA 07302;

2. Cornell is not a reporting issuer (or its equivalent) under the securities legislation of any province or territory of Canada or in any other jurisdiction. Cornell is not registered under the securities legislation of any province or territory of Canada or in any other jurisdiction as a dealer, advisor or underwriter (or their equivalents) and is not a participating organization, approved participant or member, as the case may be, of any stock exchange, over-the-counter market or securities regulatory authority. None of Cornell or any of its affiliated entities (collectively, the Cornell Group) are registered under U.S. Securities and Exchange Rules;

3. Cornell is an accredited investor as defined in National Instrument 45-106;

4. MedMira is a corporation governed by the Business Corporations Act (Alberta) having its registered office in Calgary, Alberta and its head office in Halifax, Nova Scotia. MedMira is a reporting issuer not in default under the securities legislation of British Columbia, Alberta, Ontario and Nova Scotia. MedMira is not currently subject to the reporting requirements of the United States Securities Exchange Act of 1934, as amended. As at September 6, 2005, there were 43,376,886 common shares in the capital of MedMira (MedMira Shares) issued and outstanding. The outstanding MedMira Shares are listed and posted for trading on the TSX Venture Exchange (the TSX-V) under the symbol MIR;

5. Cornell and MedMira have entered into a subscription agreement (the Subscription Agreement) pursuant to the terms of which, subject to the Subscription Agreement becoming effective, MedMira has the right, from

time to time, to require Cornell to purchase from treasury a certain number of MedMira Shares, the principal terms of which will be as follows:

(a) the maximum number of MedMira Shares that may be issued pursuant to the Subscription Agreement will be that number equal to up to 10% of the issued and outstanding MedMira Shares, as at the last trading day of the preceding 12 month period, during each subsequent 12 month period of the subscription commitment; provided that no additional MedMira Shares may be issued during the Term (as hereinafter defined) if Cdn$10 million aggregate gross proceeds have been realized by MedMira in respect of prior issuances of MedMira Shares pursuant to Draw Downs (as hereinafter defined);

(b) for a period of 60 months (the Term), MedMira will be entitled, in its sole discretion, to complete draw downs (each a Draw Down) by serving a draw down notice (a Draw Down Notice) on Cornell pursuant to which Cornell will be required to subscribe for and purchase (subject to a minimum and maximum and certain adjustments and conditions for the benefit of Cornell) that number of MedMira Shares as is equal to the dollar amount set forth in the Draw Down Notice (the Draw Down Amount);

(c) the Draw Down Amount for a Draw Down will be allocated pro rata over a set number of consecutive trading days (the Period) beginning on the date selected in the Draw Down Notice;

(d) the applicable purchase price (the Purchase Price) to be paid by Cornell is the higher of: (i) the volume weighted average price of MedMira Shares for each trading day during the Period, less a discount as agreed to by Cornell and MedMira (as adjusted pursuant to the terms of the Subscription Agreement); and (ii) the Minimum Price (as hereinafter defined). The number of MedMira Shares purchased by Cornell on each trading day during the Period will be equal to the pro rata Draw Down Amount allocated to such trading day divided by the Purchase Price;

(e) the purchase and sale with respect to each Draw Down will be completed on a settlement date (each, a Settlement Date);

(f) MedMira will set a minimum price (the Minimum Price) with respect to each Draw Down as set out in the Subscription Agreement;

(g) immediately upon issuance of a Draw Down Notice, MedMira will forthwith issue a press release (i) disclosing that a Draw Down Notice has been delivered; (ii) stating that the Prospectus relating to the Draw Down has been or will be filed and is or will be available on SEDAR; and (iii) stating that the First Purchasers of MedMira Shares under the Prospectus prior to the expiration of the date that is 40 days from the respective Settlement Dates of Cornell's purchases of MedMira Shares pursuant to the applicable Draw Down have the statutory rights of rescission or damages described in the Prospectus;

(h) immediately following the closing of a Draw Down, MedMira will forthwith issue a press release (i) announcing the settlement of a Draw Down under the Subscription Agreement; (ii) stating that pursuant to a decision granted by the Decision Makers the Prospectus is not required to be delivered and confirming availability of the Prospectus on SEDAR; (iii) stating that the First Purchasers of MedMira Shares under the Prospectus have the statutory rights of rescission or damages described in the Prospectus; and (iv) stating that the distribution period ends no later than the date that is the 40th day after the settlement of the Draw Down disclosed in the Prospectus;

(i) a copy of the Draw Down Notice will be filed by MedMira with the Market Surveillance department of the TSX-V, and if requested to do so, with the Decision Makers, prior to or immediately upon delivery of each Draw Down Notice; and

(j) immediately upon the Subscription Agreement becoming effective, MedMira will pay to Cornell an expense reimbursement for legal, administrative and due diligence fees and expenses incurred by Cornell in connection with the Equity Line;

6. MedMira has issued a press release disclosing the terms of the Subscription Agreement and has filed the Subscription Agreement on SEDAR. The Subscription Agreement as filed includes the maximum value, the Purchase Price and the Minimum Price of the MedMira Shares that may be distributed under the Subscription Agreement;

7. the Subscription Agreement provides that MedMira will not issue or make subject to issuance any MedMira Shares issued or made issuable as a result of a Draw Down Notice having been delivered by it to Cornell, if as a result of such issuance or proposed issuance, the aggregate number of MedMira Shares issued or made issuable in accordance with all Draw Down Notices delivered in any 12 month period exceeds 10% of the MedMira Shares

issued and outstanding at the beginning of any such 12 month period. The Subscription Agreement further provides that MedMira and Cornell will not amend the foregoing covenant without the prior written consent of the Decision Makers;

8. Cornell has covenanted in the Subscription Agreement that neither it nor any member of Cornell Group will, during the Term, hold a short position of MedMira Shares. For the purposes of determining the net position of MedMira Shares held by Cornell and its affiliates, on each trading day during a Period, the Subscription Agreement provides that Cornell will be deemed to own the MedMira Shares which Cornell is required to purchase for that day pursuant to the applicable Draw Down Notice, irrespective of whether Cornell has received delivery of such MedMira Shares;

9. Cornell will undertake to the TSX-V to provide the TSX-V with the details in respect of the trading and hedging activities of the Cornell Group relating to the MedMira Shares during the applicable Period, within 5 trading days following the end of each Period, including, for each trading day in the Period, the number of securities purchased or sold and the purchase or sale price therefor on such day. Cornell will also undertake to provide such information to the Decision Makers, upon the request of staff of any of the securities commissions in the Jurisdictions;

10. the MedMira Shares to be issued during the first 12 months pursuant to Draw Downs will be qualified by filing a (final) long-form prospectus (the First Prospectus) with the Decision Makers. Immediately following issuance of all receipts for the First Prospectus, the obligations of Cornell under the Subscription Agreement will become unconditional. After the end of the first 12 month period, and after the end of each succeeding 12 month period, if additional Draw Downs may be made pursuant to the Subscription Agreement, the MedMira Shares to be issued pursuant to such Draw Downs will be qualified by filing a further (final) long-form prospectus (each, a Subsequent Prospectus) with the Decision Makers (the First Prospectus and each Subsequent Prospectus are collectively referred to as the Prospectus);

11. on or prior to each Settlement Date, MedMira will, if required by the Legislation, file an amended and restated Prospectus such that the Prospectus is current at such date. Subsequent references to the Prospectus will include an amended and restated Prospectus;

12. if Cornell, within 40 days of a Settlement Date,

(a) resells any of the MedMira Shares acquired by it pursuant to a Draw Down through the TSX-V or otherwise into the secondary market in Canada, or

(b) directly or indirectly, hedges the investment risk associated with the acquisition of any of the MedMira Shares by means of short sales or similar strategies involving the sale of MedMira Shares (or securities convertible into, exchangeable for or economically equivalent to MedMira Shares) through the TSX-V or otherwise into the secondary market in Canada,

MedMira will recognize such transactions as being in the course of or incidental to a distribution, will recognize the first purchasers thereof (the First Purchasers) as having purchased pursuant to such distribution and will provide each First Purchaser with constructive delivery of the Prospectus;

13. in the event there is a misrepresentation in the Prospectus, each First Purchaser will be entitled to the statutory rights of rescission or damages pursuant to the Legislation, which rights shall be described in the Prospectus;

14. MedMira will file the Prospectus and each amendment thereto if required under the Legislation in accordance with National Instrument 13-101 - System for Electronic Document Analysis and Retrieval (SEDAR), and, immediately after receiving all receipts therefor: (a) MedMira will issue a press release outlining the special arrangements regarding the rights of a First Purchaser as set forth above; (b) Cornell will send a letter to each First Purchaser or its broker (for and on behalf of the First Purchaser) advising it that it is in fact a First Purchaser or is acting on behalf of a First Purchaser and as such has certain rights as set forth above and directing the First Purchaser to the SEDAR website at www.sedar.com where it may obtain a copy of the Prospectus;

15. Cornell may be considered to be acting as an “underwriter” as defined in the Legislation, and a Draw Down under the Equity Line may be considered to be an indirect distribution of securities by MedMira to First Purchasers of the securities directly from Cornell through the TSX-V with Cornell acting as the underwriter of the distribution.

16. Cornell would therefore be subject to the Registration Requirements and is seeking an exemption from those requirements.

17. Cornell is also seeking an exemption from the Prospectus Requirements on behalf of itself and dealers through whom it sells the MedMira Shares because the First Purchasers of the MedMira Shares from Cornell through the TSX-V will not be readily identifiable.

Decision
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 Requested Relief is granted provided that:

1. the number of MedMira Shares distributed by MedMira under one or more equity lines, including the Equity Line pursuant to the Subscription Agreement, in any 12 month period does not exceed 10% of the number of MedMira Shares issued and outstanding as at the start of such period;

2. MedMira provides a copy of each Draw Down Notice to the TSX-V, and, if requested to do so, the Decision Makers, prior to or immediately upon its issuance;

3. immediately upon issuance of a Draw Down Notice, MedMira forthwith issues a press release (i) disclosing that a Draw Down Notice has been delivered; (ii) stating that the Prospectus relating to the Draw Down has been or will be filed and is or will be available on SEDAR; and (iii) stating that the First Purchasers of MedMira Shares under the Prospectus prior to the expiration of the date that is 40 days from the respective Settlement Dates of Cornell's purchases of MedMira Shares pursuant to the applicable Draw Down have the statutory rights of rescission or damages described in the Prospectus;

4. immediately following the closing of a Draw Down, MedMira forthwith issues a press release (i) announcing the settlement of a Draw Down under the Subscription Agreement; (ii) stating that pursuant to a decision granted by the Decision Makers the Prospectus is not required to be delivered and confirming availability of the Prospectus on SEDAR; (iii) stating that the First Purchasers of MedMira Shares under the Prospectus have the statutory rights of rescission or damages described in the Prospectus; and (iv) stating that the distribution period ends no later than the date that is the 40th day after the settlement of the Draw Down disclosed in the Prospectus;

5. Cornell does not solicit offers to purchase the MedMira Shares and effects all sales of MedMira Shares through the TSX-V using a dealer unaffiliated with Cornell and MedMira and registered under the applicable Legislation;

6. the commencement date of the Draw Down pricing period is no later than five trading days after the issuance of the Draw Down Notice;

7. Cornell agrees to make available to the Decision Makers, upon request, full particulars of its trading and hedging activities (and if relevant the trading and hedging activities of any other member of the Cornell Group) relating to securities of MedMira during the Term;

8. no extraordinary commission or consideration is paid by Cornell to a person or company in respect of the distribution of the MedMira Shares; and

9. MedMira issues a press release immediately upon the adjustment, if any, of the Minimum Price, disclosing the revised Minimum Price.

H. Leslie O'Brien
Chairman
Nova Scotia Securities Commission

R. Daren Baxter
Vice-Chairman
Nova Scotia Securities Commission