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Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief granted from the requirements to include historical financial information in an information circular regarding a significant probable acquisition

Applicable British Columbia Provisions

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

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, ONTARIO, QUÉBEC, NOVA SCOTIA, NEWFOUNDLAND AND LABRADOR

AND

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

AND

IN THE MATTER OF ALLSTREAM INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Ontario, Québec, Nova Scotia and Newfoundland and Labrador (the “Jurisdictions”) has received an application from Allstream Inc. (“Allstream”), for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirements contained in the Legislation to provide historical financial statements of issuers in information circulars (the “Historical Financial Statements Disclosure Requirements”) shall not apply to the incorporation by reference of certain historical financial statements of Allstream in the management information circular of Allstream (the “Circular”) to be delivered in connection with the meeting (the “Meeting”) of securityholders of Allstream to be held on May 12, 2004 to consider the acquisition (the “Acquisition”) of Allstream by Manitoba Telecom Services Inc. (“MTS”);

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;

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AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or in Agence nationale d'encadrement du secteur financier Notice 14-101;

AND WHEREAS Allstream has represented to the Decision Makers that:

1. The head and registered office for Allstream is located in Toronto, Ontario.
2. Allstream's authorized capital consists of an unlimited number of Class A voting shares (the "Class A Shares") and an unlimited number of Class B limited voting shares (the "Class B Shares"), of which 685,082 Class A Shares and 19,139,997 Class B Shares were outstanding on March 26, 2004. The Class A Shares and the Class B Shares (collectively, the "Allstream Shares") trade on the Toronto Stock Exchange (the "TSX") and the Nasdaq National Market System.
3. Allstream is a reporting issuer, or the equivalent, in each of the Jurisdictions and is not in default of its obligations as a reporting issuer. Allstream has filed a current Annual Information Form for the purposes of National Instrument 44-101 – Prospectus Disclosure Requirements of the Canadian Securities Administrators ("NI 44-101").
4. On October 15, 2002, AT&T Canada Inc., the predecessor to the business of Allstream (the "Predecessor"), and certain of its subsidiaries (collectively, the "AT&T Canada Companies"), filed an application for creditor protection under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA") with the Superior Court of Justice (Ontario) and obtained an order from the Bankruptcy Court in the Southern District of New York under Section 304 of the U.S. Bankruptcy Code to recognize the CCAA proceedings in the United States (the "CCAA Proceedings").
5. As part of the CCAA Proceedings, the Predecessor formulated a consolidated Plan of Arrangement and Reorganization (the "CCAA Plan"). The purpose of the CCAA Plan was to restructure the balance sheet and equity of the AT&T Canada Companies, provide for the compromise, settlement and payment of liabilities of certain creditors of the AT&T Canada Companies, simplify the operating corporate structure of the AT&T Canada Companies and create a new entity, New AT&T Canada Inc. (now Allstream).
6. The Predecessor implemented the CCAA Plan and emerged from creditor protection under the CCAA on April 1, 2003. On June 18, 2003, New AT&T Canada Inc. changed its name to Allstream Inc.

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7. As a result of the implementation of the CCAA Plan, the Predecessor became a wholly-owned subsidiary of Allstream.
8. MTS is the successor to The Manitoba Telephone System, a Crown corporation incorporated by special statute of the Province of Manitoba on April 28, 1933. On January 7, 1997, MTS was reorganized and continued as a share capital corporation pursuant to *The Manitoba Telephone System Reorganization and Consequential Amendments Act*. MTS subsequently was continued as a corporation under the *Corporations Act* (Manitoba) ("MCA") pursuant to a Certificate and Articles of Continuance dated April 5, 2000. MTS's articles, as amended, were restated by a Certificate and Restated Articles of Incorporation dated May 15, 2001.
9. MTS is a reporting issuer, or the equivalent, in each of the provinces of Canada and is not in default of its obligations as a reporting issuer. MTS's common shares are listed on the TSX.
10. The Acquisition is proposed to be effected by way of a plan of arrangement (the "Arrangement") under section 192 of the *Canada Business Corporations Act* ("CBCA"), involving Allstream, its shareholders and MTS, pursuant to which MTS will become the owner of all of the outstanding Allstream Shares.
11. Under the Arrangement, each Allstream Share (other than those Allstream Shares held by MTS or its subsidiaries or held by a shareholder of Allstream who properly exercises his, her or its right of dissent from the terms of the Arrangement) will be transferred to MTS in exchange for (i) cash and (ii) either common shares of MTS or preference shares of MTS.
12. Allstream has received, pursuant to the CBCA, an interim order dated April 8, 2004 (the "Interim Order") of the Superior Court of Justice (Ontario) setting out certain procedural requirements relating to the approval of the Arrangement by the holders of Allstream Shares ("Allstream Shareholders"). Pursuant to the Interim Order, the Arrangement will require approval by a majority of not less than 66 2/3% of the votes cast by all holders of Allstream Shares voting together as a single class.
13. The Circular will be furnished to Allstream Shareholders in connection with the solicitation of proxies by and on behalf of the management of Allstream. In accordance with the Historical Financial Statements Disclosure Requirements, the Circular is required to include the disclosure (including financial statements disclosure) for MTS prescribed by the form of prospectus MTS would be eligible to use if the Circular were a prospectus of MTS, which in this case would be a short form prospectus under NI 44-101.

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14. The Acquisition will represent a “significant probable acquisition” for MTS, having a level of significance of 50% or greater. Subject to the relief granted herein, the Circular will contain prospectus-level disclosure of the business and affairs of Allstream and MTS, and of the particulars of the Acquisition and the Arrangement.
15. Pursuant to the Historical Financial Statements Disclosure Requirements, Allstream is required to incorporate by reference in the Circular: (i) statements of income, retained earnings and cash flows for each of its three most recently completed financial years ended more than 90 days before the date of the Circular; and (ii) a balance sheet as at the date on which each of its two most recently completed financial years ended more than 90 days before the date of the Circular.
16. Allstream would be required to incorporate by reference in the Circular: (i) audited consolidated statements of income, retained earnings and cash flows for the years ended December 31, 2003, 2002 and 2001; and (ii) audited consolidated balance sheets as at December 31, 2003 and 2002. However, this information is not available in respect of Allstream as it did not exist in 2002 and only became a reporting issuer on the implementation date of the CCAA Plan on April 1, 2003.
17. As Allstream was created as part of the CCAA Proceedings, Allstream’s operating history only began shortly before the implementation date of the CCAA Plan. However, as the Predecessor is a wholly-owned subsidiary of Allstream, its assets and liabilities on the implementation date of the CCAA Plan were indirectly also assets and liabilities of Allstream. Accordingly, the audited consolidated financial statements of the Predecessor, as at and for the two years ended December 31, 2002, and the unaudited consolidated financial statements of the Predecessor for the three months ended March 31, 2003 (collectively, the “Available Statements”), are the only financial statements available in respect of the business and assets of Allstream for such periods.
18. Pursuant to the CCAA Plan, there was a substantial realignment in the equity interests and capital structure of the Predecessor. The reorganization and opening balance sheet of Allstream as at April 1, 2003 were accounted for under the provisions of The Canadian Institute of Chartered Accountants’ Handbook Section 1625, Comprehensive Revaluation of Assets and Liabilities (“fresh start accounting”). Due to the significant changes in the financial structure of Allstream and the application of fresh start accounting, the consolidated financial statements of Allstream subsequent to the CCAA Plan implementation are not directly comparable with the Available Statements.

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19. While the Available Statements are not directly comparable to the consolidated financial statements of Allstream, they do provide certain relevant information relating to the business, assets and operations of Allstream in respect of such periods in that they apply to the Predecessor which in a wholly-owned subsidiary of Allstream and carried on the business of Allstream prior to the implementation date of the CCAA plan. Further, the Available Statements are the only statements available in respect of the periods covered thereby.
20. The Circular discloses that the Available Statements are not directly comparable to the consolidated financial statements of Allstream.

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 Allstream is exempt from the Historical Financial Statements Disclosure Requirements with respect to the Circular, provided that:

- (i) Allstream incorporates by reference in the Circular:
 - (a) the audited consolidated financial statements of Allstream for the period from April 1, 2003 to December 31, 2003;
 - (b) the unaudited consolidated financial statements of the Predecessor for the three months ended March 31, 2003;
 - (c) the audited consolidated financial statements of the Predecessor as at and for the two years ended December 31, 2002 (excluding the Predecessor’s balance sheet as at December 31, 2001); and
 - (d) in lieu of information in respect of Allstream, the description of the business, financial information and management’s discussion and analysis of financial condition and results of operation in respect of the Predecessor for periods pre-dating the implementation date of the CCAA Plan to the extent that such information would otherwise be required by NI 44-101 in respect of the Predecessor;

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(collectively, the “Incorporated Information”)

and

(ii) the Circular includes a statement that the Incorporated Information is available to Allstream Shareholders upon request and without charge.

Dated this 12th day of May, 2004.

Ralph Shay
Director, Take-over/Issuer Bids, Mergers & Acquisitions