

## 2003 BCSECCOM 56

### Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from the registration and prospectus requirements for trades or distributions in securities under incentive plans – first trade relief, including registration relief for trades by permitted transferees, subject to certain conditions – relief from issuer bid requirements for acquisitions under incentive plans

### Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61, 76, 105-108, 110, 114  
*Multilateral Instrument 45-102 Resale of Securities*, s. 2.14(1)

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, NEW BRUNSWICK AND NOVA SCOTIA

AND

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

AND

IN THE MATTER OF SOLECTRON CORPORATION

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick and Nova Scotia (the “Jurisdictions”) has received an application from Solectron Corporation (“Solectron”) for a decision pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that:

- (i) the requirement contained in the Legislation to be registered to trade in a security (the “Registration Requirement”) and the requirement to file a prospectus and obtain a receipt therefor (the “Prospectus Requirement”) (the Registration Requirement and the Prospectus Requirement are, collectively, the “Registration and Prospectus Requirements”) will not apply to certain trades in securities of Solectron made in connection with Solectron’s 2002 Stock Plan (the “SOP”) and Employee Stock Purchase Plan for Non-U.S. Employees (the “ESPP”) (the SOP and the ESPP are, collectively, the “Plans”);

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- (ii) the Registration and Prospectus Requirements will not apply to first trades of Shares (as defined below) acquired under the Plans provided that the conditions in subsection 2.14(1) of Multilateral Instrument 45-102 - *Resale of Securities*, other than the requirements of paragraph 2.14(1)(a), are satisfied; and
- (iii) the requirements contained in the Legislation relating to the delivery of an offer and issuer bid circular and any notices of change or variation thereto, minimum deposit periods and withdrawal rights, take-up and payment for securities tendered to an issuer bid, disclosure, restrictions upon purchases of securities, financing, identical consideration, collateral benefits, together with the requirement to file a reporting form within ten (10) days of an exempt issuer bid and pay a related fee (the "Issuer Bid Requirements") will not apply to certain acquisitions by Soletron of Shares pursuant to the Plans in each of the Jurisdictions;

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

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 – *Definitions*, or in Québec, Commission Notice 14-101;

AND WHEREAS Soletron has represented to the Decision Makers as follows:

1. Soletron is a corporation in good standing incorporated under the laws of the State of Delaware;
2. Soletron and affiliates of Soletron (the "Soletron Affiliates") (Soletron and the Soletron Affiliates are, collectively, the "Soletron Companies") are providers of electronics manufacturing and supply-chain management services;
3. Soletron is registered with the SEC in the U.S. under the U.S. Securities Exchange Act of 1934 (the "Exchange Act") and is not exempt from the reporting requirements of the Exchange Act;
4. Soletron, C-MAC Industries Inc. ("C-MAC") and 3924548 Canada Inc. entered into a combination agreement dated August 8, 2001, as amended on September 7, 2001, among Soletron, 3942163 Canada Inc., 3924548 Canada Inc. and C-MAC providing for the combination of Soletron and C-MAC to be effected by way of an arrangement under section 192 of the *Canada Business*

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*Corporations Act* (the “C-MAC Transaction”). The completion of the C-MAC Transaction was announced on December 3, 2001;

5. As a result of the C-MAC Transaction, Soletron became a reporting issuer in British Columbia, Saskatchewan and Quebec on December 3, 2001 and has remained a reporting issuer in British Columbia, Saskatchewan and Quebec since that date. Soletron is not a reporting issuer in any of the other Jurisdictions and has no present intention of becoming a reporting issuer in any of the other Jurisdictions;

6. The authorized share capital of Soletron consists of 1,600,000,000 shares of common stock (“Shares”), and 1,200,000 shares of preferred stock (“Preferred Shares”). As of July 16, 2002, there were 823,868,744 Shares and 1 Preferred Share issued and outstanding;

7. The Shares are listed for trading on the New York Stock Exchange (the “NYSE”) under the ticker symbol ‘SLR’;

8. Under the SOP, options on Shares (“Options”) (Shares and Options are, collectively, “Awards”) may be issued to employees (“Employees”), non-employee directors (“Directors”) and consultants (“Consultants”) (Employees, Directors and Consultants are, collectively, “Participants”) of the Soletron Companies;

9. Under the ESPP, Employees are offered an opportunity to purchase Shares by means of applying accumulated payroll deductions at a discounted price determined in accordance with the terms of the ESPP;

10. The purpose of the SOP is to attract and retain the best available personnel for positions of substantial responsibility, to provide additional incentive to service providers, and to promote the success of Soletron's business;

11. The purpose of the ESPP is to provide Employees of the Soletron Companies outside the United States with an opportunity to purchase Shares through accumulated payroll deductions;

12. Soletron uses the services of agents/brokers (the “Agent(s)”) in connection with the operation of the Plans. Salomon Smith Barney Inc. (“SSB”) has been appointed as an Agent under the Plans. SSB is not registered to conduct retail trades in securities in any of the Jurisdictions. SSB is registered to conduct retail trades under applicable U.S. securities or banking legislation. Any other Agent appointed in addition to, or in replacement of, SSB will be registered to conduct retail trades in the Jurisdictions or a corporation registered to conduct retail trades

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under applicable U.S. securities or banking legislation and will be authorized by Soletron to provide services as an Agent under the Plans;

13. The role of the Agent may include (a) disseminating information and materials to Participants in connection with the Plans; (b) assisting with the administration of and general record keeping for the Plans; (c) holding Shares on behalf of Participants, Former Participants (as defined below) and Permitted Transferees (as defined below) in limited purpose brokerage accounts; (d) facilitating Option exercises (including cashless exercises or Stock Swap Exercises (as defined below)) under the Plans; (e) facilitating the payment of withholding taxes, if any, by cash or the tendering or withholding of Shares; (f) facilitating the reacquisition of Awards under the terms of the Plans; and (g) facilitating the resale of Shares issued in connection with the Plans;

14. Subject to adjustments as provided for in the ESPP and an increase made in accordance with U.S. law, the maximum number of Shares which shall be made available for sale under the ESPP is 19,200,000 Shares, less the number of Shares issued under Soletron's Employee Stock Purchase Plan for U.S. Employees;

15. Subject to adjustments as provided for in the SOP, and an increase made in accordance with U.S. law, the maximum number of Shares which shall be made available for sale under the SOP is 35,000,000 Shares plus (a) any Shares which have been reserved but not issued under the Soletron's 1992 Stock Option Plan (the "1992 Plan") as of the date of shareholder approval of the SOP and (b) any Shares returned to the 1992 Plan as a result of termination of Options or repurchase of Shares issued under the 1992 Plan;

16. All necessary securities filings have been made in the U.S. in order to offer the Plans to Participants resident in the U.S.;

17. As of May 31, 2002, there were 586 persons in Canada eligible to be granted Options under the SOP: 16 persons resident in British Columbia, 101 persons resident in Alberta, 373 persons resident in Ontario, 24 persons resident in Manitoba, 1 person resident in Saskatchewan, 10 persons resident in Nova Scotia and 61 persons resident in Quebec. There were 5333 persons in Canada eligible to participate in the ESPP: 1011 persons resident in British Columbia, 347 persons resident in Alberta, 2904 persons resident in Ontario, 160 persons resident in Manitoba, 1 person resident in Saskatchewan, 871 persons resident in Nova Scotia, 1 person resident in New Brunswick and 61 persons resident in Quebec;

18. Employees who participate in the Plans will not be induced to purchase Shares or to exercise Options by expectation of employment or continued employment;

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19. Officers of the Soletron Companies who participate in the Plans will not be induced to purchase Shares or to exercise Options by expectation of appointment or employment or continued appointment or employment as an officer;

20. Consultants who participate in the SOP will not be induced to purchase shares or to exercise Options by expectation of the individual Consultant, the Consultant's company or the Consultant's partnership being engaged or continuing to be engaged as a Consultant;

21. The Plans are administered by a committee (the "Committee") appointed by the board of directors of Soletron (the "Board");

22. It is anticipated that Consultants (as used herein, "consultant" includes a "consultant company" as defined in the OSC Rule 45-503 - *Trades to Employees, Executives and Consultants*) who will be granted Options under the SOP, to the extent permitted, will: (a) provide on a *bona fide* basis technical, business, management or other services to the Soletron Companies (other than services relating to the sale of securities or promotional/investor relations services); (b) provide consulting services to the Soletron Companies under a written contract; (c) have a relationship with the Soletron Companies that will permit them to be knowledgeable about the business affairs of the Soletron Companies; and (d) will spend a significant amount of time and attention on the affairs and business of one or more of the Soletron Companies;

23. Share purchase rights issued under the ESPP are not transferable;

24. Unless determined otherwise by the Committee an Option granted under the SOP may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of intestacy and may be exercised, during the lifetime of the optionee, only by the optionee. If the Committee makes an Option transferable, such Option shall contain such additional terms and conditions as the Committee deems appropriate;

25. Following the termination of a Participant's relationship with the Soletron Companies for reasons of disability, retirement, termination, change of control or any other reason (such Participants are "Former Participants"), and where Awards have been transferred by will or pursuant to a beneficiary designation or the laws of intestacy or otherwise on the death of a Participant (beneficiaries of such Awards are "Permitted Transferees"), the Former Participants and Permitted Transferees will continue to have rights in respect of the Plans ("Post-Termination Rights");

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26. Post-Termination Rights may include, among other things, (a) the right to exercise Options for a period determined in accordance with the SOP; (b) the right to receive payment of accumulated payroll deductions in his or her account, without interest under the ESPP; and (c) the right to sell Shares acquired under the Plans through the Agent;

27. Post-Termination Rights will only be available if the Awards or rights to which they relate were granted to the Participant while the Participant was a Participant and no new Awards or rights will be granted to Former Participants under the Plans;

28. Among other payment methods, the SOP provides that payment for Shares acquired pursuant to the SOP may be made: (a) in cash; (b) by the surrender of Shares owned by the Participant to the Soletron for cancellation ("Stock-Swap Exercises") or to the Agent for resale; (c) by the retention of a number of Shares by Soletron from the total number of Shares into which the Option is exercised; or (d) by a combination of the foregoing;

29. Options may be forfeited by SOP Participants to the extent such Options are not exercised within the time period prescribed under the SOP or where the Participant's relationship with Soletron is terminated or where Options are cancelled on a merger or sale of assets or on the dissolution or liquidation of Soletron ("Option Cancellations");

30. Soletron shall have the right to deduct applicable taxes from any payment under the Plans by withholding, at the time of delivery or vesting of cash or Shares under the Plans, an appropriate amount of cash or Shares ("Share Withholding Exercises") (collectively, Share Withholding Exercises, Stock Swap Exercises and Option Cancellations are "Award Acquisitions") or a combination thereof for a payment of taxes required by law or to take such other action as may be necessary in the opinion of Soletron or the Committee to satisfy all obligations for the withholding of such taxes;

31. The annual reports, proxy materials and other materials Soletron is required to file with the SEC will be provided to Participants resident in Canada at the same time and in the same manner as the documents are provided or made available to U.S. Participants;

32. Shareholders resident in Canada do not own, directly or indirectly, more than 10% of the issued and outstanding Shares and do not represent in number more than 10% of the shareholders of Soletron.

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33. If at any time during the currency of the Plans shareholders resident in Canada hold, in aggregate, greater than 10% of the total number of issued and outstanding Shares or if such shareholders constitute more than 10% of all shareholders of Solectron, Solectron will apply to the relevant Jurisdiction for an order with respect to further trades to and by Participants, Former Participants and Permitted Transferees in that Jurisdiction in respect of Shares acquired under the Plans;

34. Participants, Former Participants or Permitted Transferees may exercise Options and sell Shares acquired under the Plans through an Agent;

35. Because there is no market for the Shares in Canada and none is expected to develop, any resale of the Shares acquired under the Plans will be effected through the facilities of, and in accordance with the rules and laws applicable to, a stock exchange or organized market outside of Canada on which the Shares may be listed or quoted for trading;

36. The Legislation of certain of the Jurisdictions does not contain exemptions from the Prospectus and Registration Requirements for Award exercises by Participants, Former Participants or Permitted Transferees through the Agent where the Agent is not a registrant;

37. Where the Agent sells Shares acquired under the Plans on behalf of Participants, Former Participants or Permitted Transferees, the Participants, Former Participants, Permitted Transferees or the Agent may not be able to rely on the exemptions from the Prospectus and Registration Requirements contained in the Legislation;

38. The acquisition by Solectron of Shares pursuant to the Award Acquisitions may be an issuer bid as defined in the Legislation. The exemptions in the Legislation from the Issuer Bid Requirements may not be available for these acquisitions by Solectron of its Shares from Participants, Former Participants or Permitted Transferees in accordance with the terms of the Plans, since these acquisitions may occur at a price that is not calculated in accordance with the "market price," as that term is defined in the Legislation and may be made from persons other than Participants or former Participants;

AND WHEREAS pursuant to the System, this 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;

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THE DECISION of the Decision Makers pursuant to the Legislation is that:

- (a) the Registration and Prospectus Requirements will not apply to certain trades or distributions of Awards made in connection with the Plans, including trades or distributions involving the Soletron Companies, the Agents, Participants, Former Participants, and Permitted Transferees, provided that the first trade in any securities acquired through the Plans pursuant to this Decision will be deemed a distribution, or a primary distribution to the public under the Legislation;
- (b) the first trade by Participants, Former Participants or Permitted Transferees in Shares acquired pursuant to this Decision, including first trades effected through the Agent, shall not be subject to the Registration and Prospectus Requirements, provided that the conditions in subsection 2.14(1) of Multilateral Instrument 45-102 - *Resale of Securities*, other than the requirements of paragraph 2.14(1)(a), are satisfied; and
- (c) the Issuer Bid Requirements shall not apply to the acquisition by Soletron of Shares from Participants, Former Participants or Permitted Transferees in connection with the Plans provided such acquisitions are made in accordance with the provisions of the Plans.

DATED November 8<sup>th</sup>, 2002.

Paul M. Moore

Harold P. Hands