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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – exemption from eligibility requirements under National Instrument 44-101 and National Instrument 44-102, where the aggregate market value of “stapled units” cannot be calculated under National Instrument 44-101 due to the unique structure of the security

Applicable British Columbia Provisions

National Instrument 44-101 - *Short Form Prospectus Distributions*, ss. 2.2(3), 2.9 15.1

National Instrument 44-102 - *Shelf Distributions*, ss. 2.1, 2.2(1), 2.2(3)(b)(ii), 11.1

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

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

AND IN THE MATTER OF TIMBERWEST FOREST CORP.

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, Newfoundland and Labrador, New Brunswick and Prince Edward Island (the “Jurisdictions”) has received an application from TimberWest Forest Corp. (“TimberWest”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that TimberWest is exempt from the requirements of:

- (a) subsection 2.2(3) of National Instrument 44-101 *Short Form Prospectus Distributions* (“44-101”) that the aggregate market value of its equity securities be \$75,000,000 or more on certain dates;
- (b) section 2.1 of National Instrument 44-102 *Shelf Distributions* (“44-102”) that it only file a short form prospectus that is a base shelf prospectus in certain circumstances; and
- (c) subsection 2.2(1) of 44-102 that it meet the qualification criteria under section 2.2 of 44-101 in order to qualify to file a preliminary short form prospectus that is a preliminary base shelf prospectus,

(collectively, the “Eligibility Requirements”)

so that it may participate in the prompt offering qualification system (the “POP System”) under 44-101;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”) the British Columbia Securities Commission is the principal regulator for this application;

AND WHEREAS TimberWest has represented to the Decision Makers that:

1. TimberWest was amalgamated under the *Company Act* (British Columbia);

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2. the authorized capital of TimberWest consists of 10,069,608,359 common shares (the "Common Shares"), 10,000,000,000 preferred shares (the "Preferred Shares"), 1,600,000 class A preferred shares and 5,000,000,000 class B preferred shares designated into series;
3. all preferred shares, other than the Preferred Shares, are held by wholly-owned subsidiaries of TimberWest;
4. TimberWest is a reporting issuer (or equivalent) in each of the Jurisdictions and is not in default of any requirement of the Legislation;
5. TimberWest has issued subordinated notes (the "Subordinated Notes") which are direct, unsecured junior subordinated obligations of TimberWest;
6. one Common Share, 100 Preferred Shares and one Subordinated Note receipt comprise a stapled unit of TimberWest (the "Stapled Unit");
7. as at November 26, 2001, there were 65,167,002 Stapled Units issued and outstanding and there are no Common Shares or Preferred Shares outstanding, other than those which comprise part of the Stapled Units;
8. the Stapled Units trade on The Toronto Stock Exchange and the closing price of the Stapled Units on November 26, 2001 was \$12.80;
9. holders of Stapled Units, are entitled:
 - (a) as holders of Common Shares comprising part of the Stapled Units, to vote at all meetings of shareholders of TimberWest, to receive rateably any dividends declared and to participate rateably in any distribution on liquidation, dissolution or winding up;
 - (b) as holders of Preferred Shares comprising part of the Stapled Units, to receive *pari pasu* with the holders of other classes of preferred shares of TimberWest, but in priority to the Common Shares, a return of capital on liquidation, dissolution or winding up; and
 - (c) as holders of Subordinated Note receipts to receive approximately \$8.98 in principal and \$1.08 of interest per annum per Subordinated Note receipt, except that no payment of principal may be made while senior indebtedness of TimberWest is outstanding;
10. it is also TimberWest's policy to make quarterly distributions to the holders of its Stapled Units in the form of interest on the Subordinated Note receipts, as a return of capital on the redemption of the Preferred Shares, or as dividends on the Common Shares or Preferred Shares;
11. the Common Share, Preferred Shares and Subordinated Note receipt comprising a Stapled Unit are transferable only with each other as part of the Stapled Unit until the earliest of the:
 - (a) maturity date of the Subordinated Notes;
 - (b) accelerated payment of the Subordinated Notes principal following an event of default; or
 - (c) amendments to remove the restrictions on the transfer of the Common Shares, Preferred Shares or Subordinated Notes, except as part of a Stapled Unit;
12. TimberWest has a current annual information form on file under 44-101 in each of the Jurisdictions;

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13. since TimberWest cannot calculate the market value of the Common Shares separate from the Stapled Units, it is unable to meet the Eligibility Requirements; and

14. TimberWest would like to access the capital markets under the POP System.

AND WHEREAS under the System this MRRS Decision Document evidences the decision (the "Decision") of each Decision Maker (collectively, the "Decision Makers");

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 TimberWest is exempt from the Eligibility Requirements in connection with the filing of a short form prospectus or a base shelf prospectus provided that:

1. the aggregate market value of TimberWest's Stapled Units, calculated in accordance with section 2.9 of 44-101, is at least \$75,000,000 on a date within 60 days before the date of the filing by TimberWest of a preliminary short form prospectus or preliminary base shelf prospectus;

2. TimberWest otherwise complies with all of the requirements and procedures set out in 44-101 and 44-102 except for the provision set out in section 2.2(3)(b)(ii) of 44-102;

3. and provided that a receipt issued for a base shelf prospectus in reliance on this Decision is effective until the earliest of:

(a) the date 25 months from the date of its issue;

(b) the time immediately before entering into of an agreement of purchase and sale for a security to be sold under the base shelf prospectus, if at that time

(i) TimberWest does not have a current AIF, or

(ii) the aggregate market value of TimberWest's Stapled Units, calculated in accordance with section 2.9 of 44-101, has not been \$75,000,000 or more on a date within 60 days before the date of the agreement; and

(c) the lapse date, if any, prescribed by the Legislation if relief has not been granted to TimberWest extending the lapse date for the distribution.

DATED January 16, 2002

Brenda Leong
Director