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Headnote

Mutual Reliance Review System for Exemptive Relief Application – dutch auction issuer bid – offeror exempt from requirement to take up and pay for securities proportionately according to number of securities deposited by each shareholder, the associated disclosure requirement – offeror also exempt from the valuation requirement on the basis that there is a liquid market for the securities

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 105(g), 108(7) and 114(2)(c)

Securities Rules, B.C. Reg. 194/97, ss. 162(2) and 162(3)

Form 62-903F, Item 9

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

AND

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

AND

IN THE MATTER OF THE DESCARTES SYSTEMS GROUP INC.

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 and Newfoundland and Labrador (collectively, the “Jurisdictions”) has received an application from The Descartes Systems Group Inc. (the “Corporation”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirements contained in the Legislation to:

- (i) take up and pay for securities proportionately according to the number of securities deposited by each shareholder (the “Proportionate Take Up and Payment Requirement”);
- (ii) provide disclosure in the issuer bid circular (the “Circular”) of such proportionate take up and payment (the “Associated Disclosure Requirement”); and

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- (iii) obtain a valuation of the Corporation's common shares (the "Shares") and provide disclosure in the Circular of such valuation, or a summary thereof (the "Valuation Requirement"),

shall not apply to the Corporation in connection with its proposed purchase of a portion of the Shares pursuant to a formal issuer bid (the "Proposed Issuer Bid");

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for the 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 the Corporation has represented to the Decision Makers that:

1. The Corporation was amalgamated under the *Business Corporations Act* (Ontario) on January 26, 1999.
2. The Corporation is authorized to issue an unlimited number of Shares. As of May 23, 2003, the Corporation had 52,231,711 Shares issued and outstanding.
3. The Corporation is a reporting issuer or the equivalent in each of the Jurisdictions, is not in default of any requirements of the Legislation and is not on the list of defaulting reporting issuers maintained pursuant to such Legislation, where applicable.
4. The Shares are listed and posted for trading on the Toronto Stock Exchange (the "TSX") under the trading symbol "DSG" and on the Nasdaq National Market ("Nasdaq") under the trading symbol "DSGX", and its Debentures are listed and posted for trading on the TSX under the trading symbol "DSG.DB.U".
5. The Corporation, or the Corporation indirectly through its wholly-owned subsidiary, proposes to purchase, for a period concurrent with the Proposed Issuer Bid, up to U.S.\$45,000,000 aggregate principal amount of its 5.50% Convertible Unsecured Subordinated Debentures due June 30, 2005 ("Debentures") at a purchase price of U.S.\$950 for each U.S.\$1,000 of principal amount of Debentures plus any accrued and unpaid interest.

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6. To the knowledge of the Corporation, the only holder of Shares that currently holds greater than 10% of the Shares is PRIMECAP Management Company, which owns 5,698,600 Shares as of May 16, 2003, representing approximately 10.9% of the issued and outstanding Shares.
7. The intention to make the Proposed Issuer Bid and certain anticipated details of the Proposed Issuer Bid were announced on May 12, 2003 (the “Announcement Date”).
8. The Proposed Issuer Bid will be made pursuant to a modified dutch auction procedure (the “Procedure”) as follows:
 - (a) the Circular specifies the maximum number of Shares that the Corporation intends to purchase under the Proposed Issuer Bid is 11,578,000 Shares (the “Specified Number”);
 - (b) the Circular also specifies a price range of \$3.00 to \$3.85 (the “Price Range”) within which the Corporation is prepared to purchase the Shares under the Proposed Issuer Bid;
 - (c) holders of Shares (collectively, the “Shareholders”) wishing to tender to the Proposed Issuer Bid may specify the lowest price within the Price Range at which they are willing to sell all or a portion of their Shares (an “Auction Tender”);
 - (d) Shareholders willing to tender to the Proposed Issuer Bid but who do not wish to make an Auction Tender may elect to tender such Shares at the purchase price (the “Clearing Price”) determined in accordance with paragraph 8(f) below (a “Purchase Price Tender”);
 - (e) all Shares tendered and not withdrawn by Shareholders who fail to specify any tender price for such tendered Shares and fail to indicate that they have tendered such Shares pursuant to a Purchase Price Tender will be deemed to have been tendered pursuant to a Purchase Price Tender;
 - (f) the Clearing Price of the Shares tendered to the Proposed Issuer Bid will be the lowest price that will enable the Corporation to purchase the Specified Number and will be determined based upon the number of Shares tendered and not withdrawn pursuant to an Auction Tender at each price within the Price Range and tendered and not withdrawn pursuant to a Purchase Price Tender, with each Purchase Price Tender being considered a tender at the lowest price in the Price Range for the purposes of calculating the Clearing Price;

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- (g) the aggregate amount that the Corporation will pay for Shares tendered to the Proposed Issuer Bid will not be ascertained until the Clearing Price is determined;
- (h) all Shares tendered and not withdrawn at or below the Clearing Price pursuant to an Auction Tender and all Shares tendered and not withdrawn pursuant to a Purchase Price Tender will be taken up and paid for at the Clearing Price (calculated to the nearest whole Share, so as to avoid the creation of fractional Shares), subject to pro ration if the aggregate number of Shares tendered and not withdrawn at or below the Clearing Price pursuant to Auction Tenders and the number of Shares tendered and not withdrawn pursuant to Purchase Price Tenders exceeds the Specified Number;
- (i) all Shares tendered and not withdrawn at prices above the Clearing Price will be returned to the appropriate Shareholders;
- (j) in the event that more than the Specified Number of Shares are tendered at or below the Clearing Price, the Shares to be purchased by the Corporation will be pro rated from the Shares so tendered;
- (k) in the event that the bid is under-subscribed by the initial expiration date but all the terms and conditions thereof have been complied with except those waived by the Corporation, the Corporation may wish to extend the bid for at least 10 days, in which case the Corporation must first take up and pay for all Shares deposited thereunder and not withdrawn. In the event the bid is under-subscribed at the expiration date, there would be no proration among the tenders taken up and paid for at such time. However, by the time any extension is over, the bid may be oversubscribed in which case the Corporation intends to pro-rate only among tenders received during the extension and after the original expiration date;
- (l) all Shares tendered and not withdrawn by Shareholders who specify a tender price for such tendered Shares that falls outside the Price Range will be considered to have been improperly tendered, will be excluded from the determination of the Clearing Price, will not be purchased by the Corporation and will be returned to the tendering Shareholders;
- (m) tendering Shareholders who make either an Auction Tender or a Purchase Price Tender but fail to specify the number of Shares that they wish to tender to the Proposed Issuer Bid will be considered to have tendered all Shares held by such Shareholder; and

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- (n) if the aggregate number of Shares validly tendered, or deemed to have been tendered, to the Proposed Issuer Bid at or below the Clearing Price and not withdrawn is less than or equal to the Specified Number, the Corporation will purchase all Shares so deposited.
- 9. Prior to the expiry of the Proposed Issuer Bid, all information regarding the number of Shares tendered and the prices at which such Shares are tendered will be kept confidential, and the depositary under the Proposed Issuer Bid will be directed by the Corporation to maintain such confidentiality until the Clearing Price is determined.
- 10. Since the Proposed Issuer Bid will be for fewer than all the Shares, if the number of Shares tendered to the Proposed Issuer Bid at or below the Clearing Price exceeds the Specified Number, the Legislation would require the Corporation to take up and pay for deposited Shares proportionately, according to the number of Shares deposited by each Shareholder. In addition, the Legislation would require disclosure in the Circular that the Corporation would, if Shares tendered to the Proposed Issuer Bid exceeded the Specified Number, take up such Shares proportionately according to the number of Shares tendered by each Shareholder to the Proposed Issuer Bid.
- 11. During the period of 12 months before the Announcement Date:
 - (a) the number of outstanding Shares was at all times at least 5,000,000, excluding Shares that either were beneficially owned, directly or indirectly, or over which control or direction was exercised, by related parties of the Corporation or were not freely tradeable;
 - (b) the aggregate trading volume of the Shares on the TSX was at least 1,000,000 Shares;
 - (c) there were at least 1,000 trades in Shares on the TSX; and
 - (d) the aggregate trading value based on the price of the trades referred to in paragraph (c) above was at least \$15,000,000.
- 12. The market value of the Shares on the TSX was approximately \$168,536,044 for the calendar month preceding the Announcement Date.
- 13. The board of directors of the Corporation has determined it is reasonable to conclude that, following completion of the Proposed Issuer Bid, there will be a market for the beneficial owners of Shares who do not tender to the Proposed

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Issuer Bid that is not materially less liquid than the market that exists at the time the Proposed Issuer Bid is made and the Corporation intends to rely upon the exemptions from the Valuation Requirement contained in sections 3.4(3) of Ontario Securities Commission Rule 61-501 and Québec Local Policy Statement Q-27 (the “Presumption of Liquid Market Exemptions”).

14. The Circular:

- (a) discloses the mechanics for the take-up and payment for, or return of, Shares as described in paragraph 8 above;
- (b) explains that, by tendering Shares at the lowest price in the Price Range or pursuant to a Purchase Price Tender, a Shareholder can reasonably expect that Shares so tendered will be purchased at the Clearing Price, subject to pro ration as described in paragraph 8(j) above;
- (c) discloses the facts supporting the Corporation’s reliance on the Presumption of Liquid Market Exemptions, calculated with reference to the Announcement Date; and
- (d) contains the disclosure prescribed by the Legislation for issuer bids, except to the extent exemptive relief is granted by this decision.

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 Proportionate Take up and Payment Requirement, the Associated Disclosure Requirement, and the Valuation Requirement shall not apply to the Corporation in connection with the Proposed Issuer Bid provided that:

- (i) Shares tendered to the Proposed Issuer Bid are taken up and paid for, or returned to the Shareholders in accordance with the Procedure;
- (ii) the facts supporting the Corporation’s reliance on the Presumption of Liquid Market Exemptions calculated with reference to the Announcement Date are disclosed; and

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(iii)The Corporation complies with other applicable provisions of the Legislation relating to formal bids made by issuers.

DATED this 25th day of June 2003.

Paul M. Moore
Robert W. Davis