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Headnote

Mutual Reliance Review System for Exemptive Relief Applications –
Employment agreements with senior employees that include retention bonuses entered into for reasons other than to increase the value of the consideration paid to the employees under a take over bid and may be entered into despite the prohibition on collateral agreements in the legislation

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 107(2) and 114(2)(a)

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 646543 B.C. LTD.

MRRS DECISION DOCUMENT

- ¶ 1 WHEREAS the local securities regulatory authority or regulator (the “Decision Makers”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, and Newfoundland and Labrador (the “Jurisdictions”) has received an application from 646543 B.C. Ltd. (the “Filer”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that, in connection with an offer dated May 1, 2002 to purchase, by way of a formal take-over bid (the “Bid”) by the Filer, all of the outstanding common shares (the “Common Shares”) of A.L.I. Technologies Inc. (“ALI”), retention and employment agreements (collectively, the “Employment Agreements”) between ALI and eight of ALI’s senior employees (the “Employees”), who are also holders of Common Shares or options to acquire Common Shares, have been made for reasons other than to increase the value of the consideration paid to the Employees for their Common Shares and may be entered into despite the provisions in the Legislation that prohibit an offeror who makes or intends to make a take-over bid from

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entering into any collateral agreement with any holder or beneficial owner of securities of the offeree issuer that has the effect of providing to the holder or owner a consideration of greater value than that offered to the other holders of the same class of securities (the “Prohibition on Collateral Agreements”);

- ¶ 2 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;
- ¶ 3 AND WHEREAS the Filer has represented to the Decision Makers that:
1. ALI is a corporation governed by the *Company Act* (British Columbia) (the “BCCA”) and is a reporting issuer in British Columbia, Alberta, Manitoba and Ontario; ALI is a medical information technology company that develops and markets film-less digital image network systems including, primarily, ultrasound and radiological applications;
 2. the Common Shares are traded on The Toronto Stock Exchange; as at April 24, 2002, ALI had 10,970,900 issued and outstanding Common Shares;
 3. the Filer, a BCCA company, is a wholly-owned subsidiary of McKesson Corporation (“McKesson”); the Filer was incorporated on April 26, 2002 solely for the purpose of making the Bid and is not, and has no current intention of becoming, a reporting issuer in any jurisdiction in Canada;
 4. McKesson is incorporated under the laws of Delaware and is not, and has no current intention of becoming, a reporting issuer in any jurisdiction in Canada;
 5. McKesson is one of the world’s largest health care service and technology companies; McKesson’s principal businesses are: (i) the wholesale distribution of ethical and proprietary drugs, medical-surgical supplies and health and beauty care products to drug and food stores, mass merchandisers and health care providers; and (ii) the provision of patient, clinical, financial and managed care, strategic management software solutions, networking technologies, information outsourcing and other services to health care organizations;
 6. on May 1, 2002, McKesson, the Filer and ALI entered into a support agreement with respect to the Bid (the “Support Agreement”) under which the Filer agreed, subject to the satisfaction of certain conditions, to make the Bid for all of the outstanding Common Shares at a price of \$43.50 per Common Share in cash; the offering price was negotiated at arm’s length by McKesson

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and ALI and represents a premium of 34% over the closing price for the Common Shares of \$32.51 on May 1, 2002;

7. McKesson and the Filer have entered into lock-up agreements with certain of the directors and officers of ALI who, as at May 1, 2002, collectively owned or controlled approximately 34% of the outstanding Common Shares on an undiluted basis and, taking into consideration options to acquire additional Common Shares, collectively owned or controlled approximately 32% of the outstanding Common Shares on a fully-diluted basis; one of the Employees, Greg Peet, ALI's President and CEO, is a party to a lock-up agreement;
8. when the Support Agreement was being negotiated by McKesson and ALI, McKesson requested that the Employees agree to remain employed by ALI after the completion of the Bid; McKesson wished to secure such an agreement because of the integral role that McKesson believes the Employees had in developing ALI's business and the Employees' substantial and valuable experience and expertise with respect to ALI's business; McKesson believes that the continued employment of the Employees by ALI following completion of the Bid will be of great assistance to McKesson in ensuring a successful transition following completion of the Bid;
9. the current positions at ALI of the Employees (which will remain the same upon completion of the Bid, as will the Employees' duties and responsibilities) and the reasons why the continued employment of each of the Employees following completion of the Bid is important to McKesson, are as follows:
 - (a) Gregory Peet is the President and CEO of ALI, and as President and CEO, Mr. Peet is integral to the business of ALI both in terms of ALI's relationships with its customers and Mr. Peet's knowledge and experience with respect to ALI and its software and technology;
 - (b) Bing Teng is currently ALI's Vice President, Sales, and will be important to ALI post-acquisition due to his relationships with ALI's customers;
 - (c) Michael Brozino is ALI's Director of Sales and provides an important link between ALI and its existing customers;
 - (d) Alan Noordvyk is a Director, Engineering, at ALI and is one of the key persons at ALI because of his knowledge of ALI's software and technology;

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- (e) Marcel Sutanto is also a Director, Engineering, and has extensive knowledge of ALI's software and technology;
 - (f) Warren Edwards is a Director, Engineering, who has cultivated relationships with many of ALI's existing customers;
 - (g) Rod O'Reilly is ALI's Vice President, Operations, and will be important to ALI upon completion of the Bid both due to his relationships with ALI's customers and his knowledge of ALI's software and technology; and
 - (h) David Sutherland is ALI's Vice President, Services, and similarly is and will be important to ALI because of his relationships with ALI's customers and his knowledge of ALI's products;
10. the Employment Agreements provide that each of the Employees will receive retention bonuses if such Employee continues to be employed by ALI for 24 months after the date on which the Employment Condition is satisfied; the amount of the retention bonus for each Employee ranges from US\$100,000 to US\$400,000, and the aggregate amount of the retention bonuses payable to all of the Employees is US\$1,450,000; Greg Peet will receive a further retention bonus of US\$200,000 if he remains employed by ALI for an additional 12 months; the retention bonuses will be pro-rated for any Employee whose employment is terminated without cause by ALI prior to the retention bonus payment date;
 11. in addition, the Employment Agreements provide that the Employees shall each receive stock options for common shares of McKesson, ranging from 5,000 options to 25,000 options, in accordance with McKesson's 1998 Canadian Stock Incentive Plan or, for the two Employees located in United States, in accordance with McKesson's United States Stock Incentive Plan;
 12. except for the retention bonuses and McKesson stock options, the Employment Agreements do not materially change the salaries, bonuses, benefits and termination rights that the Employees currently enjoy;
 13. with the exception of Greg Peet, the Employees are under no obligation to tender their Common Shares under the Bid;
 14. the Employment Agreements were negotiated on an arm's length basis and are on commercially reasonable terms; in the United States, the use of retention bonuses is not uncommon in the context of mergers and acquisitions where the acquiror wants to retain the services of the key employees of the acquired

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company; in all other respects, the Employment Agreements are consistent with current industry practice in Canada and McKesson's compensation arrangements for new executive employees; the retention bonuses are intended to provide an incentive for the Employees to continue in the employment of ALI following completion of the Bid;

15. the Employees' execution of the Employment Agreements was a condition to McKesson and the Filer entering into the Support Agreement; McKesson believes that without the continued employment of the Employees, there would be a material reduction in the likelihood of a successful transition following completion of the Bid and a corresponding reduction in the value of ALI to McKesson and its shareholders;
16. collectively, the Employees hold in the aggregate Common Shares and options to acquire Common Shares representing less than 10% of the total issued and outstanding Common Shares on a fully diluted basis; none of the Employees are related to McKesson or the Filer; and
17. the Employment Agreements were entered into for valid business reasons unrelated to the Employees' holding of Common Shares, were not entered into for the purpose of conferring a collateral benefit on the Employees not enjoyed by the other holders of Common Shares and are being made for reasons other than to increase the value of the consideration to be paid to the Employees under the Bid;

- ¶ 4 AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");
- ¶ 5 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;
- ¶ 6 THE DECISION of the Decision Makers under the Legislation is that, in connection with the Bid, the Employment Agreements are being entered into for reasons other than to increase the value of the consideration to be paid to the Employees for their Common Shares and may be entered into despite the Prohibition on Collateral Benefits.
- ¶ 7 DATED May 29, 2002.

Brenda Leong
Director