

2003 BCSECCOM 39

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from registration and prospectus requirements for trades of common shares of a reporting issuer by a selling shareholder on exercise of warrants issued under a prospectus, subject to certain conditions

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61 and 76

Multilateral Instrument 45-102 *Resale of Securities*

**IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH
COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO,
NEW BRUNSWICK, NOVA SCOTIA, PRINCE EDWARD ISLAND,
NEWFOUNDLAND AND LABRADOR, THE NORTHWEST
TERRITORIES, THE YUKON TERRITORY AND THE TERRITORY OF
NUNAVUT**

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

AND IN THE MATTER OF DOMTAR INC.

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, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, the Yukon Territory and the Territory of Nunavut (the "Jurisdictions") has received an application from Domtar Inc. ("Domtar") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the dealer registration and prospectus requirements of the Legislation (the "Dealer Registration and Prospectus Requirements") shall not apply to certain trades in securities in connection with the secondary offering (the "Offering") of 18,170,249 units ("Units") of Domtar;

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;

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

AND WHEREAS Domtar has represented to the Decision Makers that:

2003 BCSECCOM 39

1. Domtar is a corporation incorporated under the laws of Canada and governed by the *Canada Business Corporation Act*. Domtar is a reporting issuer in each of the Jurisdictions in which such concept exists and, to the best of its knowledge, is not in default of any of the requirements of the Legislation.
2. The Offering of Units is being made (i) in Canada under a short form prospectus to be filed in each of the Jurisdictions and (ii) in the United States pursuant to the multi-jurisdictional disclosure system (the "MJDS").
3. Each Unit is comprised of one common share of Domtar (a "Unit Share") being sold by Dofor Inc. (the "Selling Shareholder") and one common share purchase warrant of Domtar (a "Warrant"). Each Warrant will entitle its holder (the "Warrantholder") to purchase one common share of Domtar (an "Underlying Share") as detailed below.
4. The Selling Shareholder is an indirect wholly-owned subsidiary of Société général de financement du Québec ("SGF"), an economic development agency of the Government of the Province of Québec. Domtar has been advised by the Selling Shareholder that SGF is party to an agreement with Caisse de dépôt et placement du Québec under which the two entities have agreed to vote their common shares of Domtar in favour of the election to the Domtar board of directors of a number of representatives of the entities.
5. The Selling Shareholder beneficially owns 36,340,498, or 15.97%, of the outstanding common shares of Domtar. Of those common shares, 18,170,249 will be sold as Unit Shares under the Offering and the remaining 18,170,249 will be deposited with the Warrant Agent (as defined below) on Closing in connection with Domtar's obligation to issue, or cause to be delivered, Underlying Shares to Warrantholders on exercise of their Warrants, as described in greater detail below.
6. Domtar is qualified to file a prospectus in the form of a short form prospectus under National Instrument 44-101-Short Form Prospectus Distributions ("NI 44-101").
7. On December 10, 2002, Domtar issued a press release announcing that it had entered into an underwriting agreement dated December 10, 2002 among the Selling Shareholder, Domtar, and each of National Bank Financial Inc., CIBC World Markets Inc., Merrill Lynch Canada Inc., BMO Nesbitt Burns Inc., Scotia Capital Inc., UBS Bunting Warburg Inc., Desjardins Securities Inc. and TD Securities Inc. (the "Underwriters"), pursuant to which the Underwriters have agreed to purchase on Closing 18,170,249 Units at a price of \$16.50 per

2003 BCSECCOM 39

Unit, payable in cash to the Selling Shareholder against delivery and otherwise subject to the terms and conditions contained in the underwriting agreement.

8. Also on December 10, 2002, Domtar filed a preliminary short form prospectus (the "Preliminary Prospectus") with the Decision Makers in accordance with NI 44-101 and obtained a receipt therefor dated December 10, 2002. It is anticipated, subject to clearing any comments that might be raised by the TSX and/or the Decision Makers, that Domtar will file a final short form prospectus with the Decision Makers on or about December 17, 2002 and that Closing will take place on or about December 23, 2002.
9. Pursuant to the Offering, each Unit will be separated into one Unit Share and one Warrant on or after the Closing, but, in any event, not later than 60 days after the Closing, as may be agreed upon by the Selling Shareholder and the Underwriters. The Selling Shareholder will allocate \$15.50 for the Unit Share and \$1.00 for the Warrant. Each Warrant will entitle the Warrantholder to purchase one Underlying Share at a price of \$17.55 at any time on or prior to 5:00 p.m. (Montreal time) on the date which is one year from the Closing.
10. The warrant agreement (the "Warrant Agreement"), pursuant to which the Warrants will be issued, will require Domtar to issue, or cause to be delivered, to each Warrantholder upon due exercise of Warrant, that number of Underlying Shares to which such Warrantholder is entitled.
11. The delivery agreement (the "Delivery Agreement") will require the Selling Shareholder to irrevocably commit and agree to deliver Underlying Shares from its holding of common shares of Domtar for delivery to Warrantholders upon due exercise of the Warrants. To secure this obligation, the Selling Shareholder will agree, among other things, to deliver, at the Closing, certificates representing a total of 18,170,249 common shares of Domtar, or the pledged shares, to the warrant agent (the "Warrant Agent"), as depository and delivery agent. The pledged shares will be pledged to Domtar.
12. In the event that the Warrant Agent is unable to deliver to Warrantholders that number of pledged shares to which the Warrantholders are entitled and the Selling Shareholder does not deliver other common shares to the Warrant Agent to permit such delivery, Domtar will issue the required number of Underlying Shares to the Warrant Agent at a price equal to the exercise price of each Warrant and the equivalent number of pledged shares will automatically be cancelled.
13. Application has been made to list the Warrants on the TSX.

2003 BCSECCOM 39

14. Domtar will not be entitled to any of the proceeds from the sale of the Units.
15. Concurrently with the filing of the Preliminary Prospectus with the Decision Makers, Domtar filed a Form F-10 registration statement (incorporating the Preliminary Prospectus) with the U.S. Securities Exchange Commission (the "SEC") under the MJDS.
16. It is a condition of the Closing that a shelf registration statement be filed and declared effective by the SEC regarding the Underlying Shares delivered in the United States. Domtar will use its reasonable efforts to maintain a registration statement relating to the Underlying Shares effective until the earlier of the expiry date of the Warrants and the date on which no Warrants remain outstanding. The shelf registration statement will be filed on Form F-10 with the SEC under the MJDS. In connection with this, a prospectus will be filed with the Quebec Securities Commission relating to the Underlying Shares. This prospectus will not qualify the distribution of Underlying Shares on exercise of Warrants by Warrantholders in Quebec or in any of the Jurisdictions. Similarly, the shelf registration statement filed with the SEC will not qualify in any of the provinces or territories of Canada the distribution of the Underlying Shares on exercise of Warrants by Warrantholders in Canada.

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 Dealer Registration and Prospectus Requirements shall not apply to trades of Underlying Shares from the Selling Shareholder to Warrantholders on the exercise by them of their Warrants, provided that no commission or other remuneration is paid or given to others for the trades except for ministerial or professional services or for services performed by a registered dealer, and further provided that the first trade of the Underlying Shares is deemed to be a distribution or a primary distribution to the public unless the requirements of section 2.10 of Multilateral Instrument 45-102 Resale of Securities have been satisfied.

Dated December 20, 2002

Theresa McLeod

Harold P. Hands