

2003 BCSECCOM 439

Headnote

Mutual Reliance Review System for Exemptive Relief Application – relief from registration requirement for first trades of shares acquired under employee stock purchase plan

Applicable British Columbia Provisions

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

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA AND MANITOBA

AND

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

AND

IN THE MATTER OF SOLECTRON CORPORATION

MRRS DECISION DOCUMENT

- ¶ 1 WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in British Columbia, Alberta and Manitoba (the “Jurisdictions”) has received an application from Solelectron Corporation (“Solelectron”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirement contained in the Legislation to be registered to trade in a security (the “Registration Requirement”) will not apply to first trades of shares of its common stock (“Shares”) acquired under Solelectron’s 2003 Employee Stock Purchase Plan (the “ESPP”);
- ¶ 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, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101;

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¶ 4 AND WHEREAS Solectron has represented to the Decision Makers that:

1. it is incorporated under the laws of the State of Delaware;
2. it and its affiliates (collectively, the “Solectron Companies”) provide electronics manufacturing and supply-chain management services;
3. it is registered in the U.S. under the *Securities Exchange Act of 1934* and is not exempt from the reporting requirements of that act;
4. it is a reporting issuer in British Columbia, Saskatchewan and Quebec as the result of completing an arrangement, but is not a reporting issuer in Alberta and Manitoba and has no present intention of becoming a reporting issuer in those jurisdictions;
5. its authorized share capital consists of 1,600,000,000 Shares and 1,200,000 shares of preferred stock, of which there were 829,806,270 Shares and 1 share of preferred stock issued and outstanding on May 30, 2003;
6. the Shares are listed for trading on the New York Stock Exchange;
7. under the ESPP, employees of the Solectron Companies (“Participants”) may purchase Shares by means of applying accumulated payroll deductions at a discounted price determined in accordance with the terms of the ESPP;
8. it uses the services of one or more agents in connection with operating the ESPP (each an “Agent”), and Salomon Smith Barney Inc. has been appointed as an Agent under the ESPP;
9. each Agent will be registered to conduct retail trades under applicable U.S. securities or banking legislation and will be authorized by Solectron to provide services as an Agent under the ESPP;
10. the Agent may (a) disseminate information and materials to Participants in connection with the ESPP; (b) assist with administration of and general record keeping for the ESPP; (c) hold Shares on behalf of Participants and Former Participants in limited purpose brokerage accounts; (d) facilitate paying withholding taxes, if any, by cash; and (e) facilitate the resale of Shares issued in connection with the ESPP;
11. all necessary securities filings have been made in the U.S. in order to offer the ESPP to Participants resident in the U.S;

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12. as of June 5, 2003, there were 6,355 persons in Canada eligible to participate in the ESPP, including 1,202 persons resident in British Columbia, 23 persons resident in Alberta, 140 persons resident in Manitoba, 3,380 persons resident in Ontario, 967 persons resident in Nova Scotia and 643 persons resident in Quebec;
13. employees who participate in the ESPP will not be induced to purchase Shares by expectation of employment or continued employment;
14. share purchase rights issued under the ESPP are not transferable;
15. beneficiaries designed by Participants under the Plan ("Permitted Transferees") and former Participants ("Former Participants") continue to have rights in respect of the ESPP, including:
 - (a) the right to receive payment of accumulated payroll deductions in his or her account, without interest under the ESPP; and
 - (b) the right to sell Shares acquired under the ESPP through the Agent;
16. the annual reports, proxy materials and other materials Solectron is required to file with the U.S. Securities Exchange Commission 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;
17. 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 Solectron;
18. if at any time during the currency of the ESPP 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 the Shares acquired under the ESPP;
19. Participants, Former Participants and Permitted Transferees may sell Shares acquired under the ESPP through an Agent;
20. because there is no market for the Shares in Canada and none is expected to develop, any resale of the Shares acquired under the ESPP will be effected through the facilities of, and in accordance with the rules and laws applicable to, an exchange or market outside of Canada on which the Shares may be listed or quoted for trading; and

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21. exemptions from the Registration Requirement may not be available where the Agent sells Shares acquired under the ESPP on behalf of Participants, Former Participants or Permitted Transferees;

- ¶ 5 AND WHEREAS under the System, this Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);
- ¶ 6 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;
- ¶ 7 THE DECISION of the Decision Makers under the Legislation is that 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 Requirement, provided that the trade is made through an exchange or a market outside of Canada.
- ¶ 8 June 27, 2003

Brenda Leong
Director