

## **2002 BCSECCOM 863**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - relief from the registration and prospectus requirements granted for the distribution of securities in connection with a worldwide employee stock option plan – corporation governed by the laws of France establishing an investment fund to implement and facilitate the plan - sole objective of the fund is to acquire shares of the Corporation for future delivery to executives upon the exercise of options – distribution of fund securities to executives exempt from section 34 and 61 of the Act, subject to certain conditions

### **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 34, 48, 61 and 76

### **IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ONTARIO AND QUÉBEC**

**AND**

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

**AND**

### **IN THE MATTER OF IPSOS S.A.**

### **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Ontario and Québec (the “Jurisdictions”) has received an application from Ipsos S.A. (the “Filer”), for a decision pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that:

- (i) the requirements contained in the Legislation to be registered to trade in a security (the “Registration Requirements”) and to file and obtain a receipt for a preliminary prospectus and a prospectus (the “Prospectus Requirements”) (collectively, the “Registration and Prospectus Requirements”) shall not apply to the distribution by Ipsos Partnership Fund (“IPF”) of ordinary shares of IPF (the “IPF Shares”) to certain executive employees of the Filer who are granted options (the “Options”) to purchase ordinary shares of the Filer (the “Ipsos Shares”) pursuant to the Filer’s employee stock option plan (the “Plan”) and are resident in the Jurisdictions (the “Canadian Participants”);

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- (ii) the Registration and Prospectus Requirements shall not apply to the distribution of Options and Ipsos Shares by the Filer to Canadian Participants resident in Québec pursuant to the Plan;
- (iii) the Registration and Prospectus Requirements shall not apply to the first trade in IPF Shares by a Canadian Participant provided that such trade is made to a person or company outside of Canada; and
- (iv) the Registration and Prospectus Requirements shall not apply to the first trade in Ipsos Shares acquired on the exercise of Options by Canadian Participants resident in Québec under the Plan where such trade is made through the facilities of a stock exchange outside of Canada.

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS the Filer has represented to the Decision Makers as follows:

1. The Filer is a corporation formed under the laws of France. It is not and has no intention of becoming a reporting issuer (or the equivalent) under the Legislation. The Ipsos Shares are listed on Euronext Paris. There are presently 6,991,997 issued and outstanding Ipsos Shares. 577,320 Ipsos Shares have been issued to IPF pursuant to the Plan.
2. Ipsos-ASI Ltd., Ipsos-Reid Corporation Inc., Ipsos-NPD Canada Inc. and other Canadian affiliates of the Filer (the “Canadian Affiliates”) that employ Canadian Participants are direct or indirect subsidiaries controlled by the Filer and are not, or have no current intention of becoming, reporting issuers (or the equivalent) under the Legislation.
3. The Filer has established a worldwide employee stock option plan for the benefit of certain of its executive employees, including executive employees of the Canadian Affiliates.
4. IPF is a French non-public corporation, incorporated by a subsidiary of Société Générale (the “SG Sub”), a French financial institution. IPF has been established for the sole purpose of implementing, and facilitating the participation of eligible employees in, the Plan. SG Sub will be the general partner of IPF. The Filer will not be a shareholder of IPF. IPF is not and has

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no intention of becoming a reporting issuer (or the equivalent) under the Legislation. IPF Shares will not be listed on any stock exchange.

5. Pursuant to the authorization obtained at the special meeting of the shareholders of the Filer held on March 6<sup>th</sup>, 2002, the board of directors of Filer, at its meeting held on July 9, 2002, approved the implementation of the Plan.
6. As of July 2002 there were approximately 10 Canadian Participants. Five Canadian Participants are resident in Ontario; four Canadian Participants are resident in British Columbia and one Canadian Participant is resident in Québec. Canadian Participants represent, in the aggregate, approximately 12.7% of the number of potential participants under the Plan worldwide. Canadian Participants will not be induced to participate in the Plan by expectation of employment or continued employment with the Filer or its Canadian Affiliates.
7. Société Générale, who is appropriately licensed under applicable banking and securities legislation in France, but will not be registered under the Legislation as a dealer, has been appointed as administrative agent for the Plan. The role of Société Générale as administrative agent may include: (a) assisting with the general administration of the Plan and providing various record keeping services; (b) facilitating Option exercises (including partial cashless exercises) under the Plan; (c) holding Ipsos Shares acquired under the Plan on behalf of participants in limited purpose broker accounts; and (d) facilitating the resale of Ipsos Shares acquired under the Plan through Euronext Paris or such other stock exchange or market upon which the Ipsos Shares may be listed.
8. Société Générale has also entered into a loan agreement with IPF in connection with facilitating the implementation of the Plan and not in connection with its role as administrative agent for the Plan.
9. IPF has subscribed for Ipsos Shares financed by way of a loan it has received from Société Générale (the "SG loan"), which SG loan includes a pre-funding of the anticipated subscription proceeds for IPF Shares received from prospective participating employees. Pursuant to the Plan, Canadian Participants will be given the opportunity to subscribe for an allotted number of IPF Shares. For every one euro invested in IPF by the Canadian Participants through their subscription of IPF Shares, Société Générale has loaned 15 euros to IPF. IPF has used these funds to subscribe for Ipsos Shares (which are ultimately earmarked for delivery to participating employees on the exercise of their Options) in an amount equal to (a) the amount to be subscribed by the participating employees in IPF (the proceeds of such

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subscriptions will be used to satisfy the corresponding amount owing under the SG loan) and (b) the remainder of the SG loan. IPF will not hold securities other than Ipsos Shares. If a participating employee does not take up his or her full allotment of IPF Shares, IPF will, subject to Société Générale's consent, put the corresponding Ipsos Shares to Société Générale in order to extinguish that portion of the SG loan relating to that participating employee.

10. Concurrently with its subscription for Ipsos Shares and in order to facilitate the ultimate delivery of such Ipsos Shares to participating employees exercising their Options under the Plan, IPF has agreed to sell the Ipsos Shares that it has acquired from the Filer to Société Générale or one of its affiliates for payment and delivery on the exact dates determined according to the vesting schedule used in connection with the Options under the Plan.
11. In turn, and concurrently with the subscription agreement for Ipsos Shares entered into between IPF and Société Générale or one of its affiliates, Société Générale or one of its affiliates and the Filer have entered into a share sale agreement whereby Société Générale or one of its affiliates have agreed to sell an equal number of Ipsos Shares to the Filer by way of a stock buy-back for payment and delivery on the exact dates determined according to the same vesting schedule used in connection with the Options under the Plan. The Filer will satisfy all Option exercises under the Plan from the Ipsos Shares that it has purchased from Société Générale or one of its affiliates.
12. The Filer will inform Canadian Participants of a grant to them of Options, which will entitle the Canadian Participants to acquire, upon the exercise of the Options, Ipsos Shares.
13. Each Canadian Participant will receive Options having an aggregate exercise price equal to (a) the amount invested by such Canadian Participant in IPF and (b) 14 times such amount (i.e., the total amount of the corresponding SG loan to IPF, which it used to finance the original subscription of the Ipsos Shares). The exercise price to purchase one Ipsos Share upon the exercise of an Option is 69 euros which is equal to the price at which Ipsos Shares were subscribed for by IPF. This represents an exercise price which is greater than the market value of the Ipsos Shares at the date the Option grants were approved by the Board of Directors of the Filer (i.e., July 9, 2002).
14. The Options will be exercisable according to a vesting schedule which begins after the third anniversary of the date of grant and ends on the fifth anniversary of such date. At the end of 5 years, IPF will have delivered all of its Ipsos Shares to Société Générale or one of its affiliates, which in turn will have sold

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them all to the Filer so that the Filer can satisfy all Option exercises under the Plan.

15. In order to exercise an Option the holder of an Option must submit to Société Générale, as administrative agent, and to the Filer a written notice of exercise identifying the Option and the number of Ipsos Shares being exercised and the method of exercise. The holder of an Option may choose either a straightforward exercise (the “Cash Exercise”) or a partial cash-less exercise (the “Cashless Exercise”).
16. Under the Cash Exercise, the holder of an Option pays the price equal to the number of Ipsos Shares purchased upon exercise of the Option times the exercise price and is transferred a number of Ipsos Shares equal to the number of Ipsos Shares purchased upon exercise of the Option.
17. Under the Cashless Exercise, the holder of an Option may elect to pay the exercise price of an Option with proceeds from the sale of Ipsos Shares purchased upon the exercise of the Option. The holder of an Option who elects to exercise an Option through a Cashless Exercise will receive the funds necessary to exercise an Option from Société Générale. At the same time the holder of the Option will direct Société Générale to: sell, as agent for the holder of the Option, any or all of the Ipsos Shares purchased upon exercise of the Option as required; remit to the Filer from the proceeds of such sale the exercise price; and remit any remaining cash proceeds or Ipsos Shares purchased upon the exercise of the Option, less Société Générale’s commission to the holder of the Option. Société Générale will not sell Ipsos Shares on behalf of a holder of the Option pursuant to a Cashless Exercise unless Société Générale determines that the proceeds from the sale will be sufficient to satisfy the exercise price and all costs or expenses incurred on behalf of the holder of the Option in connection with the sale.
18. All trades in Ipsos Shares on behalf of Canadian Participants made by Société Générale pursuant to a Cashless Exercise or otherwise will be made through Euronext Paris or such other stock exchange or market upon which the Ipsos Shares may be listed.
19. On exercise of Options, Ipsos Shares will be held on behalf of the Canadian Participants in book entry form in an account with Société Générale. When applicable, a Canadian Participant may instruct Société Générale to sell Ipsos Shares held in his or her account, but cannot otherwise use the account for securities trading activities. Once all Ipsos Shares held in such an account have been sold, the account will be closed.

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20. At all times Canadian Participants that have subscribed for IPF Shares will have a right to sell their IPF Shares to the SG Sub at a value determined on the basis of IPF's net assets in accordance with the IPF By-laws.
21. If a Canadian Participant sells IPF Shares prior to the exercise of their Options, the Options corresponding to the IPF Shares sold will no longer be exercisable by such Canadian Participant. The Canadian Participant will only be entitled to exercise Options in proportion to the number of IPF Shares that he or she retains at such date.
22. In the event that a holder of IPF Shares is no longer an employee or manager within the Ipsos group, the IPF By-laws provide for the compulsory sale of all IPF shares held by such a holder to the SG Sub at a value determined on the basis of IPF's net assets. Upon such a compulsory sale, the former employee or manager will lose his or her right to exercise all of their Options.
23. None of the Filer, IPF, Société Générale or any of their employees, agents or representatives will provide investment advice to the Canadian Participants with respect to an investment in the IPF Shares, the Options or the Ipsos Shares.
24. Canadian Participants will receive an information package which will include a copy of the Regulations of the Plan and IPF's By-laws.
25. Canadian Participants will also receive copies of the continuous disclosure materials relating to the Filer furnished to shareholders generally.
26. It is not expected that there will be any market for the IPF Shares or Ipsos Shares in Canada.
27. As of the date hereof and after giving effect to the issue of Ipsos Shares upon full exercise of the Options under the Plan, Canadian-resident holders of Ipsos Shares do not and will not own, directly or indirectly, more than 10% of the Ipsos Shares and do not and will not represent in number more than 10% of the total number of holders of Ipsos Shares as shown on the books of the Filer.

AND WHEREAS pursuant to 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;

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THE DECISION of the Decision Makers pursuant to the Legislation is that:

- (a) the Registration and Prospectus Requirements contained in the Legislation shall not apply to the following trades or distributions made pursuant to the Plan:

- (1) distributions of IPF Shares by IPF to Canadian Participants;
  - (2) trades or distributions of Options and Ipsos Shares to Canadian Participants resident in Québec;

provided that, in each case, the first trade in any such IPF Share acquired thereunder in the Jurisdictions or the first trade in any such Ipsos Share acquired upon the exercise of an Option thereunder in Québec to a person or a company shall be deemed a distribution or a primary distribution to the public under the Legislation of the applicable Jurisdiction;

- (b) the Registration and Prospectus Requirements shall not apply to the first trade in IPF Shares by a Canadian Participant pursuant to the Plan provided that such trade is made to a person or company outside of Canada in accordance with the by-laws of IPF; and
  - (c) the Registration and Prospectus Requirements contained in the Legislation shall not apply to the first trade in Ipsos Shares acquired upon the exercise of Options by a Canadian Participant resident in Québec pursuant to the Plan provided that such trades are executed through the facilities of a stock exchange outside of Canada.

DATED August 28<sup>th</sup>, 2002.

Paul M. Moore

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