

# **2003 BCSECCOM 671**

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Application - issuer deemed to have ceased to be a reporting issuer – issuer is an indirect wholly-owned subsidiary with more than 50 holders of out-of-the-money options exercisable to acquire a promissory note – issuer's securities are not traded on any exchange

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C.1996, c. 418, s. 88

### **IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, ONTARIO, QUEBEC, 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 DUPONT CANADA INC.**

## **DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Ontario, Québec, Nova Scotia and Newfoundland and Labrador (the "Jurisdictions") has received an application from DuPont Canada Inc. ("DuPont Canada"), for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that DuPont Canada be deemed to have ceased to be a reporting issuer or the equivalent thereof under the Legislation;

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, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or in Quebec Commission Notice 14-101.

AND WHEREAS DuPont Canada has represented to the Decision Makers that:

## 2003 BCSECCOM 671

1. DuPont Canada is a corporation amalgamated under the *Canada Business Corporations Act* (the “CBCA”). DuPont Canada’s head office is located at 7070 Mississauga Road, Mississauga, Ontario, L5M 2H3. DuPont Canada is a corporation resulting from (i) the amalgamation (the “Amalgamation”) of DuPont Canada Inc. (“Old DuPont”) and DCI Acquisition Inc. (“DCI Acquisition”) on July 28, 2003 to create a corporation called “DuPont Canada Inc.” (“Initial Amalco”) and (ii) a subsequent amalgamation (the “Second Amalgamation”) of DCI Holding Company Inc. (“DCI Holding”) and Initial Amalco on August 1, 2003.
2. The authorized capital of DuPont Canada consists of an unlimited number of common shares (“Amalco Common Shares”). As of the date hereof, all of the issued and outstanding Amalco Common Shares are owned by an affiliate of E.I. du Pont de Nemours and Company (“EID”). On the Initial Amalgamation, certain Class A redeemable preferred shares (“Initial Amalco Redeemable Preferred Shares”) were issued, all of which were subsequently redeemed. On the Second Amalgamation, each unissued Initial Amalco Redeemable Preferred Share was converted into one non-interest bearing demand promissory note of DuPont Canada in the principal amount of \$21.75 (an “Amalco Note”). No Amalco Notes are issued and outstanding.
3. DuPont Canada also has outstanding a total of 18,800 options, each of which may be exercised to acquire one Amalco Note (“Amalco Options”), which are held by a total of 94 individuals (the “Optionholders”). Of the 94 Optionholders, 84 are resident in the Province of Ontario, six are resident outside of Canada, two are resident in the Province of Québec and there is one Optionholder resident in each of the Provinces of Alberta and Manitoba. Each Optionholder holds 200 Amalco Options, which were granted to the Optionholders by Old DuPont in connection with the 200th anniversary of EID. Each of the Amalco Options is “out of the money” in that each is exercisable at a price greater than the \$21.75 principal amount of one Amalco Note and it is therefore anticipated that none of the Amalco Options will ever be exercised. If any such Amalco Options are exercised, it is the intention of DuPont Canada to immediately repay the Amalco Notes issued upon the exercise of any such Amalco Options.
4. In connection with a previously announced reorganization of EID’s world-wide business (the “Reorganization”), on April 17, 2003, DCI Acquisition, an affiliate of EID (the then indirect holder of approximately 76% of the outstanding class A common shares, series 1 of Old DuPont (“Old DuPont Shares”)), made an offer to acquire all of the Old DuPont Shares not owned by it or its affiliates at a price of \$21.00 per share (the “Offer”), which was

## 2003 BCSECCOM 671

subsequently varied and extended and the price payable under the Offer was increased to \$21.75 cash per Old DuPont Share.

5. On June 16, 2003, DCI Acquisition took up, and on June 19, 2003 paid for, the 47,141,872 Old DuPont Shares deposited to the Offer such that, following completion of the Offer, EID owned, directly or indirectly, 259,733,032 Old DuPont Shares, representing approximately 93% of the outstanding Old DuPont Shares.
6. In the circular accompanying the Offer, DCI Acquisition disclosed its intention, if the Offer was successful, to acquire all of the Old DuPont Shares not deposited under the Offer by means of a subsequent acquisition transaction. As a statutory right of acquisition under the CBCA was not available following completion of the Offer, DCI Acquisition proceeded with the Initial Amalgamation.
7. Old DuPont called an annual and special meeting of its shareholders for July 28, 2003 (the "Meeting") to consider, among other things, a special resolution (the "Special Resolution") approving the Initial Amalgamation pursuant to Sections 181 and 182 of the CBCA. On July 2, 2003, Old DuPont mailed a Management Information Circular (the "Meeting Circular") to shareholders in connection with the Meeting. The Meeting Circular described the proposed Initial Amalgamation and summarized the dissent and appraisal rights available to shareholders who wished to dissent in respect of the Special Resolution.
8. The Initial Amalgamation was a second step going private transaction within the meaning of Ontario Securities Commission Rule 61-501 and Policy Q-27 of the Commission des valeurs mobilières du Québec.
9. At the Meeting, the Special Resolution was passed by 99.9% of the votes cast at the Meeting in accordance with the provisions of the CBCA. Following the Meeting, the articles of amalgamation were filed and the Initial Amalgamation became effective on July 28, 2003.
10. On the Initial Amalgamation becoming effective:
  - (a) each issued and outstanding Old DuPont Share (other than those held by DCI Acquisition and its affiliates) was converted into one Initial Amalco Redeemable Preferred Share;
  - (b) each issued and outstanding Old DuPont Share held by DCI Acquisition was cancelled;

## 2003 BCSECCOM 671

- (c) each issued and outstanding Old DuPont Share held by affiliates of DCI Acquisition was converted into one Initial Amalco Common Share;
- (d) each issued and outstanding share in the capital of DCI Acquisition was converted into one Initial Amalco Common Share; and
- (e) each issued and outstanding option to acquire one Old DuPont Share became an option exercisable for one Initial Amalco Redeemable Preferred Share.

11. On July 29, 2003, the day following the Initial Amalgamation:

- (a) each of the Initial Amalco Redeemable Preferred Shares were redeemed for \$21.75 in cash, in accordance with their terms, with the result that DuPont Canada is now an indirect wholly-owned subsidiary of EID; and
- (b) the Old DuPont Shares were delisted from the Toronto Stock Exchange at the close of trading.

12. On August 1, 2003, the Second Amalgamation occurred such that:

- (a) each issued and outstanding Initial Amalco Common Share (other than those held by DCI Holding) was converted into one Amalco Common Share;
- (b) each common share in the capital of DCI Holding was converted into one Amalco Common Share;
- (c) each issued and outstanding Initial Amalco Common Share held by DCI Holding was cancelled; and
- (d) each issued and outstanding option to acquire one Initial Amalco Redeemable Preferred Share became an Amalco Option exercisable for one Amalco Note.

13. In connection with implementing the Reorganization, DuPont Canada may be party to certain additional amalgamations with affiliates of EID in the future; however, EID will remain the direct or indirect owner of all of the common shares of any successor corporation to DuPont Canada created as a result of any such amalgamation.

## **2003 BCSECCOM 671**

14. DuPont Canada is a reporting issuer in each of the Jurisdictions and to the best of its knowledge, is not in default of any of the reporting requirements under the Legislation.
15. DuPont Canada has no outstanding securities, including debt securities, other than the Amalco Common Shares and the Amalco Options.
16. No securities of DuPont Canada are listed on any exchange in Canada or elsewhere, nor does DuPont Canada intend to make a distribution of its securities to the public in the future.

AND WHEREAS pursuant to the System this Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);

AND WHEREAS each Decision Maker 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 DuPont Canada is deemed to have ceased to be a reporting issuer under the Legislation.

DATED at Toronto, Ontario the 26<sup>th</sup> day of September, 2003.

R. W. Davis

H. Lorne Morphy