

# 2002 BCSECCOM 281

## Headnote

Mutual Reliance Review System for Exemptive Relief Application - relief granted from certain registration and prospectus requirements in connection with trades of securities under an employee stock purchase plan and two employee stock option plans of a US issuer - relief also granted from issuer bid requirements for certain acquisitions by the issuer of its securities in connection with the plans.

## Applicable British Columbia Provisions

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

IN THE MATTER OF THE SECURITIES LEGISLATION OF ONTARIO, BRITISH COLUMBIA,  
ALBERTA, SASKATCHEWAN, MANITOBA, NEW BRUNSWICK AND NOVA SCOTIA

AND

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

AND

IN THE MATTER OF ORACLE CORPORATION

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator ("Decision Maker") in each of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick and Nova Scotia ("Jurisdictions") has received an application from Oracle Corporation ("Oracle" or "Company") for a decision pursuant to the securities legislation of the Jurisdictions ("Legislation") that:

(i) the requirements contained in the Legislation to be registered to trade in a security (the "Registration Requirement") and to file and obtain a receipt for a preliminary prospectus and a prospectus (collectively with the Registration Requirement, the "Registration and Prospectus Requirements") shall not apply to certain trades in shares of Oracle common stock ("Shares") and Awards, as defined below, made in connection with the Oracle 1991 Long-Term Equity Incentive Plan ("1991 LTIP"), the Oracle 2000 Long-Term Equity Incentive Plan ("2000 LTIP") and the Employee Stock Purchase Plan (1992) ("ESPP") (collectively, "Plans"); and

(ii) the requirements contained in the Legislation relating to the delivery of an offer and issuer bid circular and any notices of change or variation thereto, minimum deposit periods and withdrawal rights, taking up and paying for securities tendered to an issuer bid, disclosure, restrictions upon purchases of securities, bid financing, identical consideration and collateral benefits together with the requirement to file a reporting form within 10 days of an exempt issuer bid and pay a related fee ("Issuer Bid Requirements") shall not apply to certain acquisitions by Oracle of Shares or Awards pursuant to the Plans in the Jurisdictions.

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

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

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1. Oracle is presently a corporation incorporated under the laws of the State of Delaware. The executive offices of Oracle are located in Redwood Shores, California.
2. The Company is registered with the Securities and Exchange Commission ("SEC") in the U.S. under the U.S. Securities Exchange Act of 1934 ("Exchange Act") and is not exempt from the reporting requirements of the Exchange Act pursuant to Rule 12g 3-2 made thereunder.
3. Oracle is not, and has no present intention of becoming, a reporting issuer in any jurisdiction in Canada. The majority of the directors and senior officers of Oracle reside outside of Canada.
4. The authorized share capital of Oracle consists of 11,000,000,000 Shares and 1,000,000 shares of preferred stock ("Preferred Shares"). As of December 31, 2001, there were 5,497,177,469 Shares and no Preferred Shares issued and outstanding.
5. The Shares are quoted on the Nasdaq National Market ("Nasdaq").
6. Oracle intends to use the services of one or more agents or brokers ("Agents") under the Plans. The current Agents for the Plans are E\*TRADE Canada Securities, Inc., AST Stock Plan, Inc. and Delphi Asset Management Corp. Not all of the current Agents are registered to conduct retail trades in the Jurisdictions and, if replaced, or if additional Agents are appointed, are not all expected to be registered in the Jurisdictions. Agents that are not registered in the Jurisdictions are or will be registered under applicable U.S. securities or banking legislation to trade in securities, if required under such legislation, and are or will be authorized by Oracle to provide services under the Plans. An Agent that is not registered in the Jurisdictions but is registered to trade in securities in the U.S. is referred to as a "Foreign Agent".
7. The Agents' role in the Plans may include: (a) assisting with the administration of the Plans, including record-keeping functions; (b) facilitating the exercise of Options (as defined below) granted under the Plans (including cashless and stock-swap exercises) to the extent that they are exercisable for Shares; (c) facilitating the issuance of Shares pursuant to the ESPP; (d) facilitating the cancellation and surrender of Awards (as defined below) as permitted under the Plans; (e) holding Shares issued under the Plans on behalf of Participants (as defined below), Former Participants (as defined below) and Permitted Transferees (as defined below); (f) facilitating the resale of the Shares issued in connection with the Plans; and (g) facilitating the mechanisms as set out in the Plans for the payment of withholding taxes.
8. The Plans are administered by the board of directors of the Company ("Board") and/or a committee appointed by the Board ("Committee").
9. All necessary securities filings have been made in the U.S. in order to offer the Plans to Participants of Oracle and its affiliates ("Oracle Companies"). The Plans have been approved by the shareholders of Oracle.
10. A prospectus prepared according to U.S. securities laws describing the terms and conditions of the Plans will be delivered to each Canadian Participant who is eligible to participate in the ESPP or who receives an Award under the 2000 LTIP or the 1991 LTIP. The annual reports, proxy materials and other materials Oracle is required to file with the SEC will be provided or made available to Canadian Participants at the same time and in the same manner as the documents are provided or made available to U.S. Participants.
11. The sale of Shares acquired under the Plans may be made by Participants, Former Participants or Permitted Transferees through the Agents.

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12. As there is no market for the Shares in Canada and none is expected to develop, it is expected that the resale by Participants, Former Participants and Permitted Transferees of the Shares acquired under the Plans will be effected through Nasdaq.
13. As of August 20, 2001, Canadian shareholders of Oracle did not own, directly or indirectly, more than 10% of the issued and outstanding Shares and did not represent in number more than 10% of the shareholders of the Company.
14. The purposes of the 1991 LTIP and the 2000 LTIP are to provide an incentive to eligible employees, independent consultants, advisers, officers and directors of the Oracle Companies whose present and potential contributions are important to the continued success of the Company; to afford such persons an opportunity to acquire a proprietary interest in the Company; and to enable the Company to continue to enlist and retain in its employ the best available talent for the successful conduct of its business. It is Oracle's intention to only allow employees of the Oracle Companies ("Participants") in Canada to participate in the 1991 LTIP and 2000 LTIP at this time.
15. The following awards are offered under the 1991 LTIP and 2000 LTIP: (a) stock options exercisable for Shares ("Options"); (b) stock purchase rights; (c) stock appreciation rights; and (d) long-term performance awards (collectively, the "Awards"). The Awards are non-transferable. It is Oracle's intention to only offer Options to Participants in Canada at this time.
16. The Shares issued under the 1991 LTIP and 2000 LTIP are previously authorized but unissued Shares or reacquired Shares, whether purchased on the market or otherwise.
17. Participants who participate in the 1991 LTIP and 2000 LTIP will not be induced to purchase Shares by expectation of employment or continued employment.
18. The maximum number of Shares that may be issued under the 1991 LTIP is 480,950,499 and under the 2000 LTIP is 570,893,278 plus any unused Shares under the 1991 LTIP that may be transferred to the 2000 LTIP. The foregoing maximum amount is subject to adjustment as provided for in the Plans.
19. The Committee may, in its sole discretion, grant Options to eligible Participants. Each Option granted under the 1991 LTIP and 2000 LTIP will be evidenced by an Option agreement ("Option Agreement").
20. As of December 31, 2001, there were 952 Participants in Canada eligible to receive Options under the 2000 LTIP: 696 Participants in Ontario; 53 Participants in British Columbia; 43 Participants in Alberta; 4 Participants in Saskatchewan; 10 Participants in Manitoba; 140 Participants in Québec; 4 Participants in New Brunswick; and 2 Participants in Nova Scotia. No more Awards are being made under the 1991 LTIP.
21. Subject to the provisions of the 1991 LTIP and 2000 LTIP, the Committee has the sole authority to determine the number of Shares covered by each Option and the conditions and limitations applicable to the exercise of the Option.
22. Options shall be exercisable at such times and subject to such terms and conditions as the Committee may specify, provided that no Option shall be exercisable after the expiration of ten years from the date of grant.
23. The exercise price for Options ("Exercise Price") will be specified in the Option Agreement and will be established at the discretion of the Committee. Generally, the Exercise Price per

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Share shall be the Fair Market Value (as defined in the 1991 LTIP and 2000 LTIP) of a Share on the effective date of grant of the Option.

24. The Committee shall establish procedures governing the exercise of Options. Generally, in order to exercise an Option, a Participant, Former Participant or Permitted Transferee must submit to Oracle or an Agent a notice of exercise in the form and manner prescribed by the Committee ("Notice of Exercise") identifying the Option and number of Shares being purchased, together with full payment for the Shares. The Notice of Exercise shall specify which type of exercise will be used to pay the Exercise Price and other costs, if any.

25. Following the termination of a Participant's relationship with the Oracle Companies for reasons of disability, retirement or any other reason ("Former Participant") or where the Option has been transferred on the death of a Participant by will or pursuant to the laws of intestacy or where the Option has been transferred to family members and trusts and charitable institutions as the Committee shall approve at the time of the grant of such Option ("Permitted Transferees"), the Former Participants and Permitted Transferees will continue to have rights in respect of the Plans ("Post-Termination Rights"). Post-Termination Rights may include, among other things, the right of a Former Participant or Permitted Transferee to exercise an Option for a period determined in accordance with the Plans and the right to sell Shares acquired under the Plans through the Agents. Post-Termination Rights are only available if the right was earned by the Participant while the Participant still had a relationship with the Oracle Companies.

26. The purpose of the ESPP is to provide Participants an opportunity to purchase Shares through payroll deductions.

27. Subject to adjustments as provided for in the ESPP, an aggregate of 405,000,000 Shares have been reserved for issuance under the ESPP.

28. As of December 31, 2001, there were 952 Participants in Canada eligible to purchase Shares under the ESPP: 696 Participants in Ontario; 53 Participants in British Columbia; 43 Participants in Alberta; 4 Participants in Saskatchewan; 10 Participants in Manitoba; 140 Participants in Quebec; 4 Participants in New Brunswick; and 2 Participants in Nova Scotia.

29. Participants may participate in an offering by delivering a subscription agreement to the Company within the time specified in the ESPP, in the prescribed form, thereby authorizing regular payroll deductions accumulated in a periodic deposit account maintained on behalf of the Participant in the ESPP.

30. The purchase price of Shares acquired under the ESPP shall not be less than the lesser of (i) an amount equal to 85% of the fair market value of a Share on the Offering Date, as defined in the ESPP; or (ii) an amount equal to 85% of the fair market value of a Share on the Exercise Date, as defined in the ESPP.

31. An ESPP Participant may authorize deductions not exceeding 10% of compensation, up to a maximum of US\$21,250 per year.

32. Immediately upon termination for any reason of a Participant's employment with the Oracle Companies, the accumulated payroll deductions shall be distributed to the terminated employee, without interest, unless termination occurs within 15 days of the end of the Offering Period, as defined in the ESPP, in which case the purchase will occur at the end of the Offering Period. A terminated Participant shall immediately cease to participate in the ESPP.

33. Pursuant to the 1991 LTIP and the 2000 LTIP, the acquisition of Awards and Shares by the Company in certain circumstances may constitute an "issuer bid". The terms of the Plans permit

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Option holders to surrender Shares to the Company on a stock-swap exercise; for the Company to withhold Shares in order to satisfy tax-withholding obligations (the Shares so withheld will have a Fair Market Value (as defined in the Plans) equal to the amount required to be withheld); for the Company to buy out for a payment in cash or Shares an Option; for the Company to substitute new Options for previously issued Options. The exemptions in the Legislation from the Issuer Bid Requirements may not be available for such acquisitions by the Company since such acquisitions may occur at a price that is not calculated in accordance with the "market price," as that term is defined in the Legislation and may be made from persons other than employees or former employees.

34. The Legislation of the Jurisdictions does not contain exemptions from the Registration and Prospectus Requirements for all the trades in Awards and Shares under the Plans.

35. When a Foreign Agent sells Shares on behalf of Participants, Former Participants and Permitted Transferees, the Foreign Agent, Participants, Former Participants and Permitted Transferees may not be able to rely upon the exemptions from the Registration Requirement contained in the Legislation.

AND WHEREAS pursuant to the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, "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 pursuant to the Legislation is that:

(i) the Registration and Prospectus Requirements shall not apply to any trade or distribution of Awards or Shares made in connection with the Plans, including trades and distributions involving the Oracle Companies, the Agents, Participants, Former Participants, and Permitted Transferees, provided that the first trade of Shares acquired through the Plans pursuant to this Decision shall be deemed a distribution or primary distribution to the public under the Legislation unless the conditions in subsection 2.14(1) of Multilateral Instrument 45-102 *Resale of Securities* are satisfied;

(ii) the first trade of Shares acquired pursuant to the Plans by Participants, Former Participants and Permitted Transferees effected through a Foreign Agent shall not be subject to the Registration Requirement provided that the first trade is executed through a stock exchange or market outside of Canada; and

(iii) the Issuer Bid Requirements shall not apply to the acquisition by Oracle of Shares or Awards from Participants, Former Participants and Permitted Transferees provided the acquisitions are made in accordance with the terms of the Plans.

DATED this 27<sup>th</sup> day of March, 2002.

H. Leslie O'Brien