

# **2002 BCSECCOM 374**

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – relief granted from the registration and prospectus requirements for an employee share offering through a fund in accordance with French law

## **Applicable British Columbia Provisions**

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

## **IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, ONTARIO, QUÉBEC, MANITOBA AND NEW BRUNSWICK**

**AND**

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

**AND**

## **IN THE MATTER OF THOMSON MULTIMEDIA S.A., THOMSON S.A. AND THOMSON MULTIMEDIA GESTION**

## **MRRS DECISION DOCUMENT**

WHEREAS the Canadian securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Ontario, Québec, Manitoba and New Brunswick (the “Jurisdictions”) has received an application from Thomson multimedia, S.A. (the “Issuer”) and its controlling shareholder, Thomson S.A. (the “Controlling Shareholder”), 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 and to file and obtain a receipt for a preliminary prospectus and a prospectus (the “Registration and Prospectus Requirements”) shall not apply to the distribution by the Issuer and the Controlling Shareholder of ordinary shares of the Issuer (“Shares”) to Qualifying Employees (defined in paragraph 4 below) who choose to participate in the Issuer’s global employee share offering (the “Employee Share Offering”) and are resident in the Jurisdictions (the “Canadian Participants”) or to the subsequent transfer of such Shares to Thomson multimedia Gestion, a French employee savings fund (the “Fund”, a fonds communs de placement d’entreprise or “FCPE”);

## 2002 BCSECCOM 374

- (ii) the Registration and Prospectus Requirements shall not apply to certain trades of the securities of the Fund (the “Units”) made to or with the Canadian Participants pursuant to the Employee Share offering;
- (iii) the Registration and Prospectus Requirements shall not apply to certain trades of Shares by the Funds to Canadian Participants upon the redemption of Units by Canadian Participants;
- (iv) the Registration and Prospectus Requirements shall not apply to the first trade in any Shares acquired by Canadian Participants under the Employee Share Offering where such trade is made in compliance with Multilateral Instrument 45-102 and through the facilities of a stock exchange outside of Canada; and
- (v) the manager of the Fund (the “Manager”) is exempt from the requirements contained in the Legislation to be registered as an adviser (the “Adviser Registration Requirements”) to the extent that its activities in relation to the Employee Share Offering require compliance with the Adviser Registration Requirements.

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Commission des valeurs mobilières du Québec is the principal regulator for this application;

AND WHEREAS the Issuer and the Controlling Shareholder have represented to the Decision Makers as follows:

1. The Issuer is a corporation formed under the laws of the Republic of France. The ordinary shares of the Issuer are listed on Euronext Paris and on the New York Stock Exchange (in the form of American Depositary Shares). The Issuer is not and has no current intention of becoming a reporting issuer (or equivalent) under the Legislation.
2. Thomson multimedia Ltd. and other Canadian affiliates of the Issuer (the “Canadian Affiliates”, together with the Issuer, the Controlling Shareholder and other affiliates of the Issuer, the “Thomson multimedia Group”) are direct or indirect controlled subsidiaries of the Issuer and are not or have no current intention of becoming reporting issuers (or equivalent) under the Legislation.
3. The Controlling Shareholder is a corporation formed under the laws of the Republic of France and is wholly owned by the French state. The controlling Shareholder is currently a 35% shareholder of the Issuer. It is not and has no

## 2002 BCSECCOM 374

current intention of becoming a reporting issuer (or equivalent) under the Legislation.

4. Current employees of the Thomson multimedia Group and former employees of the group who have retired after having been employed for at least five years (the “Former Employees”, and together with the current employees of the Thomson multimedia Group, the “Qualifying Employees”) are invited to participate in the Employee Share Offering, pursuant to a French ministerial order enacted under French Privatization Law.
5. The Fund is a French employee share fund (“fonds communs de placement d’entreprise”) established by the Thomson multimedia Group and the Fund Manager to facilitate the participation of Qualifying Employees in the Employee Share Offering and to simplify custodial arrangements for such participation. The Fund is not and has no current intention of becoming a reporting issuer (or equivalent) under the Legislation. The Fund is a collective shareholding vehicle of a type commonly used in France for the conservation of shares held by employee investors and is registered and approved by the French Commission des Opérations de Bourse (the “COB”). Only Qualifying Employees are allowed to hold Units of the Fund, and such holdings will be in an amount proportionate to the number of Shares held by the Fund on behalf of the Canadian Participants.
6. The Manager is an asset management company governed by the laws of the Republic of France. The Manager is registered with the COB to manage French investment funds and complies with the rules of the COB. The Manager is not and has no current intention of becoming a reporting issuer (or equivalent) under the Legislation.
7. The sale of Shares by the Controlling Shareholder will be made through a combined offering, consisting of a global institutional offering in France and elsewhere and the Employee Share Offering.
8. The purchase price for the Shares in the Employee Share Offering will be determined with reference to the French institutional offering price (the “Reference Price”), less a 20% discount. The Reference Price, as determined by a French ministerial order, is €30. Consequently, the discounted share price offered to Qualifying Employees is €24.
9. The Shares subscribed for by the Canadian Participants will be contributed to the Fund and the Canadian Participant will receive one Unit for each contributed Share.

## 2002 BCSECCOM 374

10. Dividends paid on the Shares will be distributed directly to Canadian Participants.
11. The Shares cannot be resold for a period of two years (the “Hold Period”).
12. Provided the Hold Period is satisfied and the Canadian Participants hold the Units for one additional year, Canadian Participants will be entitled to receive additional Shares (“Bonus Shares”) without the payment of any additional consideration as follows:
  - (i) one Bonus Share for each Share purchased, up to a number of Bonus Shares having a maximum value of €609 (approximately C\$847); resulting in the grant of up to 25 Bonus Shares, and
  - (ii) thereafter, one Bonus Share for every four Shares purchased, up to a maximum value of €1,176 (approximately C\$1,634) in the total number of Bonus Shares awarded (including Bonus Shares allocated under clause (i)) resulting in the grant of up to an additional 24 Bonus Shares.
- The maximum number of Bonus Shares that may be granted is 49 shares.
13. At the end of the Hold Period, a Canadian Participant may (i) redeem Units with the Fund in exchange for the Shares or cash; or (ii) continue to hold the Units and redeem them at a later date.
14. In the event of an over-subscription of the Shares available under the Employee Share Offering, the French Minister of the Economy will reduce the number of Shares which should be allocated to each subscriber in approximate proportion to the amount of his or her initial subscription.
15. The Fund will be established for the purpose of implementing the Employee Share Offering. The Fund’s portfolio will consist exclusively of Shares and, from time to time, a minor percentage of the Fund’s assets will be in cash or cash equivalents which are held for purposes of facilitating Unit redemptions. The Fund will not engage in any of the investment practices described in sections 2.3 through 2.6 of National Instrument No. 81-102 except as described herein.
16. Shares issued under the Employee Share Offering will be deposited in the Fund through BNP Paribas Securities Services (the “Depository”), a French bank subject to French banking legislation. Under French law, the Depository must be selected by the Manager from among a limited number of companies

## 2002 BCSECCOM 374

identified on a list by the French Minister of the Economy, and its appointment must be approved by the COB. The Depositary carries out orders to purchase, trade and sell securities in the portfolio and takes all necessary action to allow the Fund to exercise the rights relating to the securities held in its portfolio.

17. The Manager's asset management activities in connection with the Plan and the Fund is limited to receiving the Shares from the Depositary on behalf of the Canadian Participants, and selling such Shares as necessary in order to fund redemption requests. The Manager is also responsible for preparing accounting documents and publishing periodic informational documents as provided by the rules of the Fund. The Manager's activities in no way affect the underlying value of the Shares, and the Manager will not be involved in providing advice to any Canadian Participants.
18. The initial value of a Unit in the Fund corresponds to the market price for the Shares when the Shares are transferred to the Fund. The Unit value of the Fund will be calculated and reported to the COB on a monthly basis, based on the net assets of the Fund divided by the number of Units outstanding. The number of Units will be adjusted to reflect Bonus Shares contributed to the Fund, effective from the first date on which the net asset value is calculated and whenever Shares or Bonus Shares are contributed to the Fund. Upon such adjustments being made, a holder will be credited with additional Units
19. Upon redemption of the Units, the Canadian Participant may choose to receive the underlying Shares or be paid in cash on the basis of the net market price of the Shares corresponding to the Canadian Participant's Units, less the applicable redemption charges. All management charges relating to the Fund will be paid by the Issuer.
20. The Shares may be resold by the Canadian Participants following the Hold Period through the facilities of any of the stock exchanges on which the Shares are then traded.
21. There are approximately 1,032 Qualifying Employees resident in Canada in the provinces of British Columbia (15), Alberta (15), Ontario (150), Québec (840), Manitoba (8) and New Brunswick (4) all of whom together account for less than 3% of the Qualifying Employees worldwide.
22. The Canadian-resident Qualifying Employees will not be induced to subscribe for Shares by expectation of employment or continued employment.

## 2002 BCSECCOM 374

23. The total amount invested by a Qualifying Employee cannot exceed €141,120 (approximately C\$196,156), although a lower limit may be established for Canadian Participants by the Canadian Affiliates.
24. None of the Issuer, the Controlling Shareholder, the Manager or any of their employees, agents or representatives will provide investment advice to the Qualifying Employees with respect to an investment in the Shares or the Units.
25. The Canadian-resident Qualifying Employees will receive an information package which will include a summary of the terms of the Employee Share Offering and a description of relevant Canadian income tax consequences. Upon request, Canadian-resident Qualifying Employees may receive copies of a prospectus filed with the United States Securities and Exchange Commission (the "SEC") and/or the French *Document de Référence and Note d'opération* filed with the COB in respect of the Shares and a copy of the Fund's rules (which are analogous to company by-laws).
26. Canadian-resident Qualifying Employees will also receive copies of the continuous disclosure materials relating to the Issuer furnished to shareholders resident in the United States by virtue of the registration of the Shares with the SEC.
27. It is not expected that there will be any market for the Shares or the Units in Canada. The Units will not be listed on any exchange.
28. As of the date hereof and after giving effect to the Employee Share Offering, Canadian-resident holders of Shares do not and will not beneficially own more than 10% of the Shares and do not and will not represent in number more than 10% of the total number of holders of Shares as shown on the books of the Issuer.

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;

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

## **2002 BCSECCOM 374**

(a) the Registration and Prospectus Requirements contained in the Legislation shall not apply to the following trades made pursuant to the Employee Share Offering:

- (1) trades in Shares by the Controlling Shareholder to Qualifying Employees resident in the Jurisdictions;
- (2) trades in Shares by the Qualifying Employees resident in the Jurisdictions to the Fund;
- (3) trades of the Units of the Fund made to or with Canadian Participants; and
- (4) trades of Shares by the Fund to Canadian Participants upon the redemption of Units by Canadian Participants;

provided that, in each case, the first trade in any such Share or Unit acquired pursuant to this Decision to a person or a company, other than a trade in Shares or Units enumerated in this paragraph, shall be deemed a distribution or a primary distribution to the public under the Legislation of such Jurisdiction;

(b) the Registration and Prospectus Requirements shall not apply to a trade in Shares acquired by a Canadian Participant pursuant to the Employee Share Offering provided that:

- (1) except in Québec, the conditions in subsection (1) of section 2.14 of Multilateral Instrument 45-102 are satisfied; or
- (2) in Québec, such trade is executed through the facilities of a stock exchange outside of Canada; and

(c) the Manager shall be exempt from the Adviser Registration Requirements, where applicable, in order to carry out the activities described in paragraph 17 above.

DATED at Montreal, Quebec on April 5, 2002.

Josée Deslauriers  
Le chef du service du financement des sociétés