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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from the registration and prospectus requirements for trades in securities under incentive plans – first trade relief, including registration relief for trades by permitted transferees, subject to certain conditions – relief from issuer bid requirements for stock swap exercises under incentive plans

Applicable British Columbia

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61, 76, 105-108, 110, 114
Multilateral Instrument 45-102 Resale of Securities, s. 2.14(1)

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

AND

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

AND

IN THE MATTER OF OPENWAVE SYSTEMS, INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Ontario, British Columbia and Alberta (the “Jurisdictions”) has received an application from Openwave Systems, Inc. (“Openwave” or the “Company”) for a decision pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that (i) the requirement contained in the Legislation to be registered to trade in a security (the “Registration Requirements”), and the requirement to file a prospectus and obtain a receipt (the “Prospectus Requirements”) will not apply to certain trades in securities of Openwave made in connection with the 1999 Employee Stock Purchase Plan (the “ESPP”); the Openwave 1995 Stock Plan (the “1995 SOP”); the Openwave 1996 Stock Plan (the “1996 SOP”); and the Openwave 2001 Stock Compensation Plan (the “2001 SOP”) (the 1995 SOP, the 1996 SOP and the 2001 SOP are collectively the “SOPs” and together with the ESPP, the “Plans”); (ii) the Registration Requirements will not apply to first trades of shares acquired under the Plans executed on an exchange or market outside of Canada; and (iii) 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

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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 (the "Issuer Bid Requirements") will not apply to certain acquisitions by the Company of shares pursuant to the Plans in each of the Jurisdictions;

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 Openwave has represented to the Decision Makers as follows:

1. Openwave is presently a corporation in good standing incorporated under the laws of the State of Delaware.
2. Openwave and affiliates of Openwave ("Openwave Affiliates") (Openwave and Openwave Affiliates are collectively, the "Openwave Companies") provide software and services related to mobile Internet and network use.
3. The Company is registered with the Securities Exchange Commission (the "SEC") in the U.S. under the U.S. Securities Exchange Act of 1934 (the "Exchange Act") and is not exempt from the reporting requirements of the Exchange Act pursuant to Rule 12g 3-2.
4. Openwave is not a reporting issuer in any of the Jurisdictions and has no present intention of becoming a reporting issuer in any of the Jurisdictions.
5. The authorized share capital of Openwave consists of: 1,000,000,000 shares of common stock ("Shares"); and 5,000,000 shares of preferred stock ("Preferred Shares"). As of January 31, 2002, there were 174,483,287 Shares, and 0 Preferred Shares issued and outstanding.
6. The Shares are quoted on Nasdaq.
7. Openwave intends to use the services of one or more agents/brokers in connection with the Plans (each an "Agent"). E*Trade Securities Inc. ("E*Trade") and E*Trade Canada Securities Corporation ("E*Trade Canada") have initially been appointed by Openwave to act as Agents for the Plans. E*Trade is a corporation registered under applicable U.S. securities or banking legislation to conduct retail trades in securities and E*Trade Canada is registered as a broker/dealer in each of the Jurisdictions. Openwave may at any time appoint additional or replacement Agents under the Plans. Any Agent appointed in

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replacement of, or in addition to, E*Trade and E*Trade Canada, if not a registrant in the Jurisdictions, would be registered under applicable U.S. legislation.

8. The role of the Agent may include: (a) disseminating information and materials to Participants (as defined below) in connection with the Plans; (b) assisting with the administration of and general record keeping for the Plans; (c) holding Shares on behalf of Participants, Former Participants (as defined below) and Permitted Transferees (as defined below) in limited purpose brokerage accounts; (d) facilitating Option (as defined below) exercises (including cashless exercises and stock swap exercises) under the Plans; (e) facilitating the payment of withholding taxes, if any, by cash or the tendering or withholding of Shares; (f) facilitating the reacquisition of Awards (as defined below) under the terms of the Plans; and (g) facilitating the resale of Shares issued in connection with the Plans.

9. The purposes of the SOPs are to attract and retain the best available personnel, to provide additional incentive to Participants and to promote the success of Openwave's business. The purpose of the ESPP is to provide Participants with an opportunity to purchase Shares of the Company.

10. Subject to adjustment as described in the Plans, the maximum number of Shares that may be issued pursuant to the Plans are: 6,552,339 Shares under the ESPP; 30,855,627 Shares under the 1995 SOP; 25,593,850 Shares under the 1996 SOP and 10,604,385 Shares under the 2001 SOP.

11. The SOPs permit grants of: (a) options on Shares ("Options"); (b) stock awards including restricted stock bonus awards ("Restricted Stock Bonus Awards"); (c) the right to acquire restricted stock ("Restricted Stock Purchase Awards"), and (d) the right to purchase Shares ("Stock Purchase Rights") (Shares, Options, Restricted Stock Bonus Awards, Restricted Stock Purchase Awards and Stock Purchase Rights are, collectively, "Awards") to employees, non-employee directors and consultants of the Openwave Companies ("SOP Participants").

12. Under the ESPP, employees of the Openwave Companies ("ESPP Participants") are offered an opportunity to purchase Shares by means of applying accumulated payroll deductions to the purchase of Shares at a discount price determined in accordance with the terms of the ESPP.

13. Employees of the Openwave Companies eligible to participate in the Plans will not be induced to purchase Shares or to exercise Awards by expectation of employment or continued employment.

14. Consultants to the Openwave Companies eligible to participate in the Plans will not be induced to purchase Shares or to exercise Awards by expectation of the

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individual consultant, the consultant's company or the consultant's partnership being engaged or continuing to be engaged as a consultant.

15. Officers of the Openwave Companies who participate in the Plans will not be induced to purchase Shares or to exercise Awards by expectation of appointment or employment or continued appointment or employment as an officer.

16. It is anticipated that consultants who will be granted Awards under the SOPs will: (a) provide technical, business, management or other services to the Openwave Companies (other than services relating to the sale of securities or promotional/investor relations services); (b) provide consulting services to the Openwave Companies under a written contract; (c) have a relationship with the Openwave Companies that will permit them to be knowledgeable about the business affairs of the Openwave Companies; and (d) will spend a significant amount of time and attention on the affairs and business of one or more of the Openwave Companies.

17. As of April 17, 2002, there were 19 persons resident in Canada eligible to receive Awards under or participate in the Plans: 11 persons resident in Ontario; 4 persons resident in British Columbia; 1 person resident in Alberta, and 3 persons resident in Quebec.

18. All necessary securities filings have been made in the U.S. in order to offer the Plans to Participants resident in the U.S.

19. A prospectus prepared according to U.S. securities laws describing the terms and conditions of each of the Plans will be delivered to each SOP Participant who receives an Award under the SOPs and to each ESPP Participant who is eligible to participate in the ESPP. The annual reports, proxy materials and other materials Openwave provides to its U.S. shareholders will be provided or made available upon request to SOP Participants and ESPP Participants (together "Participants") resident in the Jurisdictions at substantially the same time and in substantially the same manner as such documents are provided to Participants whose participation under the Plans is comparable to that of the Canadian residents.

20. The Plans are administered by a committee appointed by the board of directors of Openwave (the "Committee").

21. Generally, in order to exercise an Option under the SOPs, an optionee must submit a written notice of exercise to Openwave or to the Agent identifying the Option, the number of Shares being purchased and the method of payment.

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22. The SOPs provide that on exercise of Options, the payment of the exercise price in order to acquire the underlying Shares may be made: (a) in cash; (b) by the surrender of Shares owned by the Option holder to the Company for cancellation ("Stock-Swap Exercises") or to the Agent for resale; (c) the retention of a number of Shares by the Company from the total number of Shares into which the Option is exercised; (d) by a combination of the foregoing; or (e) such other consideration and method of payment permitted by the Committee at an exercise price determined in accordance with the terms of the SOPs.

23. Options will vest and will be exercisable as specified in the Option agreement as determined by the Committee. The Option exercise price for each Share purchased under any Option will be specified in the Option agreement and (a) in the case of the 2001 SOP, will not be less than the fair market value (as such term is defined in the 2001 SOP), (b) in the case of the 1995 SOP and the 1996 SOP, the exercise price shall be determined by the Committee in its discretion.

24. The term of each Option will be fixed by the Committee, provided however that the term shall be no more than ten (10) years from the date of the grant. The date of exercise will be chosen by the Option holder.

25. Under the SOPs, on the termination of the SOP Participant's service with Openwave, Shares awarded under Restricted Stock Bonus Awards or Restricted Stock Purchase Awards may be subject to a Share reacquisition or Share repurchase option in favor of Openwave in accordance with the terms of the Plans ("Share Reacquisitions").

26. Openwave shall have the right to deduct applicable taxes from any payment under the Plans by withholding, at the time of delivery or vesting of cash or Shares under the Plans, an appropriate amount of cash or Shares ("Share Withholding Exercises") or a combination thereof for a payment of taxes required by law or to take such other action as may be necessary in the opinion of Openwave or the Committee to satisfy all obligations for the withholding of such taxes.

27. Awards and rights under the Plans are not transferable by a Participant other than by will or beneficiary designation or by the laws of intestacy unless otherwise provided for by the Committee.

28. Following the termination of a Participant's relationship with the Openwave Companies for reasons of disability, retirement, termination, change of control or any other reason ("Former Participants"), and on the death of a Participant where Awards have been transferred by will or pursuant to a beneficiary designation or the laws of intestacy or otherwise ("Permitted Transferees"), the Former

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Participants and Permitted Transferees will continue to have rights in respect of the Plans ("Post-Termination Rights").

29. Post-Termination Rights may include, among other things: (a) the right to exercise Awards for a period determined in accordance with the SOPs; (b) the right to receive Shares under the ESPP; (c) the right to receive payment of accumulated payroll deductions in his or her account, without interest under the ESPP; and (d) the right to sell Shares acquired under the Plans through the Agent.

30. Post-Termination Rights will only be effective where such rights accrued while the Participant had a relationship with the Openwave Companies.

31. 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.

32. As of April 25, 2002, Canadian shareholders 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 Openwave. If at any time during the currency of the Plans Canadian shareholders of Openwave 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 Openwave, Openwave will apply to the relevant Jurisdiction for an order with respect to further trades to and by Participants in that Jurisdiction in respect of the Shares acquired under the Plans.

33. Pursuant to the SOPs, the acquisition of Awards by the Company in the following circumstances may constitute an "issuer bid": Stock Swap Exercises, Share Withholding Exercises, Share Reacquisitions.

34. The issuer bid exemptions in the Legislation 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 Permitted Transferees.

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

36. When the Agents sell Shares on behalf of Participants, Former Participants and Permitted Transferees, the Agents, Participants, Former Participants and

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Permitted Transferees may not be able to rely upon the exemptions from the Registration Requirements contained in the Legislation.

AND WHEREAS pursuant to the System, this 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:

- (a) the Registration Requirements and Prospectus Requirements will not apply to any trade or distribution of Awards or Shares made after the date of this Decision in connection with the Plans provided that the first trade in Shares acquired through the Plans pursuant to this Decision is deemed a distribution under the Legislation unless the conditions in subsection 2.14(1) of Multilateral Instrument 45-102 Resale of Securities are satisfied;
- (b) the first trade after the date of this Decision of Awards or Shares acquired under the Plans will not be subject to the Registration Requirements provided the conditions in subsection 2.14(1) of Multilateral Instrument 45-102 *Resale of Securities* are satisfied; and
- (c) the Issuer Bid Requirements will not apply to the acquisition after the date of this Decision by Openwave of Awards or Shares from Participants, Former Participants or Permitted Transferees provided such acquisitions are made in accordance with the terms of the Plans.

DATED August 6, 2002.

Howard I. Weston

Robert L. Shirriff