

# 2005 BCSECCOM 178

March 9, 2005

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Rules s. 162(3) - Exemption from the Valuation Requirements - An issuer wants relief from the requirement to obtain a formal valuation in connection with an issuer bid for its outstanding securities - A liquid market for the issuer's securities exists prior to the bid; subsequent to the bid, there will be a market for the issuer's securities that is not materially less liquid than prior to the bid

## Applicable British Columbia Provisions

*Securities Rules*, B.C. Reg. 194/97, ss. 162(2) and (3)

In the Matter of  
the Securities Legislation of  
Alberta, British Columbia, Manitoba, Newfoundland, Nova Scotia and  
Saskatchewan  
(the Jurisdictions)

and

In the Matter of  
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of  
Sherritt International Corporation  
(the Filer)

## MRRS Decision Document

## Background

1. The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that, in connection with the proposed purchase by the Filer of up to 10,000,000 of its common shares (the "Common Shares") pursuant to an issuer bid (the "Offer"), the Filer be exempt from the requirements in the Legislation to obtain a valuation of the Common Shares and provide disclosure in the Circular of such valuation, or summary thereof (the "Valuation Requirement").

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2. Under the Mutual Reliance Review System for Exemptive Relief Applications (MRRS):
  - 2.01 the Alberta Securities Commission is the principal regulator for this application; and
  - 2.02 this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

3. Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are otherwise defined in this decision.

### **Representations**

4. This decision is based on the following facts represented by the Filer:
  - 4.01 The Filer is a reporting issuer or the equivalent in each of the Jurisdictions and is not in default of any requirement under the Legislation.
  - 4.02 The Filer's authorized capital consists of an unlimited number of Common Shares. 131,381,776 Common Shares were outstanding as at February 1, 2005. The Filer also has outstanding \$200,000,000 aggregate principal amount outstanding on its 6% Convertible Unsecured Subordinated Debentures due December 15, 2006, (the "Debentures"). On January 28, 2005, the Filer announced its intention to redeem the Debentures and to satisfy the redemption price by issuing Common Shares to Debentureholders. If all of the outstanding Debentures are redeemed, then the Filer will issue approximately 21,297,984 Common Shares. If all of the Debentureholders exercise their option to convert, then the Filer will issue approximately 22,798,000 Common Shares.
  - 4.03 The Debentures and the Common Shares are listed and posted for trading on the Toronto Stock Exchange (the "TSX").
  - 4.04 To the knowledge of the Filer, no person or company holds more than 10% of the Common Shares.
  - 4.05 On February 1, 2005, the last full trading day prior to the day on which the Filer announced its pricing of the Offer, the closing price of the Common Shares on the TSX was \$10.00.

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4.06 During the 12 months ended February 1, 2005:

- a. the number of outstanding Common Shares was at all times at least 5,000,000, excluding Common Shares that either were beneficially owned or over which control or direction was exercised by related parties to the Filer or were not freely tradeable;
- b. the aggregate trading volume of the Common Shares on the TSX was at least 1,000,000 Shares;
- c. there were at least 1,000 trades in Common Shares on the TSX; and
- d. the aggregate trading value based on the price of the trades referred to in paragraph c. was at least \$15,000,000.

The market value of the Common Shares on the TSX was at least \$75,000,000 for the months of December, 2004 and January, 2005.

4.07 Taking into account the information in paragraph 4.06, no formal valuation will be prepared in connection with the Offer or disclosed in the Circular as the Filer will rely on the liquid market exemption (the "Liquid Market Exemption") that is available to it under section 3.4, paragraph 3, of Rule 61-501 of the Ontario Securities Commission (the "Ontario Rule") and the same section of Local Policy Statement Q-27 of the Quebec Securities Commission (the "Quebec Policy").

4.08 As indicated in paragraph 4.06, the Common Shares meet the bright line test for a liquid market that is set out in section 1.2, paragraph 1(a), of the Ontario Rule and section 1.3, paragraph 1(a), of the Quebec Policy. It is reasonable to conclude that, following the completion of the Issuer Bid, there will be a market that is no less liquid than the market that existed at the time of the making of the bid. As a result, the Filer intends to avail itself of the liquidity exemption to the valuation requirement pursuant to the provisions of the Ontario Rule and the Quebec Policy set out in the above paragraph.

### **Decision**

5. 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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6. The decision of the Decision Makers under the Legislation is that, in connection with the Offer, the Filer is exempt from the Valuation Requirement.

DATED at Calgary, Alberta on this 9<sup>th</sup> day of March, 2005.

Mavis Legg CA,  
Manager, Securities Analysis  
Alberta Securities Commission