

## **2003 BCSECCOM 870**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Application – relief for the first trade of securities acquired under prospectus exemptions where the issuer does not meet all of the technical requirements of “qualifying issuer” under MI 45-102 - issuer does not have a “current AIF” as defined in MI 45-102 and is unable to become listed on a qualified market until after it distributes the securities - issuer may rely on its Form 10-KSB as an alternative annual information form – securities subject to a 4 month restricted period on resale of securities acquired under the exemptions, which restricted period beginning on the date the issuer becomes listed on the American Stock Exchange – revocation of previous order relating to same matter

### **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C.1996, c. 418, s. 171

Multilateral Instrument 45-102 *Resale of Securities*, definitions and sections 2.3, 2.4 and 4.1(1).

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

**AND**

### **IN THE MATTER OF NATIONAL POLICY 12-201 MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATION**

**AND**

### **IN THE MATTER OF MULTILATERAL INSTRUMENT 45-102 RESALE OF SECURITIES**

**AND**

### **IN THE MATTER OF SUITE101.COM, INC.**

### **MRRS DECISION DOCUMENT**

1. WHEREAS the securities regulatory authority or regulator (Decision Makers) in each of Alberta, British Columbia and Ontario (Jurisdictions) has received an application from Suite101.com, Inc. (Suite101) for a decision under section 4.1 of Multilateral Instrument 45-102 *Resale of Securities* (MI 45-102) that sections 2.3 and 2.4 of MI 45-102 will not apply to the first trade of units (Units), Warrants or common shares of Suite101 acquired by residents of the

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Jurisdictions (Residents) under an offering by way of private placement (Offering) or to the Common Shares acquired by the Agents on exercise of certain brokers warrants (Brokers Warrants);

2. AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Application (System), the Alberta Securities Commission (ASC) is the Principal Regulator for this application;
3. AND WHEREAS the Alberta Securities Commission on behalf of the Jurisdictions issued an MRRS Decision Document dated December 10, 2003 (the Original MRRS Decision) that did not provide first trade relief for Common Shares issued upon the exercise of Brokers Warrants;
4. AND WHEREAS, unless otherwise defined, the terms herein have the same meaning as set out in National Instrument 14-101 *Definitions*;
5. AND WHEREAS Suite101 has represented to the Decision Makers that:
  - 5.1 Suite101 is a corporation incorporated under the laws of the State of Delaware with its head office in Calgary, Alberta;
  - 5.2 Suite101 is a reporting issuer under the securities legislation of the Jurisdictions and Québec and is not in default of any of its obligations under the securities legislation of the Jurisdictions or Québec;
  - 5.3 Suite101's authorized capital consists of 100,000,000 shares of common stock, par value \$0.001 (Common Shares) of which there are presently 49,053,355 Common Shares issued and outstanding;
  - 5.4 Suite101 is an electronic filer under National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR);
  - 5.5 Suite101's Common Shares are not listed on any Canadian stock exchange;
  - 5.6 the Common Shares are traded on the Over the Counter Bulletin Board (OTCBB) market in the United States;
  - 5.7 Suite101 has a class of equity securities registered under Section 12(g) of the 1934 Act, and accordingly is required to file with the SEC periodic and other reports and schedules under the provisions of the 1934 Act;

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- 5.8 Suite101 is not a “qualifying issuer” as defined in MI 45-102 because it fails to meet the following requirements under that definition:
  - 5.8.1 it does not have a “current AIF” as defined in MI 45-102; and
  - 5.8.2 it does not have a class of equity securities listed or quoted on a “qualified market” as defined in MI 45-102;
- 5.9 under MI 45-102 a “current AIF” means, among other things, a current annual report filed on Form 10-K under the 1934 Act for the issuer’s most recently completed financial year filed in any jurisdiction by an issuer that has securities registered under section 12 of the 1934 Act;
- 5.10 Suite101 filed an annual report on Form 10-KSB under the 1934 Act for its fiscal year ended December 31, 2002, which Form 10-KSB was filed on SEDAR on May 23, 2003;
- 5.11 a Form 10-KSB is a category of the Form 10-K and other than certain requirements relating to historical financial information, the Form 10-KSB contains the same level of disclosure as the Form 10-K;
- 5.12 under proposed National Instrument 51-102 Continuous Disclosure Obligations, both the Form 10-K and the Form 10-KSB would qualify as an alternative form of annual information form;
- 5.13 the American Stock Exchange (AMEX) is a qualified market under MI 45-102;
- 5.14 Suite101 intends to list its Common Shares on AMEX and has filed an application for listing on or about October 2, 2003 with AMEX;
- 5.15 to meet AMEX’s listing requirements, and to fund corporate activities, Suite101 intends to conduct the Offering;
- 5.16 under the Offering Suite101 will distribute up to 6,000,000 Units at a price of \$1.00 per Unit;
- 5.17 under the Offering one Unit is comprised of one Common Share and one half warrant where one whole warrant (Warrant) entitles the holder to purchase one Common Share at a price of \$2.50 for a period of two years from the closing of the Offering;

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- 5.18 under the Offering Units may be sold to Residents, residents of the United States and to parties who are non-resident in Canada and the United States;
- 5.19 under the Offering the Agents are entitled to receive a 6% commission and to receive warrants ("Brokers Warrant") to purchase up to 600,000 Common Shares at a price of US\$1.50 for a period of two years from the closing of the Offering;
- 5.20 Units will be distributed to Residents under exemptions from the dealer registration requirement and the prospectus requirement that are available under the securities legislation of the Jurisdictions;
- 5.21 absent this Decision, Residents who acquire securities under the Offering will be restricted from selling their Units, Warrants or Common Shares (including Common Shares acquired on exercise of the Warrants) for 12 months under MI 45-102 because Suite101 will not be a "qualifying issuer" when the Residents acquire their Units;
- 5.22 absent this Decision, the brokers who acquire securities under the Offering will be restricted from selling their Common Shares acquired on exercise of the Broker Warrants for 12 months under MI 45-102 because Suite101 will not be a "qualifying issuer" when the brokers acquire their Broker Warrants.
- 6. AND WHEREAS under the System, this MRRS Decision document evidences the decision of each Decision Maker (Decision);
- 7. 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;
- 8. THE DECISION of the Decision Makers under MI 45-102 is that section 2.3 and 2.4 of MI 45-102 will not apply to the first trade of Units, Warrants or Common Shares (including Common Shares acquired on exercise of the Warrants) acquired by Residents under the Offering or to the first trade of Common Shares acquired on exercise of the Broker Warrants, provided that
  - 8.1 Suite101 is and has been a reporting issuer in a jurisdiction listed in Appendix B of MI 45-102 for the four months immediately preceding the trade;

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- 8.2 Suite101 files a notice on SEDAR advising that it has filed the Form 10-KSB as an alternative form of annual information form under MI 45-102 and identifying the SEDAR project number under which the Form 10-KSB was filed;
  - 8.3 Suite101 files a Form 45-102F2 on or before the tenth day after the distribution date (as defined in MI 45-102) of the Units certifying that it is a qualifying issuer except for the requirement that it have a current AIF and have a class of securities listed or quoted on a qualified market;
  - 8.4 Suite101 has a class of equity securities listed on AMEX and has not
    - 8.4.1 been notified by AMEX that it does not meet the requirements to maintain that listing, or
    - 8.4.2 been declared inactive, suspended or the equivalent by AMEX;
  - 8.5 at least four months have elapsed from the distribution date of Units or from the date the Common Shares are listed for trading on AMEX, whichever is later;
  - 8.6 certificates representing the securities issued under the Offering are issued that carry a legend stating:

“Unless permitted under securities legislation, the holder of the securities shall not trade the securities before [insert the date that is four months and a day after the distribution date] or four months and a day after the date the Common Shares are listed for trading on AMEX, whichever is later.”
  - 8.7 the trade is not a control distribution;
  - 8.8 no unusual effort is made to prepare the market or to create a demand for the Units, Warrants or Common Shares;
  - 8.9 no extraordinary commission or consideration is paid to a person or company in respect of the trade; and
  - 8.10 if the selling security holder is an insider or officer of Suite101, the selling security holder has no reasonable grounds to believe that Suite101 is in default of securities legislation.
9. The Original MRRS Decision is hereby revoked.

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DATED at the City of Calgary  
in the Province of Alberta  
this day 18<sup>th</sup> of December, 2003.

Glenda A. Campbell, Q.C., Vice-Chair

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Stephen R. Murison, Vice-Chair