

# 2005 BCSECCOM 217

March 2, 2005

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 48, 76 Employees & Consultants - Exemption from s. 34(1)(a) requirement to be registered as a dealer in connection with a trade and s. 61 requirement to file a prospectus in connection with a distribution involving employees, consultants, past employees and similar persons - A US issuer is seeking first trade relief for securities that it will issue or has issued to Canadian residents - The issuer meets all of the conditions of section 2.14 of Multilateral Instrument 45-102 *Resale of Securities* and section 3.2 of Multilateral Instrument 45-105 *Trades to Employees, Senior Officers, Directors, and Consultants*, except that the issuer is a reporting issuer in Québec as a result of an arrangement

## **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, Saskatchewan, Manitoba, Ontario, Nova Scotia, New  
Brunswick and Newfoundland and Labrador (the Jurisdictions)

and

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

and

In the Matter of  
Hewlett-Packard Company (HP or the Filer)

## MRRS Decision Document

## **Background**

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application (the Application) from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the requirements contained in the Legislation to be registered to trade in a security (the Registration Requirements) and to file and obtain a receipt for a preliminary prospectus and a prospectus (the Prospectus Requirements) shall not apply to first trades by Award Eligible Employees (defined below), former such employees, or the legal representatives, beneficiaries or other permitted transferees of any of the foregoing, of common shares (the Common Shares) in the capital of the Filer

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acquired pursuant to options for Common Shares and stock awards granted in connection with the HP 2004 Stock Incentive Plan (the HP 2004 Plan), including first trades effected through agents (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Ontario Securities Commission is the principal regulator for this application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

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

### **Representations**

This decision is based on the following facts represented by the Filer:

1. HP is a corporation incorporated under the laws of Delaware and is not a reporting issuer in any jurisdiction in Canada except Quebec. HP is subject to the reporting requirements of the United States Securities Act of 1933, as amended, and the United States Securities Exchange Act of 1934, as amended. The Common Shares are listed and posted for trading on the New York Stock Exchange, Inc., the Pacific Exchange and the NASDAQ National Market.
2. The authorized share capital of HP consists of 9,600,000,000 Common Shares with a par value of US\$0.01 each and 300,000,000 shares of preferred stock with a par value of US\$0.01 each. As at December 31, 2004, there were 2,910,039,823 Common Shares and no shares of preferred stock of HP issued and outstanding.
3. Hewlett-Packard (Canada) Ltd. (HP Canada), currently a wholly-owned subsidiary of HP, is a corporation incorporated under the federal laws of Canada. HP Canada is not a reporting issuer or its equivalent in any jurisdiction in Canada and has no present intention of becoming a reporting issuer or its equivalent in any jurisdiction in Canada.
4. Options to acquire Common Shares (HP Options) are awarded pursuant to the HP 2004 Plan to various employees of HP and its affiliated entities eligible to participate (Award Eligible Employees). In addition, stock awards, including restricted stock units payable in Common Shares, and cash awards may be

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granted under the HP 2004 Plan. The HP 2004 Plan was approved by the shareholders of HP on March 17, 2004.

5. Participation in the HP 2004 Plan is voluntary and the Award Eligible Employees will not be granted HP Options or stock or cash awards under the HP 2004 Plan or induced to exercise HP Options by expectation of employment or continued employment with HP, HP Canada or any other affiliated entity of HP.
6. Unless determined otherwise by the administrator of the HP 2004 Plan, HP Options or stock or cash awards granted under the HP 2004 Plan are non-transferable during an Award Eligible Employee's life, other than by beneficiary designation, will or by the laws of descent or distribution. An Award Eligible Employee's beneficiary, the executor or administrator of such employee's estate or, if none, the person(s) entitled to exercise the HP Options under such employee's will or the laws of descent or distribution, may exercise such HP Options in full within one year following the Award Eligible Employee's death. Upon the death of an Award Eligible Employee with an outstanding stock award, such employee's beneficiary, the executor or administrator of such employee's estate or, if none, the person(s) entitled to the stock award under such employee's will or the laws of descent or distribution, will be entitled to receive a prorated portion of Common Shares pursuant to the stock award.
7. Award Eligible Employees in Canada who are granted HP Options or stock or cash awards under the HP 2004 Plan will be provided with all the disclosure documentation that HP employees resident in the United States who receive HP Options or stock or cash awards under the HP 2004 Plan are entitled to receive.
8. HP uses the services of agents (each as listed or as replaced, an Agent, and collectively, the Agents) in connection with the HP 2004 Plan. The current Agents under the HP 2004 Plan are Fiserv Investor Services, Inc., Morgan Stanley, Smith Barney and Computershare Investor Services. The Agents are, and, if replaced will be, corporations registered under applicable U.S. securities legislation and have been or will be authorized to provide services under the HP 2004 Plan.
9. Because there is no market for the Common Shares in Canada and none is expected to develop, any trades of the Common Shares by Award Eligible Employees, former such employees, their legal representatives or permitted transferees or any Agent will be effected through the facilities of and in

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accordance with the rules of one of the exchanges or markets outside of Canada on which the Common Shares are traded.

10. As at December 3, 2004, residents of Canada did not own, directly or indirectly, more than 10% of the outstanding Common Shares and did not represent in number more than 10% of the total number of owners, directly or indirectly, of Common Shares.
11. An exemption from the Registration Requirements is not available in the Jurisdictions for resale of the Common Shares acquired pursuant to HP Options and stock awards granted under the HP 2004 Plan, including trades effected through Agents. Such an exemption would be available pursuant to section 3.2 of Multilateral Instrument 45-105 *Trades to Employees, Senior Officers, Directors and Consultants* but for the fact that HP is a reporting issuer in Quebec.
12. The exemption from the Prospectus Requirements contained in section 2.14 of Multilateral Instrument 45-102 *Resale of Securities* (MI 45-102) is not available in the Jurisdictions for resale of the Common Shares acquired pursuant to HP Options and stock awards granted under the HP 2004 Plan, including trades effected through Agents, since HP is a reporting issuer in Quebec.

### Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the Decision has been met.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that the conditions in subsection 2.14(1) of MI 45-102, other than the requirements of paragraph 2.14(1)(a), are satisfied.

Paul M. Moore  
Vice-Chair  
Ontario Securities Commission

Wendell S. Wigle  
Commissioner  
Ontario Securities Commission