

2004 BCSECCOM 202

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief from the requirement that a reporting issuer must send its audited annual financial statements to securityholders concurrently with filing the statements, subject to conditions

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 91

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

AND

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

AND

IN THE MATTER OF DIGITAL DISPATCH SYSTEMS INC.

MRRS DECISION DOCUMENT

- ¶ 1 WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan and Ontario (the “Jurisdictions”) has received an application from Digital Dispatch Systems Inc. (“Digital”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirement contained in the Legislation that a reporting issuer send to its security holders its comparative consolidated financial statements and auditor’s report thereon relating to its financial year ended December 31, 2003 (the “Annual Financial Statements”) concurrently with the filing of the Annual Financial Statements with the Decision Makers (the “Concurrent Mailing Requirement”) shall not apply to Digital;
- ¶ 2 AND WHEREAS, under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the British Columbia Securities Commission is the principal regulator for this application;

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- ¶ 3 AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions;
- ¶ 4 AND WHEREAS Digital has represented to the Decision Makers that:
1. it is a company incorporated under the *Company Act* (British Columbia) with its head office located in British Columbia;
 2. it is a reporting issuer in the Jurisdictions and is not in default of any applicable requirement of the Legislation;
 3. its authorized capital consists of 200,000,000 common shares without par value and 50,000,000 preferred shares without par value, of which 10,257,983 common shares and no preferred shares are issued and outstanding;
 4. its common shares are listed and posted for trading on The Toronto Stock Exchange;
 5. it proposes to file a preliminary long form prospectus (the “Preliminary Prospectus”) in mid-March, 2004 and a final long form prospectus approximately six weeks later (together, the “Prospectuses”) for the offering of a series of common shares;
 6. the Annual Financial Statements and related management’s discussion and analysis (“MD&A”) have been approved by Digital’s board of directors;
 7. although the Legislation does not require Digital to file the Annual Financial Statements until May 19, 2004, it will file its Annual Financial Statements and MD&A prior to, or concurrently with, the filing of the Preliminary Prospectus because it wants to incorporate its Annual Financial Statements into the Prospectuses;
 8. concurrently with the filing of the Annual Financial Statements and MD&A, Digital proposes to announce that the Annual Financial Statements and MD&A have been filed and will be publicly available via the System for Electronic Document Analysis and Retrieval (“SEDAR”);
 9. it proposes to send the Annual Financial Statements and MD&A to its shareholders entitled to receive them concurrently with the mailing of the notice of meeting and management proxy circular for the annual meeting of shareholders of Digital in respect of fiscal 2003 and, in any event, not later

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than the last date upon which they could have been filed with the Decision Makers in compliance with the Legislation;

- ¶ 5 AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);
- ¶ 6 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;
- ¶ 7 THE DECISION of the Decision Makers under the Legislation is that the Concurrent Mailing Requirement shall not apply to Digital in respect of its Annual Financial Statements, provided that:
1. Digital issues, concurrently with the filing of the Annual Financial Statements and MD&A with the Decision Makers, a press release that will:
 - (a) be filed on SEDAR and Digital’s website;
 - (b) include the approximate date on which the Annual Financial Statements and MD&A will be mailed to the shareholders of Digital who are entitled to receive them; and
 - (c) state that any of the shareholders of Digital entitled to receive the Annual Financial Statements and MD&A may, on request to Digital, obtain a copy, and that they will be able to view the Annual Financial Statements and MD&A on the SEDAR website; and
 2. Digital sends the Annual Financial Statements and MD&A to its shareholders entitled to receive them in accordance with the procedures outlined in National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* and, in any event, not later than the last date upon which they could have been filed with the Decision Makers in compliance with the Legislation.
- ¶ 8 March 23, 2004

Brenda Leong
Director