

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Employment agreements entered into between offeror and key executives of the offeree who are also selling securityholders of the offeree - executives holding less than five percent of offeree shares on a fully-diluted basis - agreements reflect commercially reasonable terms and negotiated at arm's length - Decision made that agreements being entered into for reasons other than to increase the value of the consideration paid to the selling securityholders for their shares and that such agreements may be entered into notwithstanding the prohibition on collateral benefits.

Applicable Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as amended, ss. 97 and 104(2)(a).

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA, BRITISH COLUMBIA, MANITOBA, NEWFOUNDLAND AND LABRADOR,
NOVA SCOTIA, ONTARIO, QUEBEC, AND SASKATCHEWAN

AND

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

AND

IN THE MATTER OF
CANADIAN TIRE CORPORATION, LIMITED

AND
CTC ACQUISITION LIMITED

AND

MARK-S WORK WEARHOUSE LTD.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the **ADecision Maker@**) in each of the provinces of Alberta, British Columbia, Manitoba, Newfoundland and Labrador, Nova Scotia, Ontario, Quebec and Saskatchewan (collectively, the **AJurisdictions@**) has received an application (the **AApplication@**) from CTC Acquisition Limited (the **AOfferor@**), and its parent corporation Canadian Tire Corporation, Limited (**ACanadian Tire@**and, together with the Offeror, the **AAplicants@**) for a decision under the securities legislation of the Jurisdictions (the **ALegislation@**), in connection with an offer dated December 27, 2001 (the **AOffer@**) to purchase, by way of a formal take-over bid by the Offeror, all of the outstanding common shares (the **ACommon Shares@**) of Mark-s Work Wearhouse Ltd. (**AMark-s@**), that employment agreements (the **ANew Employment Agreements@**) between Canadian Tire and each of two of the senior officers of Mark-s, who are also holders of Common Shares, have been made for reasons other than to increase the value of the consideration paid to such senior officers for their Common Shares and may be entered into notwithstanding the provision in the Legislation that prohibits an offeror who makes or intends to make a take-over bid or issuer bid and any person acting jointly or in concert with the offeror from entering into any collateral agreement, commitment or understanding with any holder or beneficial owner of securities of the offeree issuer that has the effect of providing to the holder or owner a consideration of greater value than that offered to other holders of the same class of securities (the **AProhibition on Collateral Benefits@**);

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the *ASystem@*), the Ontario Securities Commission is the principal regulator for the Application;

AND WHEREAS the Applicants have represented to the Decision Makers as follows:

1. Mark-s was formed by amalgamation under the *Business Corporations Act* (Alberta) (the *AABCA@*) and is a reporting issuer in each of the provinces of Canada.
2. The authorized share capital of Mark-s is comprised of an unlimited number of Common Shares and 100,000,000 first preferred shares, issuable in series (the *APreferred Shares@*). Mark-s has advised the Applicants that, as at December 17, 2001, there were 26,294,159 Common Shares and no Preferred Shares outstanding and, in addition, 2,252,850 options outstanding to acquire Common Shares (the *AOptions@*). The Common Shares are listed and posted for trading on The Toronto Stock Exchange under the symbol *AMWW@*.
3. Garth Mitchell (*AMitchell@*) and Michael Lambert (*ALambert@*) (collectively, the *AExecutives@*) are each directors and senior officers of Mark-s, holding the positions of President & Chief Executive Officer and Chief Financial Officer, respectively. Mark-s has advised the Applicants that, as of December 17, 2001, Mitchell beneficially owned 179,525 Common Shares and 590,600 Options and Lambert beneficially owned 86,585 Common Shares and 378,100 Options. The Common Shares owned by Mitchell and Lambert represent approximately 2.7% and 1.6% of the outstanding Common Shares, respectively (on a fully-diluted basis). Neither of the Executives is related to Canadian Tire or the Offeror.
4. The Offeror is incorporated under the *Business Corporations Act* (Ontario) and is a wholly-owned subsidiary of Canadian Tire. The Applicant has been incorporated for the sole purpose of making the Offer and has not carried on any prior business operations.
5. The intention of the Offeror to make the Offer was publicly announced on December 19, 2001. The Offer was mailed to holders of Common Shares (the *AShareholders@*) on December 27, 2001 and, unless withdrawn or extended, will expire on February 1, 2002.
6. Under the Offer, \$4.10 has been offered for each Common Share.

7. The Offer is conditional upon, among other things, sufficient Common Shares being tendered to the Offer to assure that the Offeror is ultimately able to successfully acquire all of the outstanding Common Shares, either pursuant to the exercise of the statutory right of compulsory acquisition under Part 16 of the ABCA (a "Right of Compulsory Acquisition") or by way of an amalgamation, reclassification, statutory arrangement, consolidation or other combination of Mark-s and the Offeror, or an affiliate of the Offeror (a "Subsequent Acquisition Transaction").
8. On December 18, 2001, Canadian Tire entered into the New Employment Agreements, conditional upon regulatory approval, with each of the Executives in respect of their continued employment with either Canadian Tire or Mark-s following completion of the Offer.
9. The Offer is conditional upon the New Employment Agreements being in effect upon first take-up of Common Shares under the Offer. However, pursuant to an agreement among Canadian Tire, Mark-s, Lambert and Mitchell dated December 18, 2001, it was agreed that, in the event that the relief sought in the Application which is the subject of this Decision Document is not obtained in respect of the New Employment Agreements, such failure shall not constitute a breach of the foregoing condition. In such event, Lambert and Mitchell agreed that their existing employment agreements (the "Existing Employment Agreements") with Mark-s would continue in full force and effect following completion of the Offer, subject to a waiver by each of them of an entitlement to certain change of control payments, and Canadian Tire agreed to cause Mark-s to honour such agreements. The parties also agreed to continue to negotiate in good faith new arrangements which would be as close as possible to the New Employment Agreements without constituting a collateral benefit under applicable securities law.
10. The Existing Employment Agreements provide for, among other things, the payment of varying amounts of compensation if either of the Executives is terminated without cause or voluntarily terminates his employment with Mark-s at any time within 90 days following a change of control of Mark-s. If the Offer is successful, a change of control will be considered to have occurred for the purposes of the Existing Employment Agreements.
11. Canadian Tire believes that each of the Executives has been instrumental in the growth of the business of Mark-s and the success of Mark-s during the Executives' respective tenures with the company and that the Executives also possess substantial invaluable experience, expertise and relationships in both the Mark-s organization and the retail sector generally.

12. Canadian Tire believes that the role of each of the Executives following completion of the Offer is critical to the ability of Canadian Tire to ensure an effective transition and the continued success of Mark-s. In addition, Canadian Tire believes that the continued services of the Executives will be fundamental to increasing the likelihood that other valuable members of the management team will remain with Mark-s following completion of the Offer.
13. The Offeror would not have agreed to make the Offer unless satisfactory arrangements had been entered into in respect of the ongoing employment of the Executives with Canadian Tire or Mark-s following completion of the Offer. The Offeror believes that, if it were to acquire all of the outstanding Common Shares but not the services of the key senior officers of Mark-s, there would be a material reduction in the likelihood of a successful transition of Mark-s following completion of the Offer and a corresponding reduction in the value of Mark-s to Canadian Tire and its shareholders.
14. Canadian Tire believes that the terms of the New Employment Agreements are consistent with the those in respect of individuals occupying comparable positions within public companies in the retail sector generally, and more particularly with other senior officers of Canadian Tire.
15. The New Employment Agreements were negotiated on an arm-s length basis, are on commercially reasonable terms, are consistent with current industry practice and Canadian Tire-s compensation arrangements for new executives, and are intended to provide an incentive for the Executives to continue in the employment of Canadian Tire on an ongoing basis following completion of the Offer.
16. The New Employment Agreements were entered into for valid business reasons unrelated to the Executives= holdings of Common Shares and not for the purpose of providing the Executives with greater consideration for their Common Shares than the consideration that may be received under the Offer by Shareholders other than the Executives.
17. The Executives own approximately 1% of the outstanding Common Shares (less than 5% on a fully-diluted basis) and the acquisition of their Common Shares is almost (if not entirely) immaterial to the success of the Offer. The Executives are under no specific obligation to tender their Common Shares under the Offer.
18. In the context of the Offer, the availability to the Offeror of a Right of Compulsory Acquisition or the ability to effect a Subsequent Acquisition Transaction renders the Executives, in their capacities as Shareholders, of minimal relevance to the Offeror as a result of their *de minimis* holdings of Common Shares.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the ADecision@);

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides each Decision Maker with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers under the Legislation is that, in connection with the Offer, the New Employment Agreements are being entered into for reasons other than to increase the value of the consideration to be paid to the Executives for their Common Shares and may be entered into notwithstanding the Prohibition on Collateral Benefits.

DATED January 25, 2002.

APaul Moore@

AR. Stephen Paddon@
