

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – as a result of the exercise of call rights upon exchangeable shares, issuer has only one security holder – issuer deemed to have ceased to be a reporting issuer.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c.S.5, as am. s. 83.

**IN THE MATTER OF
THE SECURITIES LEGISLATION
OF ONTARIO, ALBERTA,
NEWFOUNDLAND, NOVA SCOTIA, QUEBEC
AND SASKATCHEWAN**

AND

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

AND

**IN THE MATTER OF
PHOTON DYNAMICS CANADA INC.**

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Ontario, Alberta, Newfoundland, Nova Scotia, Quebec and Saskatchewan (the “Jurisdictions”) has received an application from Photon Dynamics Canada Inc. (formerly Image Processing Systems Inc.) (“Photon Canada”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that Photon Canada be deemed to have ceased to be a reporting issuer under the Legislation;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or in Québec Commission Notice 14-101;

AND WHEREAS Photon Canada has represented to the Decision Makers that:

1. Photon Canada was incorporated pursuant to the *Business Corporations Act* (Ontario) on April 8, 1988.
2. The principal executive office of Photon Canada is located at 221 Whitehall Drive, Markham, Ontario.

3. Photon Canada is a reporting issuer in each of the Jurisdictions.
4. The common shares in the capital of Photon Canada (the "Photon Canada Common Shares") were listed and posted for trading on the Toronto Stock Exchange ("TSX") under the symbol "IPV", but were voluntarily de-listed from the TSX following the completion of a certain transaction (the "Transaction"), which is described below.
5. The Transaction involved the re-organization of the capital structure of Photon Canada by way of a plan of arrangement, a simultaneous acquisition by Photon Dynamics Nova Scotia Company ("Photon ULC"), a wholly owned subsidiary of Photon Dynamics, Inc. ("Photon"), of all of the issued and outstanding Photon Canada Common Shares and the subsequent de-listing of all securities of Photon Canada from the TSX on January 3, 2001.
6. As part of the Transaction, holders of the Photon Canada Common Shares received 0.0447 exchangeable shares of Photon Canada (the "Photon Canada Exchangeable Shares") for each Photon Canada Common Share held. Each Photon Canada Exchangeable Share was exchangeable into one common share in the capital of Photon. The Photon Canada Exchangeable Shares were retractable at the option of the holders and, upon retraction, were subject to the overall call right of Photon ULC to purchase all of the outstanding Photon Canada Exchangeable Shares. Photon ULC subsequently exercised its call right each time a retraction was made and, as a result, has become the owner of all Photon Canada Exchangeable Shares.
7. The authorized capital of Photon Canada consists of an unlimited number of Photon Canada Common Shares, an unlimited number of preferred shares (the "Photon Canada Preferred Shares") and an unlimited number of Photon Canada Exchangeable Shares.
8. As of September 13, 2002, there was one issued and outstanding Photon Canada Common Share, 1,159,832 issued and outstanding Photon Canada Exchangeable Shares, and no issued and outstanding Photon Canada Preferred Shares. There are no other securities of Photon Canada, including debt securities, issued and outstanding. All of the issued and outstanding securities of Photon Canada are owned by Photon ULC. No securities of Photon Canada, including debt securities, are listed or quoted on any exchange.
9. To the best of our knowledge, Photon Canada is not in default of any of the requirements of the Legislation.
10. Photon Canada does not intend to offer securities to the public.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision (the “Decision”) of each Decision Maker (collectively, the “Decision Makers”);

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;

THE DECISION of the Decision Makers under the Legislation is that Photon Canada is deemed to have ceased to be a reporting issuer under the Legislation.

Dated October 28, 2002

“John Hughes”

John Hughes
Manager, Corporate Finance



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Memorandum

Date: October 18, 2002

To: John Hughes
Manager, Continuous Disclosure

From: Terry Moore
Legal Counsel, Take-over/Issuer Bids, Mergers & Acquisitions

Subject: MRRS for Exemptive Relief Applications – application by Photon Dynamics Canada Inc. pursuant to section 83 of the *Securities Act* (Ontario)

Application

This is an application on behalf of Photon Dynamics Canada Inc. ("Photon Canada") filed under the MRRS in each of Alberta, Saskatchewan, Ontario, Quebec, Nova Scotia and Newfoundland and Labrador (the "Jurisdictions") for a decision, pursuant to the securities legislation of each of the Jurisdictions (the "Legislation"), that Photon Canada be deemed to have ceased to be a reporting issuer under the Legislation. Ontario is the principal regulator for the purposes of the application.

Recommendation

Staff recommends that the relief sought be granted in the form of the attached draft decision document (the "Decision Document").

Facts

The relevant facts are as set out in the Decision Document. All capitalized terms have the same meaning as set out in the Decision Document unless otherwise defined in this memorandum.

Discussion and Analysis

As a result of the completion of a plan of arrangement, former holders of Photon Canada Common Shares received Photon Canada Exchangeable Shares, and Photon ULC (a wholly-owned subsidiary of Photon, the U.S. parent company) became the sole holder of Photon Canada Common Shares.

The Exchangeable Shares were retractable and, pursuant to a voting support and exchange trust agreement, Photon was granted a call right to purchase all of the Photon Canada Exchangeable Shares. As a result of the exercise by Photon of its call right, Photon has become the sole holder of all of the Exchangeable Shares.

Other than the Photon Canada Common Shares and the Photon Canada Exchangeable Shares, there are no other issued and outstanding securities, including debt securities, of Photon Canada. Therefore, as a result of the completion of the Transaction and the exercise of the call right by Photon, Photon is the sole securityholder of Photon Canada. None of Photon Canada's securities are currently listed on any exchange or quoted on any market. Photon Canada does not intend to offer any securities to the public.

The Legislation provides that the Decision Maker may grant an order that an issuer be deemed to have ceased to be a reporting issuer where it is satisfied that to do so would not be prejudicial to the public interest. Based on the foregoing and the facts set out in the Decision Document, staff recommends that the relief requested be granted on the basis that it would not be prejudicial to the public interest.

Comments from other jurisdictions

Staff of the Quebec Commission asked for confirmation that there were less than 15 beneficial holders of Exchangeable Shares in Quebec. A representation was added to the Decision that Photon ULC is the holder of all outstanding securities of Photon Canada.

Staff of the Nova Scotia Commission asked for an explanation of how Photon ULC became the owner of all of the Exchangeable Shares. A representation explaining that it was pursuant to the exercise of its call rights was added.

This application was originally made in Manitoba but subsequently withdrawn on the basis that the application was not required.