

**IN THE MATTER OF  
THE SECURITIES LEGISLATION  
OF ONTARIO, QUEBEC AND MANITOBA,**

**AND**

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

**AND**

**IN THE MATTER OF  
BIOVAIL CORPORATION**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of Ontario, Quebec and Manitoba (collectively, the "Jurisdictions") has received an application from Biovail Corporation (the "Company") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that in connection with the proposed purchase by the Company of up to 12,862,800 of its issued and outstanding common shares pursuant to an issuer bid, the Company be exempt from the provisions in the Legislation relating to issuer bids (the "Issuer Bid Requirements") insofar as purchases under the issuer bid are made by the Company through the facilities of the New York Stock Exchange (the "NYSE");

**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** the Company has represented to the Decision Makers that:

1. The Company is a corporation amalgamated under the *Business Corporations Act* (Ontario) and its head office is located in Ontario.
2. The Company is a reporting issuer or its equivalent in each of the provinces of Canada (where that concept exists), and is not in default of its reporting issuer obligations under the Legislation.
3. The Company is also a registrant with the Securities Exchange Commission in the United States (the "SEC") and is subject to the requirements of the *United States Securities Act of 1934* (the "1934 Act").
4. The authorized capital of the Company consists of an unlimited number of common shares (the "Shares"), of which, as at June 13, 2002, approximately 150,162,417 Shares were issued and outstanding.

5. The Shares are listed on the Toronto Stock Exchange (the "TSX") and the NYSE under the trading symbol "BVF". Approximately 75% of the Shares that have traded to date in 2002 have traded through the NYSE, up from 72% in 2001. The remainder of Shares in those periods traded through the TSX.

6. Based on information provided by the Company's transfer agent, as at June 13, 2002, there were approximately 540 registered holders of Shares in Canada, holding in the aggregate approximately 18,761,666 Shares, which represents approximately 12.5% of the total issued and outstanding Shares. This information indicates that there were 386 registered holders in Ontario holding approximately 12.5% of the total issued and outstanding Shares and 99 holders in Manitoba holding approximately 0.0009% of the total issued and outstanding Shares. This data further indicates that there were fewer than 50 registered holders, if any, resident in the provinces of British Columbia, Alberta, Saskatchewan, New Brunswick, Newfoundland and Labrador, Nova Scotia, and Prince Edward Island, and in the Yukon Territory, the Northwest Territories, and Nunavut. According to a report obtained from Independent Investors Communications Corporation, there were more than 50 beneficial holders of Shares in Quebec holding approximately 3.5% of the issued and outstanding Shares.

7. On February 14, 2002, the Company commenced a normal course issuer bid pursuant to which the Company was able to repurchase up to 5% of the issued and outstanding Shares. As at May 31, 2002, the Company had repurchased 7,791,400 Shares under that bid through the facilities of the NYSE. These repurchases were exempt from the Issuer Bid Requirements under the "normal course issuer bid" exemption in the Legislation.

8. On May 31, 2002, the Company's normal course issuer bid was amended to provide that the Company could repurchase up to 10% of the public float, or an additional 5,071,400 Shares, through the facilities of the TSX, for a total of 12,862,800 Shares (representing approximately 8% of the total issued and outstanding Shares). The amended bid is currently limited to the facilities of the TSX and is exempt from the Issuer Bid Requirements under the "recognized stock exchange" exemption in the Legislation.

9. As a much higher volume of Shares trade through the NYSE, the Company wishes to have the ability to continue to repurchase Shares through the facilities of the NYSE and wishes to extend the amended bid to the facilities of the NYSE (the "Proposed Bid").

10. The Proposed Bid will be completed in compliance with the 1934 Act, the *United States Securities Act of 1933*, and the rules of the SEC made pursuant to such statutes (collectively, the "Applicable U.S. Securities Laws"). All purchases made through the NYSE will be made through only one broker in any one day, will not be made at the opening of the market or within one half hour of the close, will not be made at prices higher than the highest published independent bid or last reported independent sale price on the NYSE (whichever is higher), and will be in an amount that does not exceed, in any one day, 25% of the average daily trading volume over the past four weeks. NYSE rules also require that the NYSE be notified within 10 days of the end of a quarter of repurchases of shares by listed companies and promptly of any repurchases in excess of the market price.

11. The Company cannot rely on the "recognized stock exchange" exemption from the Issuer Bid Requirements in the Legislation for the Proposed Bid because the NYSE is not recognized for the purpose of this exemption.

12. The Company cannot rely on the "normal course issuer bid" exemption from the Issuer Bid Requirements in the Legislation because the Company is proposing to repurchase more than 5% of the issued and outstanding common Shares within a 12 month period.

13. The Company cannot rely on the "de minimis" exemption from the Issuer Bid Requirements in the Legislation because there are more than 50 registered holders of Shares in each of Ontario and Manitoba and, in the case of Quebec, there are more than 50 beneficial holders of Shares.

**AND WHEREAS** pursuant to the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

**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 the Proposed Bid is exempt from the Issuer Bid Requirements, provided that the Proposed Bid is made in compliance with the requirements of Applicable U.S. Securities Laws.

**DATED** July 3, 2002.

"Robert W. Korthals"

"Harold P. Hands"

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - amended issuer bid made through the facilities of the NYSE by U.S. offeror with approximately 540 registered holders in Canada holding 12.5% of the total outstanding securities subject to the bid - Offeror exempt from formal issuer bid requirements, provided that in each of the Jurisdictions the issuer bid is made in compliance with the applicable U.S. securities laws.

Applicable Ontario Statutory Provisions

*Securities Act, R.S.O. 1990, c. S.5, as am., ss. 93(3)(e), 95, 96, 97, 98, 100 and 104(2)(c).*