

IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA,  
ONTARIO, NOVA SCOTIA, NEW BRUNSWICK,  
PRINCE EDWARD ISLAND, NEWFOUNDLAND,  
THE NORTHWEST TERRITORIES, THE YUKON TERRITORY AND NUNAVUT

AND

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

AND

IN THE MATTER OF  
JANNOCK LIMITED,  
JANNOCK PROPERTIES LIMITED  
AND 1386517 ONTARIO LIMITED

DECISION DOCUMENT

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland, the Northwest Territories, the Yukon Territory and Nunavut (the "Jurisdictions") has received an application from Jannock Limited ("Jannock"), Jannock Properties Limited ("Splitco") and 1386517 Ontario Limited ("Subco") (collectively, the "Filer") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that:

1. The registration and prospectus requirements of the Legislation shall not apply to certain trades made in connection with or subsequent to a proposed plan of arrangement (the "Arrangement") under the *Business Corporations Act* (Ontario) (the "OBCA") involving Jannock, Splitco and Subco; and
2. In those Jurisdictions in which the Legislation contains the concept of a reporting issuer, Splitco shall be deemed to be a reporting issuer as of the effective time of the Arrangement;

**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 Filer has represented to the Decision Makers that:

1. Jannock is a corporation governed by the OBCA, and its head office is in Toronto, Ontario. It is a reporting issuer or the equivalent in each province of Canada and is not in default of any requirements of the Legislation. Its common shares (the "Common Shares") and Second

Preference Shares are listed on The Toronto Stock Exchange, and its Common Shares are also quoted on the NASDAQ National Market System.

2. Jannock has an unlimited number of authorized Common Shares, of which 34,554,708 were issued and outstanding as of December 17, 1999. Jannock also has outstanding Second Preference Shares and Fourth Preference Shares. The Second Preference Shares are redeemable by Jannock, and the Fourth Preference Shares are convertible into Common Shares.

3. Jannock is engaged in the manufacture and distribution of metal building products for the construction industry. Jannock sold its brick manufacturing and distribution business in May, 1999, and its vinyl manufacturing and distribution business in September, 1999.

4. American Buildings Company ("ABC") is a corporation governed by the laws of the State of Delaware, and its head office is in Alabama. It is not a reporting issuer in any Jurisdiction and its securities are not publicly traded.

5. Subco is a subsidiary of ABC. It is a corporation governed by the OBCA, and its head office is in Toronto. Subco does not carry on a business, and its only asset is an approximate 4.6% holding of the Common Shares of Jannock.

6. In May, 1999, Jannock announced that it had received a requisition from shareholders holding more than 50 per cent of the issued Common Shares, requesting that the directors of Jannock call a meeting of shareholders. The purpose of the meeting would be to consider a special resolution to reduce the stated capital of Jannock to \$5 million and to distribute the amount of such reduction to the common shareholders on a pro rata basis.

7. In early June, 1999, the board of directors of Jannock engaged Merrill Lynch & Co. ("Merrill Lynch") as advisors to assist the management of Jannock in pursuing measures to maximize shareholder value. A number of alternatives were considered, culminating in the decision announced on June 14, 1999, that it would be in the best interests of the shareholders to offer the company for sale, and to conduct an auction process for this purpose. Merrill Lynch was retained to assist Jannock's management and board in the search for purchasers and to aid in the analysis of proposals received.

8. On June 22, 1999, Jannock announced that it had received written notification from the shareholders that had requisitioned a meeting of shareholders, confirming that such requisition had been withdrawn.

9. As a result of this auction process, Jannock commenced negotiations with ABC concerning the proposed transaction outlined below, which would result in Jannock becoming a subsidiary of ABC by way of a plan of arrangement.

10. Pursuant to the Arrangement, the steps set forth below will occur in the following order:

- (a) Jannock will sell its real estate development business, along with certain other assets which do not relate to its metal business (collectively the "Non-Core

Assets") to Splitco, a newly-created corporation governed by the OBCA. Splitco will issue common shares (the "Splitco Shares") to Jannock as the consideration for the Non-Core Assets. The Non-Core Assets will consist of the following:

(i) Jannock's real estate development business (the "Real Estate Business") (which has historically been subject to segmented disclosure), which involves the redevelopment for residential and commercial uses of various parcels of real property which were previously used by Jannock in its brick business; and

(ii) a "non-control" investment by way of preferred shares and common shares of Survivor Technologies Group, Inc., a private Delaware corporation, which were received by Jannock as part of the sale of Jannock's vinyl business in September, 1999 (the "Survivor Shares"). The preferred shares have issue consideration of U.S. \$26.2 million, and the common shares have issue consideration of U.S. \$600,000.

(b) Jannock will distribute, as a dividend in kind to its holders of Common Shares (the "Shareholders"), one Splitco Share for each Common Share held.

(c) Jannock will redeem all of its issued and outstanding Second Preference Shares at their redemption price as set forth in the articles of Jannock. The holders of the Fourth Preference Shares will agree to convert those shares into Common Shares prior to the implementation of the Arrangement.

(d) All outstanding employee and director stock options of Jannock will be cancelled. The holders of such options (the "Option Holders") will be entitled to receive, in respect of each Common Share subject to such options, the following:

(i) if the exercise price of the relevant option (the "Exercise Price") is less than the Cash Amount (as defined in paragraph (e) below), the Option Holder will be entitled to receive the difference between Cash Amount and the Exercise Price in cash, together with one senior subordinated note of Subco (a "Note") in the principal amount of the Note Amount (as defined in paragraph (e) below) and one Splitco Share;

(ii) if the Exercise Price is greater than the Cash Amount but less than the sum of the Cash Amount and the Note Amount (the "Total Amount"), the Option Holder will be entitled to receive one Note in the principal amount equal to the difference between the Total Amount and the Exercise Price, and one Splitco Share; and

(iii) if the Exercise Price is greater than the Total Amount, then upon payment by the Option Holder to Jannock of the difference

between the Exercise Price and the Total Amount on or before the effective date of the Arrangement, the Option Holder will be entitled to receive one Splitco Share.

(e) Each Common Share held by a Shareholder (other than those held by Subco) will be exchanged with, and acquired by, Subco for a specified amount of cash (the "Cash Amount") and a Note in a specified principal amount (the "Note Amount").

(f) Jannock will amalgamate with Subco to form an amalgamated corporation governed by the OBCA ("Amalco"), the assets of which will be substantially comprised of the current assets of Jannock relating to its metal business.

(g) On the amalgamation, all of the Common Shares will be cancelled, and all of the common shares of Subco will be converted, share for share, into common shares of Amalco. Amalco will become a subsidiary of ABC.

(h) On the amalgamation, the Notes will become the obligations of Amalco as the successor corporation to Subco.

(i) The Arrangement must be approved by the Ontario Superior Court and by the Jannock shareholders.

11. The Non-Core Assets are being transferred by Jannock to Splitco, and the shares of Splitco distributed to the Shareholders, because ABC does not view these assets as relevant to Jannock's metal business and is not prepared to pay for these Non-Core Assets.

12. Splitco will be managed and operated in a fashion which will endeavour to realize maximum value on Splitco's assets in a timely fashion, and to distribute the net proceeds realized from those assets to Splitco's shareholders.

13. Splitco and Subco intend to apply to have the Splitco Shares and the Notes, respectively, listed on the Canadian Venture Exchange as of the effective time of the Arrangement.

14. The Management Information Circular (the "Circular") that will be provided to all Shareholders and filed in the Jurisdictions will contain prospectus-level disclosure of Splitco and Amalco, including a detailed description of the Splitco Shares and the Notes.

15. The Real Estate Business has been the subject of segmented financial and descriptive disclosure on an ongoing basis in Jannock's continuous disclosure documents for more than 12 months pursuant to Jannock's responsibilities as a reporting issuer, including disclosure in Jannock's interim and annual reports, annual information forms and management's discussion and analysis. The Survivor Shares, which were acquired by Jannock in September, 1999, and represent a "non-control" interest in a private company (approximately an 11% voting interest on a fully diluted basis), will be fully described in the Circular. Public disclosure of the acquisition of the Survivor Shares was made in a press release and a material change report issued by

Jannock at the time of the acquisition, and the Survivor Shares have been referenced in the continuous disclosure documentation of Jannock since their acquisition.

16. The assets of Amalco have been the subject of continuous disclosure on an ongoing basis for more than 12 months pursuant to Jannock's responsibilities as a reporting issuer.

17. It is a condition of the Arrangement that the Splitco Shares and Notes will be freely tradable throughout Canada at the effective time of the Arrangement, in order that the Shareholders do not lose the ability to liquidate their holdings as a result of the Arrangement.

18. The Shareholders will have the right to dissent from the Arrangement under section 185 of the OBCA, and the Circular will disclose full particulars of this right in accordance with applicable law.

19. Exemptions from registration and prospectus requirements of the Legislation in respect of trades made in connection with the Arrangement, and exemptions from prospectus requirements of the Legislation in respect of the first trades in Splitco Shares and Notes following the Arrangement, are not otherwise available in all Jurisdictions.

20. Splitco will not be a reporting issuer within the definitions of all of the applicable Jurisdictions at the time the Arrangement becomes effective.

21. In respect of those Jurisdictions in which an issuer cannot be deemed to be a reporting issuer under the Legislation, Splitco and Amalco will, from and after the completion of the Arrangement, make the same continuous disclosure filings as are required by reporting issuers or issuers having a status equivalent to that of a reporting issuer, subject to any exemptive relief granted by the Jurisdictions.

**AND WHEREAS** under the System, this MRRS 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:

(a) all trades made in connection with the Arrangement shall not be subject to the registration and prospectus requirements of the Legislation;

(b) the first trades of Splitco Shares and Notes acquired by Shareholders and Option Holders in connection with the Arrangement in a Jurisdiction shall be distributions under the Legislation of such Jurisdiction except that where:

(i) if the seller is in a special relationship with Splitco or Amalco, as the case may be, defined in the Legislation, the seller has

reasonable grounds to believe that Splitco or Amalco are not in default of any requirement of the Legislation; and

(ii) no unusual effort is made to prepare the market or to create a demand for the securities and no extraordinary commission or consideration is paid in respect of the first trades;

then such a first trade shall be a distribution only if it is from the holdings of any person, company or combination of persons or companies holding a sufficient number of securities of Splitco or Amalco, as the case may be, to affect materially the control of Splitco or Amalco, but any holding of any person, company or combination of persons or companies holding more than 20 percent of the outstanding voting securities of Splitco or Amalco shall, in the absence of evidence to the contrary, be deemed to affect materially the control of Splitco or Amalco;

(c) in those Jurisdictions in which an issuer can be deemed to be a reporting issuer under the Legislation, Splitco shall be deemed to be a reporting issuer as of the effective time of the Arrangement.

**DATED** this "26<sup>th</sup>" day of January, 2000.

## **NOTICE**

Please note that a previous version of this decision was published in error in the February 4, 2000 edition. The previous version erroneously included Quebec as one of the jurisdictions. The following decision is the correct version and it does not include Quebec as one of the jurisdictions

## **Headnote**

Subsection 74(1) - Application pursuant to Mutual Reliance Review System for Exemptive Relief Applications - Relief granted from registration and prospectus requirement in connection with first trades of a spun off issuer subject to certain conditions.

Section 83.1 "Issuer spun off from a reporting issuer in connection with a plan of arrangement deemed to be a reporting issuer where parent company has been a reporting issuer for more than 12 months and the assets that will make up the business of the spun off issuer have been subject to segmented reporting in the continuous disclosure filings of the parent company. Prospectus level disclosure of the spun off entity to be provided in the information circular.

## **Applicable Ontario Statutory Provisions**

Securities Act, R.S.Q. 1990, c.S.5, as am., ss. 25, 53, 72(5), 74(1), & 83.1.

Business Corporations Act, R.S.O. 1990, c. B.16, as am.

**Rules Cited**

Rule 45-501 Exempt Distributions