

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

AND

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

AND

IN THE MATTER OF SHAW COMMUNICATIONS INC., 875500 ALBERTA LTD. AND  
SHAW INVESTMENT PARTNERSHIP III

AND

IN THE MATTER OF THE TORONTO-DOMINION BANK

MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Newfoundland and Prince Edward Island, and in the Northwest Territories, the Yukon Territory and the Territory of Nunavut (the "Jurisdictions") has received an application from Shaw Communications Inc. ("SCI") and 875500 Alberta Ltd. ("Shaw Subco") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the requirements contained in the Legislation to be registered to trade in a security (the "Registration Requirements") and to file and obtain a receipt for a preliminary prospectus and a prospectus (the "Prospectus Requirements") (collectively, the "Prospectus and Registration Requirements") shall not apply to trades in connection with certain conversion events related to variable rate equity linked exchangeable debentures of Shaw Subco due October 4, 2025 (the "Debentures");
2. AND WHEREAS, under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Alberta Securities Commission is the principal regulator for this application;
3. AND WHEREAS SCI and Shaw Subco have represented to the Decision Makers that:

3.1 SCI is a corporation organized under the *Business Corporations Act* (Alberta), is a reporting issuer in each of the Provinces of Canada in which such concept exists and is not in default of any of the requirements of the Legislation;

3.2 Shaw Subco is a corporation incorporated under the *Business Corporations Act* (Alberta) and is a direct wholly-owned subsidiary of SCI;

3.3 Shaw Investment Partnership [II ("SIP") is a general partnership formed under the laws of Alberta. The partners of SIP consist of 875514 Alberta Ltd., which is a direct wholly-owned subsidiary of SCI, and Shaw Investment Limited Partnership, which is a limited partnership, registered in Alberta and indirectly wholly-owned by SCI;

3.4 Liberate Technologies ("Liberate") is a corporation incorporated under the laws of the state of Delaware and is subject to the reporting requirements of the United States *Securities Exchange Act of 1934*, as amended;

3.5 the shares of common stock of Liberate (the "Liberate Common Shares") are listed and posted for trading on The NASDAQ Stock Market ("NASDAQ");

3.6 neither Shaw Subco, SIP nor Liberate is, and there is no expectation that they will be, a reporting issuer in any of the Jurisdictions in which such concept exists;

3.7 SIP currently beneficially owns 1,000,000 Liberate Common Shares (the "Pledged Securities") which represent approximately one percent of the issued and outstanding Liberate Common Shares. SCI originally acquired the Pledged Securities from Liberate pursuant to an exemption from the prospectus and registration requirements contained in the Legislation, and later caused the Pledged Securities to be transferred to SIP;

3.8 according to a list of registered shareholders of Liberate maintained by Liberate and dated as of April 30, 2000, of the 90,730,476 Liberate Common Shares outstanding, less than 1.0% were held by registered shareholders resident in Ontario, approximately 1.1% were held by registered shareholders resident in British Columbia and approximately 1.8% were held by registered shareholders resident in Alberta. Of the registered shareholders, two are resident in Ontario, one is resident in British Columbia and one is resident in Alberta;

3.9 the Debentures, in the aggregate principal amount of U.S. \$28,853,000, were issued by Shaw Subco to The Toronto-Dominion Bank ("TD") pursuant to a trust indenture (the "Trust Indenture") dated October 4, 2000 (the "Closing Date") among Shaw Subco, SCI, SIP and Montreal Trust Company of Canada, as trustee (the "Trustee");

3.10 the Debentures were issued by Shaw Subco to TD pursuant to an exemption from the prospectus and registration requirements contained in the Legislation.

TD may resell the Debentures to persons in, or outside of, the Jurisdictions pursuant to exemptions from the prospectus and registration requirements contained in the Legislation;

3.11 the Debentures have a 25 year term with a maturity date of October 4, 2025 (the "Maturity Date"). The Debentures were issued in U.S. \$1,000 denominations, with each U.S. \$1,000 principal amount of Debenture being exchangeable for Liberate Common Shares;

3.12 a prescribed rate of interest is payable on the Debentures by Shaw Subco semiannually on October 4 and April 4 of each year commencing on April 4, 2001;

3.13 pursuant to a limited recourse guarantee (the "Guarantee"), SIP guarantees, as principal debtor pursuant to the terms of the Trust Indenture, the obligations of Shaw Subco under the Debentures and the Trust Indenture;

3.14 as security for the Guarantee, Shaw Subco and SIP have pledged to the Trustee all of their right, title and interest in the Pledged Securities (the "Securities Pledges");

3.15 the Pledged Securities include all after-acquired securities, instruments or other personal property or assets distributable in respect of any of the Pledged Securities pursuant to any dividends, interest obligations, stock dividends, recapitalizations, amalgamations, mergers, consolidations, stock splits, combinations, exchanges or otherwise (collectively, "Resulting Property"; any Resulting Property which constitutes securities is referred to as the "Resulting Securities");

3.16 under the terms of the Securities Pledges and the Trust indenture,. Shaw Subco and SIP have the right to replace the Pledged Securities or the Resulting Property from time to time with Authorized Investments (as defined in the Trust Indenture). Shaw Subco and SIP may sell, transfer or otherwise dispose of any such Liberate Common Shares or Resulting Property that are released from the Securities Pledges;

3.17 the Trust Indenture provides that the exchange price (the "Exchange Price") is 13.8. \$28.853 per Liberate Common Share. Each U.S. \$1,000 principal amount of Debenture will be exchangeable from time to time and in part or in whole at the option of the Debenture holder (the "Right to Exchange") for, in addition to the payment of accrued but unpaid interest, the number of Liberate Common Shares which is obtained by dividing the Exchange Price into U.S. \$1,000 (the "Exchange Rate") which on the Closing Date was 34.6584 Liberate Common Shares per U.S. \$1,000 principal amount of Debentures;

3.18 Shaw Subco may elect to satisfy its obligation under the Right to Exchange by delivery of:

3.18.1 Liberate Common Shares (that constitute Pledged Securities) and/or Resulting Property (if any), provided that, at the time of delivery of the Liberate Common Shares, such shares can be traded on NASDAQ without the trade constituting a distribution under applicable Canadian securities Legislation and there are no other applicable restrictions on the sale of the shares on NASDAQ under applicable Canadian or United States securities legislation ("NASDAQ Tradeable"); or

3.18.2 in respect of each U.S. \$1,000 principal amount of Debentures, subject to paragraph 3.24 below as it relates to Resulting Property, the cash amount equal to the Exchange Rate multiplied by the Current Market Price (as defined in the Trust Indenture) per Liberate Common Share (the "Liberate Cash Payment");

3.19 if Shaw Subco makes the election under paragraph 3.18 above and is unable to deliver Liberate Common Shares that are NASDAQ Tradeable, Shaw Subco shall be obliged to deliver the Liberate Cash Payment instead;

3.20 at any time after October 4, 2004 and prior to the Maturity Date, and subject to the right of Debenture holders to exercise the Right to Exchange, Shaw Subco may redeem, from time to time, not less than that number of Debentures equal to one-third of the Debentures issued and outstanding on the Closing Date, in all cases, at a redemption price equal to the principal amount ("Redemption Value") plus any accrued and unpaid semi-annual payments of interest;

3.21 Shaw Subco may elect to satisfy payment of the Redemption Value by delivery of Liberate Common Shares (that constitute Pledged Securities) that are NASDAQ Tradeable (and/or Resulting Property, if any) or, subject to paragraph 3.24 below as it relates to Resulting Property, by way of the Liberate Cash Payment for the amount redeemed;

3.22 if Shaw Subco makes an election to deliver Liberate Common Shares and is unable to deliver Liberate Common Shares that are NASDAQ Tradeable, Shaw Subco shall be obliged to deliver the Liberate Cash Payment instead;

3.23 the Exchange Rate shall be adjusted by the Trustee upon the occurrence of certain stated dilutive events, which may produce Resulting Property, including a Share Reorganization, a distribution of an Extraordinary Cash Dividend or Dividend Property, a Reorganization Event or a Merger Event (as such terms are defined in the Trust Indenture and each referred to herein as an "Adjustment Event"), all in accordance with the provisions of the Trust Indenture;

3.24 the provisions of the Trust Indenture relating to the satisfaction of Shaw Subco's obligations under the Right to Exchange and on redemption provide that Resulting Property, including

Resulting Securities, for which there is no liquid market, must be distributed in kind to the Debenture holders upon exchange or redemption. In such circumstances, cash in the form of the Liberate Cash Payment or otherwise cannot be delivered in lieu thereof;

3.25 on the Maturity Date, to the extent that the Debentures have not been previously redeemed or exchanged, in respect of each U.S. \$1,000 principal amount of the Debentures, Shaw Subco will repay the Debentures at the principal amount of the Debentures plus any accrued and unpaid semi-annual payments of interest (collectively, the "Maturity Value") in accordance with the provisions of the Trust Indenture;

3.26 at the option of Shaw Subco, and subject to paragraph 3.24 above as it relates to Resulting Property, the Maturity Value may be satisfied in respect of each US. \$1,000 principal amount of Debentures by:

3.26.1 delivery to a Debenture holder of Liberate Common Shares (that constitute Pledged Securities) that are NASDAQ Tradeable and/or Resulting Property (if any) with a value, based on the Current Market Price on the date which is one business day prior to the Maturity Date, equal to the Maturity Value; or

3.26.2 any combination of 3.26.1 and cash;

3.27 Shaw Subco or SIP may enter into Securities Lending Transactions (as defined in paragraph 3.32 below) whereby the Liberate Common Shares and/or Resulting Securities which either Shaw Subco or SIP receives from the Trustee upon replacement of such securities with Authorized Investments, as described above in paragraph 3.16, are loaned to a securities borrower who may be:

3.27.1 a Debenture holder; or

3.27.2 an intermediary who is a qualified party, as described in Appendix A, ("Qualified Party") and who wishes to loan the Liberate Common Shares and/or Resulting Securities to a Debenture holder, for the purposes described in paragraphs 3.28 to 3.31 below;

3.28 a Debenture holder may seek to limit the risk of declining value in the Liberate Common Shares and/or Resulting Securities, which the Debenture holder would receive on an exercise of the Right to Exchange, by the use of a short hedge;

3.29 to implement a short hedge, the Debenture holder would sell short a certain number of Liberate Common Shares and/or Resulting Securities and then borrow the same number of Liberate Common Shares and/or Resulting Securities to settle the short sale;

3.30 the Debenture holder may borrow the Liberate Common Shares and/or Resulting Securities from either Shaw Subco or SIP or from a Qualified Party (who obtained the Liberate Common Shares as described above in paragraph 3.27 or otherwise);

3.31 at a future time, the Debenture holder will be required to buy the same number of Liberate Common Shares and/or Resulting Securities, or exercise the Right to Exchange to obtain such number of Liberate Common Shares and/or Resulting Securities, in order to repay the securities loan to a securities lender who may then use such Liberate Common Shares and/or Resulting Securities in another securities lending transaction;

3.32 the transactions involved in paragraphs 3.27 to 3.31 above (inclusive) are referred to herein as the "Securities Lending Transactions";

3.33 in order to provide maximum flexibility to SCI and Shaw Subco during the term of the Debentures, Debentures properly tendered, delivered or exchanged by a holder in connection with the exercise by a Debenture holder of the Right to Exchange, or in connection with the payment of the Redemption Value on redemption, may, at the direction of Shaw Subco, be purchased, redeemed or otherwise acquired by a subsidiary of SCI other than Shaw Subco. Debentures so purchased, redeemed or otherwise acquired will not be canceled and may be reissued. On such a purchase, redemption or other acquisition by a subsidiary of SCI other than Shaw Subco, such subsidiary is required to deliver to the Debenture holder the same consideration that would otherwise be deliverable by Shaw Subco on the exercise of the Right to Exchange, or in connection with the payment of the Redemption Value on redemption, as the case may be, including Liberate Common Shares or Resulting Securities;

4. AND WHEREAS, under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

5. 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;

6. THE DECISION of the Decision Makers pursuant to the Legislation is that the Prospectus and Registration Requirements shall not apply to trades of Debentures, Liberate Common Shares or Resulting Securities in connection with:

6.1 the exercise by a Debenture holder of the Right to Exchange;

6.2 the payment of the Redemption Value of a Debenture on redemption;

6.3 the payment of the Maturity Value of a Debenture on the Maturity Date;

6.4 the replacement of Liberate Common Shares or Resulting Securities with Authorized Investments; and

6.5 the purchase of Debentures by a subsidiary of SCI other than Shaw Subco;

(collectively, the "Conversion or Transaction Events") provided that, at the time of such trades, Shaw Subco is not a reporting issuer or equivalent in any of the Jurisdictions;

7. THE FURTHER DECISION of the Decision Makers pursuant to the Legislation is that any subsequent trade of Debentures, Liberate Common Shares or Resulting Securities acquired in connection with a Conversion or Transaction Event shall be a distribution or a distribution to the public unless:

7.1 the trade is executed through the facilities of NASDAQ or a stock exchange located outside of Canada in accordance with the laws and rules applicable to NASDAQ or such exchange; or

7.2 the trade is made in connection with a Securities Lending Transaction to a Debenture holder, SIP, Shaw Subco or a Qualified Party.

DATED at Calgary, Alberta this "10<sup>th</sup>" day of October, 2000.

Glenda A. Campbell, Vice Chair Eric T. Spink, Vice-Chair

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Registration and prospectus relief for trades in connection with certain conversion events related to variable rate equity linked exchangeable debentures

**Applicable Alberta Statutory Provisions**

Securities Act, S.A., 1981, c.S-6.1, as amended, s. 54, 81 and ss. 116(1).