

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

**AND**

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

**AND**

**IN THE MATTER OF CALIAN TECHNOLOGY LTD.**

**MRRS DECISION DOCUMENT**

**WHEREAS** the Canadian securities regulatory authority or regulator (the "Decision Maker") in each of the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland (the "Jurisdictions") has received an application from Calian Technology Ltd. ("Calian" or the "Corporation") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that, in connection with the proposed purchase by Calian of a portion of its outstanding common shares (the "Shares") pursuant to an issuer bid (the "Bid"), Calian be exempt from the requirements in the Legislation to:

- (i) take-up and pay for securities proportionately according to the number of securities deposited by each security holder (the "Proportionate Take-up and Payment Requirement");
- (ii) provide disclosure in the issuer bid circular (the "Circular") of such proportionate take-up and payment (the "Associated Disclosure Requirement");
- (iii) state the number of Shares sought under the Bid in the Circular (the "Number of Securities Requirement"); and
- (iv) obtain a valuation of the Shares and provide disclosure in the circular of such valuation, or a summary thereof, (the "Valuation Requirement").

**AND WHEREAS** pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the Principal Regulator for this application;

**AND WHEREAS** Calian has represented to the Decision Makers as follows:

1. Calian is a reporting issuer in each of the Jurisdictions with its head office located in Kanata, Ontario. Calian is not in default of any requirement of the Legislation and is not on the list of defaulting reporting issuers maintained pursuant to such Legislation, where applicable.

2. The authorized capital of Calian includes an unlimited number of Shares, of which approximately 9,774,701 Shares were issued and outstanding as of October 15, 2001. Calian is not aware of any person who owns, directly or indirectly, or exercises control or direction over more than 10% of the outstanding shares.

3. The Shares are listed and posted for trading on The Toronto Stock Exchange (the "TSE"). On October 15, 2001, the closing price of these Shares on the TSE was \$2.10 per Share. Based upon such closing price, the Shares had an aggregate market value of approximately \$20,526,872 as at that date.

4. The Bid is being made pursuant to the following "Dutch Auction" procedure:

(a) the maximum number of 2,040,816 Shares (the "Specified Number") that the Corporation intends to purchase under the Bid is specified in the Circular;

(b) the maximum amount of \$5,000,000 (the "Specified Amount") that the Corporation is prepared to spend under the Bid is specified in the Circular;

(c) the range of prices of \$2.85 to \$2.45 (the "Range") within which the Corporation is willing to repurchase its Shares under the Bid is specified in the Circular;

(d) any holder of Shares (each, a "Shareholder") wishing to tender to the Bid will have the right either to: (i) specify the lowest price within the Range that the Shareholder is willing to sell the tendered Shares (an "Auction Tender"); or (ii) elect to be deemed to have tendered at the Purchase Price (as determined in accordance with paragraph 4(e) below) (a "Purchase Price Tender");

(e) the purchase price (the "Purchase Price") of the Shares tendered to the Bid will be the lowest price that will enable Calian to purchase the lesser of (i) the Specified Number of Shares and (ii) the maximum number of Shares that may be purchased with the Specified Amount, and will be determined based upon the number of Shares tendered pursuant to an Auction Tender at each price within the Range and the number of Shares tendered pursuant to a Purchase Price Tender, with each Purchase Price Tender being considered a tender at the lowest price in the Range for the purpose of calculating the Purchase Price;

(f) all Shares tendered at or below the Purchase Price pursuant to either an Auction Tender or a Purchase Price Tender and not withdrawn will be taken up and paid for at the Purchase Price, subject to pro ration if the aggregate number of Shares tendered at or below the Purchase Price pursuant to Auction Tenders and the number of Shares tendered to Purchase Price Tenders exceeds the Specified Number or would require Calian to spend more than the Specified Amount (an "Over-Subscription");

(g) in the event of an Over-Subscription, in order to avoid the creation of "odd

lots" as a result of proration, the number of Shares to be purchased from each Shareholder who tenders at or below the Purchase Price will be increased as follows: in addition to the Specified Number, Calian will purchase an additional number of Shares at the Purchase Price from each tendering Shareholder equal to the minimum number of Shares necessary such that the number of Shares not purchased from and returned to such Shareholder as a result of proration (the "Return Number") will be a whole multiple of 100, except that, if the Return Number for any such Shareholder is less than 100, Calian will purchase from each such Shareholder that number of Shares equal to the Return Number. Multiple tenders by the same Shareholder will be aggregated for this purpose;

(h) all Shares tendered at prices above the Purchase Price will be returned to the appropriate Shareholders;

(i) all Shares tendered by Shareholders who specify a tender price for such tendered Shares that falls outside the Range and not withdrawn will be considered to have been improperly tendered, will be excluded from the determination of the Purchase Price, will not be purchased by Calian and will be returned to the tendering Shareholders; and

(j) all Shares tendered and not withdrawn by Shareholders who fail to specify any tender price for such tendered Shares and fail to indicate that they have tendered their Shares pursuant to a Purchase Price Tender will be considered to have tendered pursuant to a Purchase Price Tender.

5. Prior to the expiry of the Bid, all information regarding the number of Shares tendered and the prices at which such Shares are tendered will be kept confidential and the depository under the Bid will be directed by Calian to maintain such confidentiality until the Purchase Price is determined.

6. Since the Bid is for less than all the Shares, if the number of Shares tendered to the Bid at or below the Purchase Price exceeds the maximum number of Shares which Calian is prepared to purchase, the Legislation would require Calian to take-up and pay for deposited Shares proportionately, according to the number of Shares deposited by each Shareholder. In addition, the Legislation would require disclosure in the Circular that Calian would, if Shares tendered to the Bid exceeded the specified number of Shares which Calian is prepared to purchase, take-up Shares proportionately according to the number of Shares tendered by each Shareholder.

7. CIBC World Markets Inc., a qualified registered dealer independent of Calian, provided Calian with an opinion dated October 24, 2001 that there is a liquid market in the Shares and that following completion of the Bid, Shareholders will continue to have available a market which is not materially less liquid than the market which now exists prior to the Bid (the "Liquidity Opinion").

8. Prior to commencing the Bid, Calian received a statement from the TSE that it concurs with the Liquidity Opinion conclusion that there is a liquid market in the Shares and that following

completion of the Bid, Shareholders will continue to have available a market which is not materially less liquid than the market which now exists prior to the Bid (the "TSE Letter").

9. No formal valuation has been prepared in connection with the Bid, or disclosed in the Circular, as Calian is able to rely upon the liquidity exemption available under Paragraph 3 of sub-section 3.4 of Ontario Securities Commission Rule 61-501, "Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions".

10. The Circular:

- (a) discloses the mechanics for the take-up and payment for, or return of, Shares as described in Paragraph 4 above;
- (b) explains that, by tendering Shares at the lowest price in the Range, a Shareholder can reasonably expect that Shares so tendered will be purchased at the Purchase Price, subject to pro ration as described in Paragraph 4 above;
- (c) discloses the Liquidity Opinion; and
- (d) states that the TSE Letter will be sent to the Ontario Securities Commission and the Québec Securities Commission.

11. A copy of the TSE Letter was delivered to each of the Decision Makers.

**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 in the Jurisdictions pursuant to the Legislation is that, in connection with the Bid, Calian is exempt from each of the Proportionate Take-up and Payment Requirement, the Associated Disclosure Requirement, the Number of Securities Requirement, and the Valuation Requirement provided that Shares tendered to the Bid are taken up and paid for, or returned to the Shareholders, in the manner and circumstances described in Paragraph 4 above.

DATED this 27th day of November, 2001

Paul M. Moore

Robert W. Korthals

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Dutch auction issuer bid -  
With respect to securities tendered at or below the clearing price, offer providing for full take-up

of and payment for shares tendered by odd lot holders, as well as additional purchases from certain shareholders in order to prevent the creation of odd lots - Offeror exempt from the requirement in the legislation to take up and pay for securities proportionately according to the number of securities deposited by each securityholder and the associated disclosure requirement, the requirement to disclose the exact number of shares it intends to purchase, and from the valuation requirement on the basis that there is a liquid market for the securities.

**Ontario Statutes Cited**

*Securities Act*, R.S.O. 1990, c.S.5, as am, ss. 95(7) and 104(2)(c)