

IN THE MATTER OF  
THE SECURITIES LEGISLATION OF THE PROVINCES OF ALBERTA,  
SASKATCHEWAN, MANITOBA, ONTARIO, QUEBEC, NOVA SCOTIA AND  
NEWFOUNDLAND AND LABRADOR

AND

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

AND

IN THE MATTER OF  
COTT CORPORATION

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia and Newfoundland and Labrador (the "Jurisdictions") has received an application from Cott Corporation ("Cott") for a decision under the securities legislation of each of the Jurisdictions (the "Legislation") that the requirements contained in the Legislation (the "CD GAAP & GAAS Requirements") which require Cott

(a) to prepare its annual and interim financial statements in accordance with Canadian generally accepted accounting principles ("Canadian GAAP"), and

(b) to accompany its annual financial statements with an auditor's report prepared in accordance with Canadian generally accepted auditing standards ("Canadian GAAS"),

will not apply;

AND WHEREAS under National Policy 12-201 *Mutual 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 Quebec Commission Notice 14-101;

AND WHEREAS Cott has represented to the Decision Makers as follows:

1. The head office of Cott is located at 207 Queen's Quay West, Suite 340, Toronto, Ontario, Canada M5J 1A7.

2. Cott is a corporation formed pursuant to articles of amalgamation under the *Canada Business Corporations Act*, is a reporting issuer or its equivalent in each of the Jurisdictions and is not on the list of defaulting reporting issuers maintained by any of the Decision Makers.

3. The common shares of Cott are listed and posted for trading on The Toronto Stock Exchange under the symbol "BCB" and on the New York Stock Exchange under the symbol "COT".

4. The common shares of Cott are registered under section 12 of 1934 Act. Cott is not registered or required to be registered as an investment company under the United States *Investment Company Act* of 1940 (the "US Investment Company Act").

5. Cott currently files with the securities regulatory authorities in each of the Jurisdictions annual and interim financials prepared in accordance with Canadian GAAP and, in the case of its annual financial statements, accompanies them with an auditor's report prepared in accordance with Canadian GAAS.

6. Cott currently reports and files with the SEC its interim and annual financial statements in accordance with the generally accepted accounting principles in the United States that the SEC has identified as having substantial authoritative support, as supplemented by Regulation S-X and Regulation S-B under the 1934 Act ("US GAAP").

7. Cott has prepared its fiscal 1998 and each subsequent fiscal year's annual financial statements in accordance with US GAAP and has filed each of those financial statements with the SEC in accordance with the 1934 Act. Such financial statements have also been filed via SEDAR with the securities regulatory authorities in each Jurisdiction.

8. Cott has prepared interim financial statements for its 1999 fiscal year and for each interim period thereafter in accordance with US GAAP and has filed such financial statements with the SEC in accordance with the 1934 Act. Such financial statements have also been filed via SEDAR with the securities regulatory authorities in each Jurisdiction.

9. Cott has filed on SEDAR under Form 10-Q its first and second quarter interim financial statements for the three month periods ended March 29, 2003 and June 28, 2003, respectively, in accordance with US GAAP. The accompanying management discussion and analysis ("MD&A") to those financial statements contains a description of the material differences between Canadian GAAP and US GAAP that relate to recognition, measurement and presentation and quantifies the effect of any such material differences that relate to recognition, measurement and presentation including a reconciliation between net income reported in the financial statements and net income computed in accordance with Canadian GAAP.

10. Cott's auditors have prepared and filed with the SEC audit reports on Cott's 1999 fiscal year and for each completed fiscal year's annual financial statements thereafter in accordance with United States generally accepted auditing standards, as supplemented by the SEC's rules on auditor independence ("US GAAS").

11. Cott is satisfied that it has obtained and that it applies the necessary level of expertise in US GAAP to support the preparation of its interim and annual financial statements under US GAAP.

12. Cott's audit committee has taken steps to ensure it has, or has access to, the necessary expertise in relation to US GAAP and that management has put in place systems to ensure that the appropriate levels and numbers of staff have and will maintain the level of expertise in US GAAP necessary to prepare reliable, high quality financial statements.

13. Cott's audit committee has satisfied itself as to the adequacy of the expertise of the audit engagement team and its auditors in relation to the application of US GAAP and US GAAS.

AND WHEREAS under the System, this 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 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 CD GAAP & GAAS Requirements will not apply to Cott's annual and interim financial statements that are required to be filed under the Legislation, provided that:

(i) Cott has a class of securities registered under section 12 of the 1934 Act or is required to file reports under section 15(d) of the 1934 Act and is not registered or required to be registered under the US Investment Company Act;

(ii) Cott's annual and interim financial statements that are required to be filed under the Legislation are prepared in accordance with US GAAP;

(iii) Cott's annual financial statements that are required to be filed under the Legislation are accompanied by a report of an auditor that is prepared in accordance with US GAAS;

(iv) the notes to the first two sets of Cott's annual comparative financial statements filed after the date of this Decision and the notes to the interim financial statements for interim periods during those two years:

(a) explain the material differences between Canadian GAAP and US GAAP that relate to recognition, measurement and presentation;

(b) quantify the effect of material differences between Canadian GAAP and US GAAP that relate to recognition, measurement and presentation, including a tabular reconciliation between net income reported in the financial statements and net income computed in accordance with Canadian GAAP, and

(c) provide disclosure consistent with Canadian GAAP requirements to the extent not already reflected in the financial statements;

(v) the notes to Cott's financial statements identify the accounting principles used to prepare the financial statements;

(vi) Cott files a supplement to the MD&A relating to each of the financial statements referred to in paragraph (iv) above that will restate, based on financial information of Cott prepared in accordance with or reconciled to Canadian GAAP, those parts of the MD&A that:

(a) are based on financial statements of Cott prepared in accordance with US GAAP, and

(b) would contain material differences if they were based on financial statements of Cott prepared in accordance with Canadian GAAP;

(vii) Cott uses US GAAP generally on a going-forward basis for all of its financial statements filed under its continuous disclosure requirements in the Jurisdictions;

(viii) the auditor's report on the annual financial statements filed under paragraph (iv) above is prepared in accordance with US GAAS and:

(a) contains an unqualified opinion;

(b) identifies all financial periods presented for which the auditor has issued an auditor's report; if Cott has changed its auditor and one or more of the comparative periods presented in the financial statements were audited by a different auditor, the auditor's report must refer to any former auditor's report(s) on the comparative periods, and

(c) identifies the auditing standards used to conduct the audit and the accounting principles used to prepare the financial statements; and

(ix) this Decision, as it relates to the Jurisdiction of a Decision Maker, will terminate upon the coming into force of any legislation or rule of that Decision Maker dealing with acceptable accounting principles and auditing standards that conflicts with any provision of this Decision (other than proposed National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*, in substantially the same form as published on May 16, 2003).

DATED November 19, 2003.

"Paul M. Moore"

"Suresh Thakrar"

#### Headnote

Mutual Reliance Review System for Exemptive Relief Applications – securities of issuer registered under section 12 of the 1934 Act – issuer not required to register under United States *Investment Company Act of 1940* – relief granted from requirement to file annual and interim financial statements prepared in accordance with Canadian GAAP and audited in accordance with Canadian GAAS – relief conditional upon issuer preparing annual and interim financial statements in accordance with US GAAP and having them audited in accordance with US GAAS – issuer to provide Canadian GAAP reconciliation for two years following date of decision

#### Statutes Cited

Securities Act, R.S.O. 1990, c.5, as am., ss. 77, 78, 80(b)(iii)

#### Regulations Cited

R.R.O. 1990, Reg. 1015, as am., s. 2