

DECISION DOCUMENT

ORDER

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

- AND -

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

- AND -

IN THE MATTER OF EXFO ELECTRO-OPTICAL ENGINEERING INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "**Decision Maker**") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Prince Edward Island, Nova Scotia and Newfoundland (the "**Jurisdictions**") has received an application (the "**Application**") from EXFO Electro-Optical Engineering Inc. (the "**Corporation**") for a decision pursuant to the securities legislation of the Jurisdictions (the "**Legislation**") exempting the Corporation from the eligibility criteria set out in Section 4.1 of National Policy No. 44 ("**NP 44**") and articles 37.5, 37.6 and 37.7 of the Regulation respecting Securities under the Legislation of Quebec (the "**Quebec Regulation**") and from the requirements of sections 61, 67 and 68(1) of the *Securities Act* (British Columbia) (the "**BC Legislation**"), thereby permitting the use by the Corporation of the PREP Procedures (as such term is defined in NP 44) and similar procedures under the Legislation of Quebec (the "**Quebec Procedures**") as amended by proposed National Instrument 44-103 ("**NI 44-103**") entitled "**Post Receipt Pricing**" in connection with the Corporation's proposed initial public offering of its subordinate voting shares (the "Shares"), each as more fully described below;

AND WHEREAS pursuant to the Mutual Reliance System for Exemptive Relief Applications (the "**System**"), the Commission des valeurs mobilières du Québec (the "**Commission**") is the principal regulator for this application;

AND WHEREAS the Corporation has represented to the Decision Makers that:

1. The Corporation is a designer, manufacturer and marketer of fiber-optic test, measurement and monitoring instruments for the telecommunications industry.
2. The Corporation was incorporated under the *Canada Business Corporations Act*.

3. The Corporation is not a reporting issuer, or equivalent, under the Legislation and its Shares are not listed or posted for trading on a recognized stock exchange.
4. The offering will consist of newly issued Shares from treasury to the public in Canada and in the United States and the Corporation estimates that approximately 6,000,000 of Shares will be sold in the offering for gross proceeds of approximately US\$108,000,000 (the "**Offering**"). The underwriters of the Offering in Canada will be Merrill Lynch Canada Inc., RBC Dominion Securities Inc. and CIBC World Markets Inc. The underwriters of the Offering in the United States will be Merrill Lynch & Co., RBC Dominion Securities Inc., CIBC World Markets Inc. and Wit SoundView Corporation.
5. The authorized share capital of the Corporation currently consists of an unlimited number of Class "A", Class "B", Class "C", Class "D", Class "E", Class "F" and Class "G" Shares, of which as of June 5, 2000, 38,000,000 Class "A" Shares, 709,605 Class "F" Shares and 800,000 Class "G" Shares are issued and outstanding.
6. Immediately prior to this Offering, the Corporation will perform a capital reorganization pursuant to which, at such time, its authorized share capital will consist of an unlimited number of subordinate voting shares without par value, an unlimited number of multiple voting shares without par value and an unlimited number of preferred shares series 1 issuable in series without par value, of which 38,000,000 multiple voting shares, 709,605 subordinate voting shares and 800,000 preferred shares series 1 will be issued and outstanding.
7. Subject to resolving any comments received by the securities regulatory authorities in Canada and in the United States, the Corporation anticipates filing, in connection with this Offering: (i) a preliminary prospectus (the "**Offering Preliminary Prospectus**") with the securities regulatory authorities of each of the provinces of Canada (each an "**SRA**" and, collectively, the "**SRAs**") in early June 2000; and (ii) a Form F-1 registration statement (the "**Registration Statement**") with the SEC in early June 2000.
8. In connection with the Offering in the United States, the Corporation plans to use the procedures permitted by Rule 430A under the *Securities Act of 1933* (the "**1933 Act**") which will permit the Corporation to omit certain pricing information in the Registration Statement until after it has been declared effective by the SEC.
9. The Corporation has made applications to the Toronto Stock Exchange to list the Shares for trading and to The Nasdaq Stock Market to have the Shares quoted on the Nasdaq National Market.
10. On April 14, 2000, the Corporation filed with the Commission a confidential application pursuant to the procedures established by the Mutual Reliance Review System for Prospectuses and Annual Information Forms (as set out in National Policy 43-201) (the "**43-201 Application**") confirming and/or requesting that: (i) the Offering Preliminary Prospectus is being pre-filed with the 43-201 Application on a confidential basis; (ii) the Commission will commence its review of the pre-filed Offering Preliminary Prospectus in accordance with the review periods set out in NP 43-201, which review periods will commence on the pre-filing of

the Offering Preliminary Prospectus, and that if the comments from the securities regulatory authorities are not completely resolved by the date of the filing of the Offering Preliminary Prospectus, the Corporation will continue to work with the Commission to resolve the comments before the receipt for the final prospectus is issued, but that the review periods set out in NP 43-201 will not commence again with the filing of the Offering Preliminary Prospectus; and (iii) in accordance with the provisions of subsection 199(4) of the Securities Act (Quebec) and the equivalent provisions of the securities legislation of each of the provinces of Canada (the "**Legislation**"), the authorization of the Commission to include in the Offering Preliminary Prospectus a statement with respect to the listing of the Corporation's Shares.

11. The Corporation furnished a confidential draft submission of the Registration Statement to the SEC pursuant to the SEC's special confidential review procedures extended to foreign issuers.

12. Use of the PREP Procedures and the Quebec Procedures would permit the Corporation and its underwriters to better co-ordinate the pricing, prospectus delivery, confirmation of purchase, closing and settlement processes in Canada with those anticipated to be employed in the United States.

13. Neither the Corporation nor the Shares satisfy the requirements listed in Section 4.1 of NP 44 or in the Quebec Regulation which would otherwise enable the Corporation to use the PREP Procedures and the Quebec Procedures.

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 and are of the opinion that it would not be prejudicial to the public interest to make the Decision:

THE DECISION of the Decision Makers under the Legislation is that the Corporation be and is hereby exempted from the eligibility criteria set out in Section 4.1 of NP44 and in the Quebec Regulations and the requirements of the BC Legislation and the Corporation is permitted to use the PREP Procedures under NP 44 and the Quebec Procedures (as such procedures are amended by NI 44-103) in connection with the Canadian tranche of the Offering;

provided that:

1. a prospectus complying with NP 44 and the Quebec Regulation is filed under the Legislation pursuant to and in accordance with the requirements and procedures set forth in NP 44 and the Quebec Regulation, as if the Corporation was eligible to use the PREP Procedure under NP 44 and the Quebec Procedures; and

2. such prospectus is supplemented and amended pursuant to and in accordance with the requirements and procedures set forth in NP 44 and the Quebec Regulation, including the filing of amendments complying with the requirements of the Legislation.

DATED "June 29th", 2000

Viateur Gagnon Guy Lemoine