

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

AND

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

AND

IN THE MATTER OF  
SYSTECH RETAIL SYSTEMS CORP.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the Decision Maker) in each of Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador (collectively, the Jurisdictions) has received an application from Systech Retail Systems Corp. (Systech) for a decision under 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 Requirement) and to file and obtain a receipt for a preliminary prospectus and a prospectus (the Prospectus Requirement) shall not apply to certain trades in connection with a plan of compromise and arrangement (the CCAA Plan) under the *Companies' Creditors Arrangement Act* (the CCAA) and a consolidated amended plan of reorganization (the U.S. Plan and, together with the CCAA Plan, the Plans) under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. 101-1330, as amended (the U.S. Bankruptcy Code);

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, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or in Québec Commission Notice 14-101;

AND WHEREAS Systech has represented to the Decision Makers that:

1. Systech is a corporation organized under the laws of the Province of Ontario and its registered office is located in Mississauga, Ontario.
2. Systech is a reporting issuer (or its equivalent) in each of the Provinces of Ontario, British Columbia and Québec and has been so for a period in excess of 12 months.

3. Systech is not on the list of defaulting issuers maintained by the Decision Makers in the Provinces of Ontario and Québec pursuant to the Legislation or by the British Columbia Securities Commission pursuant to the *Securities Act* (British Columbia) and the regulations and rules made thereunder.

4. Systech is not currently a qualified issuer as defined under Multilateral Instrument 45-102 Resale of Securities (45-102), but is an electronic filer under National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR).

5. The authorized capital of Systech consists of an unlimited number of common shares, an unlimited number of Series A convertible preferred shares and an unlimited number of Series C convertible preferred shares, of which, as at August 7, 2003, there were 36,645,901 common shares, 301,059 Series A convertible preferred shares and 1,174,947 Series C convertible preferred shares issued and outstanding.

6. As at August 7, 2003, there were outstanding warrants of Systech (the Old Warrants) exercisable for 10,161,214 common shares of Systech and options (the Old Options) granted by Systech pursuant to two option plans in respect of directors, officers, employees and consultants exercisable for 1,644,500 common shares of Systech.

7. The outstanding common shares of Systech are listed and posted for trading on the Toronto Stock Exchange (the TSX) under the symbol "SYS".

8. On January 13, 2003, Systech and its subsidiaries filed voluntary petitions for relief pursuant to Chapter 11 of the U.S. Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of North Carolina (the U.S. Court). In addition, on January 16, 2003 and January 20, 2003, Systech and certain of its Canadian subsidiaries sought, and by order of the Ontario Superior Court of Justice (the Canadian Court and, together with the U.S. Court, the Courts), was granted protection from its creditors pursuant to the CCAA.

9. The Plans provide for a comprehensive recapitalization of Systech and its subsidiaries through the settlement of claims in consideration of the issuance of new debt, 1,908,329,606 additional common shares (the New Common Shares) and 136,148,285 warrants (the New Warrants) of Systech, each whole New Warrant entitling the holder to acquire one common share of Systech at a price of Cdn\$0.025 per share for a period of 5 years following implementation of the Plans. The aggregate number of the New Warrants will equal 7% of the number of common shares of Systech outstanding after implementation of the Plans. The Plans have the support of Systech's senior secured lenders, Park Avenue Equity Partners, L.P. and Integrated Partners Limited Partnership One (the "Senior Secured Lenders").

10. A disclosure statement for the U.S. Plan (the Disclosure Statement), which was prepared in accordance with the requirements of the U.S. Bankruptcy Code, was conditionally approved by the U.S. Court on July 3, 2003 and distributed to the Senior Secured Lenders, secured creditors and each holder of impaired unsecured claims under the U.S. Plan.

11. The Disclosure Statement provides a detailed description of the terms of the U.S. Plan, the background and events leading up to the filing of the Plans and prospectus-level disclosure of the business of Systech and includes *pro forma* financial statements.

12. The CCAA Plan was filed with the Canadian Court on August 6, 2003. A Canadian disclosure statement, containing information specific to the CCAA proceedings and including a summary of the Disclosure Statement was sent to each of the Senior Secured Lenders, secured creditors and each person that would have been an affected unsecured creditor under the CCAA Plan.

13. On the implementation of the Plans, among other things, the following trades (the Trades) will occur in the Jurisdictions:

13.1 The secured claims of the Senior Secured Lenders will be satisfied through the issuance to the Senior Secured Lenders of a *pro rata* share of the New Common Shares and New Warrants, which New Common Shares, together with the existing 3,333,333 common shares of Systech owned by Park Avenue Equity Partners, L.P., shall represent 80% of the common shares of Systech outstanding after implementation of the Plans;

13.2 The secured and unsecured claims of Robert Simon will be satisfied as follows: (a) payment of Cdn\$325,000 in cash to Robert Simon on the date of the implementation of the Plans; (b) the balance owing to Robert Simon to be paid from royalties due to Systech pursuant to a software development agreement between MGV Computer Holdings, Inc. and IBM after implementation of the Plans (all such payments are contingent on such royalties and are non-recourse); (c) 3.25% of the common shares of Systech and New Warrants owned by the Secured Lenders and management of Systech will be held in escrow as security to Robert Simon of the obligation of Systech in 13.2(b) above; and (d) the payment noted in 13.2(a) is inclusive of a payment of Cdn\$25,000 in cash to George Patterson (a former shareholder of MGV Computer Holdings, Inc.) on the date of the implementation of the Plans for work performed on the agreement noted in 13.2(b) above as a director;

13.3 The secured claim of Systech Group, Inc. will be satisfied through the issuance to Systech Group, Inc. of a *pro rata* share of the New Common Shares and New Warrants, which New Common Shares shall represent 6.47578% of the common shares of Systech outstanding after implementation of the Plans and, together with the existing 21,865,597 common shares of Systech owned by Systech Group, Inc., Systech Group, Inc. shall own approximately 7.6% of the common shares of Systech outstanding after implementation of the Plans;

13.4 Holders of impaired unsecured claims will be satisfied through the issuance to such holders of a *pro rata* share of the New Common Shares and New Warrants, which New Common Shares shall represent 10% of the common shares of Systech outstanding after implementation of the Plans;

13.5 The Class A preferred shares and Class C preferred shares of Systech will be cancelled and extinguished and the holders thereof will be issued a *pro rata* share of the New Common Shares and New Warrants, which New Common Shares shall represent 1.81147% of the common shares of Systech outstanding after implementation of the Plans. Park Avenue Equity Partners, L.P., which is the registered and beneficial owner of 246,575 Class A preferred shares of Systech, has agreed to waive any right to receive a distribution of New Common Shares and New Warrants on account of its Class A preferred share holdings;

13.6 Holders of common shares of Systech: (a) will retain such shares, which, excluding the existing 3,333,333 common shares of Systech owned by Park Avenue Equity Partners, L.P., shall represent 1.71275% of the common shares of Systech outstanding after implementation of the Plans; and (b) other than Park Avenue Equity Partners, L.P., will be issued a *pro rata* share of the New Warrants;

13.7 Each holder of an Old Warrant and Old Option will not receive or retain any property under the Plans and all Old Warrants and all Old Options will be extinguished and terminated; and

13.8 The Senior Secured Lenders shall segregate and dedicate approximately 10% of their holdings of common shares of Systech after implementation of the Plans to a management stock option incentive plan to be developed by Systech following implementation of the Plans (the New Options).

14. In certain Jurisdictions, not all of the Trades are exempt from the Registration Requirement and Prospectus Requirement.

15. Other than through the vote on the Plans in the U.S. Court, shareholder approval of the Plans is not required under the CCAA, the *Business Corporations Act* (Ontario) or the U.S. Bankruptcy Code;

16. Systech has received conditional listing approval from the TSX for the New Common Shares, the New Warrants and the common shares of Systech issuable upon the due exercise of the New Warrants, subject to certain conditions.

17. Section 1145(a)(1) of the U.S. Bankruptcy Code exempts the offer and sale of securities from registration under U.S. federal and state securities laws if: (a) the securities have been issued "under a plan" of reorganization by the debtor or its successor or by an affiliate participating in a joint plan of reorganization with the debtor; (b) the recipients of the securities hold a pre-petition or administrative expense claim against the debtor or an interest in the debtor; and (3) the securities are issued entirely in exchange for the recipient's claim against or interest in the debtor, or "principally" in such exchange and "partly" for cash or property. Section 1145(c) of the U.S. Bankruptcy Code deems any offer or sale of securities of the kind and in the manner specified in Section 1145(a)(1) to have been a public offering, and such securities will be freely transferable under U.S. federal securities laws, subject to certain exceptions.

18. Systech is of the view, and it has been advised, that implementation of the Plans is necessary for it to continue as a going concern and to provide a more favourable result for creditors than a liquidation under applicable bankruptcy legislation.

AND WHEREAS under 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 under the Legislation is that the Registration Requirement and the Prospectus Requirement shall not apply to the Trades provided that: (A) all approvals required by orders of the U.S. Court and the Canadian Court to implement the U.S. Plan and the CCAA Plan, respectively, have been obtained, and all conditions of such Plans have been satisfied or waived in accordance with such Plans; and (B) the first trade in any New Common Shares or New Warrants acquired under this Decision in a Jurisdiction or of the common shares of Systech issued upon the due exercise of the New Warrants or New Options is deemed to be a distribution or a primary distribution to the public under the Legislation of such Jurisdiction unless:

1. except in the Province of Québec, the conditions in subsections (3) or (4) of Section 2.6 or subsections (2) or (3) of Section 2.8 of 45-102 are satisfied; and

2. in the Province of Québec:

(a) the issuer is and has been a reporting issuer in the Province of Québec for the 12 months immediately preceding the trade;

(b) no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade;

(c) no extraordinary commission or consideration is paid to a person or company in respect of the trade; and

(d) if the selling shareholder is an insider or officer of the issuer, the selling shareholder has no reasonable grounds to believe that the issuer is in default of securities legislation.

DATED the 11<sup>th</sup> day of September, 2003

"P.M. Moore"

"Wendell S. Wigle"

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Relief from registration and prospectus requirements in connection with an arrangement under the Companies’ Creditors Arrangement Act (Canada). First trade deemed a distribution unless made in accordance with specified provisions of Multilateral Instrument 45-102 – *Resale of Securities*.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 25, 53 and 74(1).

Applicable Ontario Rules

Rule 45-501 – *Exempt Distributions*.

Applicable Multilateral Instruments

Multilateral Instrument 45-102 – *Resale of Securities*.