

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

AND

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

AND

IN THE MATTER OF THE T. EATON COMPANY LIMITED,  
1381052 ONTARIO INC. AND SEARS CANADA INC.

#### MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Newfoundland, Prince Edward Island, the Yukon Territory and the Northwest Territories (the "Jurisdictions") has received an application from The T. Eaton Company Limited ("Eaton's"), 1381052 Ontario Inc. ("Distributionco") and Sears Canada Inc. ("Sears") (collectively, the "Filer") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirement contained in the Legislation that prohibits a person or company from trading in a security unless the person or company is registered in the appropriate category of registration under the Legislation (the "Registration Requirement") and distributing a security unless a preliminary prospectus and prospectus for the security have been filed and receipts obtained for them (the "Prospectus Requirement") shall not apply to intended trades in securities to be made in connection with a statutory plan of arrangement (the "Arrangement") involving the Filers;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Executive Director of the British Columbia Securities Commission is the principal regulator for this application;

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

1. Eaton's is a company incorporated under the laws of Ontario and is a reporting issuer or the equivalent under the Legislation in each of the Jurisdictions;
2. the authorized capital of Eaton's consists of an unlimited number of common shares (the "Common Shares") and preference shares;
3. as of the date hereof, there are 24,430,000 Common Shares issued and outstanding of which there are holders resident in each of the Jurisdictions;

4. the Common Shares are listed for trading on The Toronto Stock Exchange (the "TSE") however trading of the Common Shares on the TSE was suspended on August 23, 1999;
5. Distributionco is a corporation incorporated under the laws of Ontario, is a wholly owned subsidiary of Eaton's incorporated to implement the terms of the Arrangement and is not a reporting issuer or the equivalent under the Legislation of any of the Jurisdictions;
6. the authorized capital of Distributionco consists of one common share, which is currently held by Eaton's;
7. Sears is a corporation incorporated under the laws of Canada, is a reporting issuer or the equivalent under the Legislation in each of the Jurisdictions and is not in default of any of the requirements of the Legislation;
8. on September 19, 1999, Eaton's entered into an agreement with Sears (the "Sears Agreement") under which Eaton's will reorganize under the *Companies Creditors' Arrangement Act* (Ontario) (the "CCAA") and section 182 of the *Business Corporations Act* (Ontario) and Sears will acquire all of the issued and outstanding Common Shares;
9. the purpose of the Arrangement is to reorganize the Common Shares and certain of Eaton's assets and to effect a compromise of the liabilities of Eaton's so that Eaton's continues as a going concern with Sears becoming its sole shareholder;
10. under the Arrangement:
  - a. on or before December 31, 1999 (the "Plan Implementation Date"), all of the assets of Eaton's, with some exceptions, will be transferred to Distributionco (the "Transferred Assets") and Eaton's will issue a promissory note to Distributionco in the principal amount of \$60 million, subject to any adjustment required under the Sears Agreement (the "Eaton's Note");
  - b. in exchange for the Transferred Assets and the Eaton's Note, Distributionco will assume all of the obligations, indebtedness and liabilities of Eaton's which are compromised on the Plan Implementation Date as well as the claims of certain unsatisfied creditors of Eaton's;
  - c. Eaton's will retain certain assets including all of its non-capital loss carryforwards for income tax purposes (the "Eaton's Tax Losses");
  - d. holders of the Common Shares (the "Shareholders") will transfer their Common Shares to Distributionco in exchange for a right to receive a unit of participation (a "Participation Unit") from Distributionco on the basis of one Participation Unit per Common Share;
  - e. each Participation Unit represents a *pari passu* beneficial ownership interest in the proceeds of a variable note, after deducting certain agency and administrative

costs, to be issued by Sears to Distributionco (the "Sears Variable Note") on the Plan Implementation Date;

f. on the Plan Implementation Date, Sears will purchase all of the issued and outstanding Common Shares from Distributionco in exchange for the Sears Variable Note in the principal amount of up to \$20 million; the Sears Variable Note is to be paid by Sears only from the use of the Eaton's Tax Losses in accordance with the Sears Agreement and will bear interest at the same rate of interest as earned on the funds received by Distributionco from Sears under the terms of the Sears Variable Note;

g. Sears will make a contribution to Eaton's in the amount of \$60 million, subject to any adjustment which may be required under the Sears Agreement, on the Plan Implementation Date and will subscribe for approximately \$60 million of Common Shares to be issued from treasury; the proceeds of the subscription will be used to satisfy the Eaton's Note;

h. Eaton's will sell the issued and outstanding common share of Distributionco that it owns to Richter and Partners Inc. in its capacity as liquidator of the estate and effects of Distributionco for the nominal consideration of \$1;

i. claims of creditors of Eaton's (the "Creditors") will be satisfied by Distributionco through the distribution of a cash pool consisting of the approximately \$60 million received from Eaton's on satisfying the Eaton's Note and the net amounts received upon the disposition of the Transferred Assets; and

j. through the Participation Units, former Shareholders will have a beneficial interest in the Sears Variable Note and will receive any future payments ultimately made by Sears under the Sears Variable Note together with income earned thereon and after deducting certain agency and administrative costs, upon the expiry of the relevant assessment or appeal periods in respect of the utilization by Sears of the Eaton's Tax Losses;

11. Richter and Partners Inc. in its capacity as the monitor appointed under the CCAA (the "Monitor") has provided a fairness opinion stating that the Arrangement is fair and reasonable to the Creditors under the circumstances and that the Creditors and Shareholders will receive a greater realization from the assets and shares of Eaton's under the Arrangement than in a bankruptcy, which is the likely alternative to the Arrangement;

12. the Shareholders and Creditors approved the Arrangement at meetings held on November 19, 1999;

13. prior to the meetings, an information circular dated October 8, 1999 and a supplement to the information circular dated November 5, 1999 (collectively, the "Information Circular") prepared in accordance with the requirements of the CCAA were mailed to the Shareholders and Creditors;

14. the Information Circular contained all material disclosure regarding the Arrangement and the Participation Units including a statement that the Participation Units can only be resold in reliance on registration and prospectus exemptions in the Legislation and a comparative analysis by the Monitor of the estimated distributions to the Creditors and the Shareholders under the CCAA and in bankruptcy;

15. the Arrangement was also sanctioned by the Ontario Superior Court of Justice on November 23, 1999;

16. the trades of securities under the Arrangement are not within any of the registration and prospectus exemptions under the Legislation; and

17. the Participation Units will not be listed on any stock exchange and are non-transferable except in reliance on available exemptions from the Registration Requirement and Prospectus Requirement of the 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:

1. the Registration Requirement and Prospectus Requirement shall not apply to the trades of securities under the Arrangement; and

2. the first trade in Participation Units acquired by Shareholders under this Decision is a distribution under the Legislation unless:

(a) Distributionco is a reporting issuer or the equivalent under the Legislation in the Jurisdiction where the trade takes place and has been a reporting issuer or the equivalent under the Legislation for the 12 months immediately preceding the trade;

(b) if the seller is an insider of Distributionco, other than a director or senior officer of Distributionco, the seller has filed all records required to be filed under the insider reporting obligations of the Legislation;

(c) if the seller is a director or senior officer of Distributionco, the seller has filed all records required to be filed under the insider reporting obligations of the Legislation and Distributionco has filed all records required to be filed under the continuous disclosure obligations of the Legislation;

(d) the trade is not a distribution from the holdings of a person or company, or combination of persons and companies, acting in concert or by virtue of an agreement, arrangement, commitment or understanding, which holds in total a sufficient number of any voting securities of Distributionco to affect materially the control of Distributionco, and if a person or company or combination of persons and companies holds more than 20% of the voting rights attached to all outstanding voting securities of Distributionco, the person or company or combination of persons and companies is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of Distributionco;

(e) no unusual effort is made to prepare the market or create a demand for the Participation Units; and

(f) no extraordinary commission or other consideration is paid in respect of the trade.

DATED December 24, 1999.

Margaret Sheehy  
Director

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Registration and prospectus relief for trades of securities under a plan of arrangement that are not within the statutory arrangement exemption.

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61, 76