



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED**

- AND -

**IN THE MATTER OF
MOSAID TECHNOLOGIES INCORPORATED AND WI-LAN INC.**

**ORDER
(Section 127)**

WHEREAS on September 28, 2011, Wi-LAN Inc. (“Wi-LAN”) filed an application (the “Application”) with the Ontario Securities Commission (the “Commission”) pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5 (the “Act”) for an order cease trading the shareholder rights plan (the “Shareholder Rights Plan”) of MOSAID Technologies Incorporated (“MOSAID”);

AND WHEREAS, in its Application, Wi-LAN seeks the following relief:

- (a) a permanent order pursuant to section 127 of the Act, effective at 9:00 a.m. on October 14, 2011, that trading cease in respect of any securities issued under, or in connection with the Shareholder Rights Plan of MOSAID, including without limitation, in respect of the rights issued under the Shareholder Rights Plan and any common shares of MOSAID to be issued upon the exercise of those rights; and
- (b) a permanent order removing prospectus exemptions in respect of the distribution of rights on the occurrence of the Separation Time (as defined in the Shareholder Rights Plan) and in respect of the exercise of the rights;

AND WHEREAS on October 4, 2011, the Commission issued a Notice of Hearing for a hearing commencing on October 12, 2011 to consider whether it is in the public interest to make a cease trade order in respect of the Shareholder Rights Plan pursuant to Wi-LAN’s Application;

AND WHEREAS on August 17, 2011, Wi-LAN issued a press release announcing its intention to make an offer for the issued and outstanding common shares of MOSAID;

AND WHEREAS on August 17, 2011, the MOSAID Board appointed a special committee of independent directors (the “Special Committee”);

AND WHEREAS on August 23, 2011, Wi-LAN commenced an offer for all the issued and outstanding common shares of MOSAID for \$38.00 per common share in cash (the “Offer”);

AND WHEREAS on September 1, 2011, MOSAID announced that it acquired Core Licensing S.a.r.l., a Luxembourg corporation that owns wireless patents and patent applications (the “Core Wireless Transaction”);

AND WHEREAS on September 6, 2011, MOSAID recommended to shareholders in a directors’ circular that they reject the Wi-LAN offer;

AND WHEREAS MOSAID submits that on September 12, 2011, financial advisors to the Special Committee began contacting potentially interested parties with a view to engaging them in discussions about a strategic transaction with MOSAID;

AND WHEREAS on September 22, 2011, MOSAID shareholders voted to renew the Shareholder Rights Plan, originally dated July 8, 2005;

AND WHEREAS on September 28, 2011, Wi-LAN amended its offer and extended the expiry date to October 14, 2011 at 5:00 p.m.;

AND WHEREAS a hearing was held on October 12, 2011 to consider the merits of the Application;

AND UPON considering the evidence and the submissions of Wi-LAN, MOSAID and Staff of the Commission filed with the Commission;

AND UPON considering the characteristics of the Offer made by Wi-LAN, the length of time since the Offer was announced and commenced, the fact that Wi-LAN was the first bidder to make a formal offer and that the Wi-LAN Offer will expire on October 14, 2011;

AND WHEREAS we have concluded that it is in the public interest to make an order allowing the Shareholder Rights Plan to remain in place only until November 1, 2011 at 9:00

a.m. We note that November 1, 2011 is 70 days from the commencement of the Offer and 61 days from the announcement of the Core Wireless Transaction;

AND WHEREAS in coming to our conclusion, the Commission has considered the case law which sets out the relevant factors to be considered in making a determination to cease trade a shareholder rights plan. Those factors were enumerated in *Re Royal Host Real Estate Investment Trust* (1999), 22 O.S.C.B. 7819 (“*Royal Host*”) and were restated in *Re Baffinland Iron Mines Corporation* (2010), 33 O.S.C.B. 11385;

AND WHEREAS in this case, we have considered the following factors to be particularly important:

1. We are satisfied that the Shareholder Rights Plan is still serving a purpose by providing an opportunity for continuing the auction process, which may enhance shareholder value. MOSAID presented evidence that it has been pursuing alternatives to the Offer since September 12, 2011, including entering into 12 confidentiality agreements, and is in receipt of a formal non-binding indication of interest from one interested party;
2. One of the factors enumerated in *Royal Host* is the size and complexity of the target company. This is a relevant factor in this case. In particular, we are mindful of the importance of the Core Wireless Transaction to MOSAID and the juxtaposition of this “transformational event”, which began in March 2011, being completed at approximately the same time as the unsolicited take-over bid by Wi-LAN was made;
3. MOSAID shareholders approved the renewal of the Shareholder Rights Plan on September 22, 2011. The Shareholder Rights Plan contains a definition of a “permitted bid”, which, among other conditions, requires that a “permitted bid” be open for not less than 60 days. MOSAID shareholders voted to renew the Shareholder Rights Plan subsequent to Wi-LAN’s commencement of the Offer and subsequent to MOSAID’s announcement of the Core Wireless Transaction;
4. We were presented in evidence with letters from two shareholders in MOSAID dated October 4, 2011 expressing continued support for the Shareholder Rights Plan, including from MOSAID’s largest shareholder, which owns approximately 12% of the outstanding common shares; and

5. We note that there is no evidence to suggest that the Offer is coercive or unfair to MOSAID shareholders;

IT IS ORDERED that:

1. effective November 1, 2011 at 9:00 a.m., pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities issued or to be issued under or in connection with the Shareholder Rights Plan shall cease permanently; and
2. effective November 1, 2011 at 9:00 a.m., pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply permanently to any securities issued or to be issued under or in connection with the Shareholder Rights Plan.

Dated at Toronto this 12th day of October, 2011.

“Mary G. Condon”

“C. Wesley M. Scott”

Mary G. Condon

C. Wesley M. Scott

“Sarah B. Kavanagh”

Sarah B. Kavanagh