

2010 BCSECCOM 575

Headnote

An issuer is issuing debentures under a trust indenture and wants an exemption from the trust indenture requirements contained in sections 90 to 101 of the *Business Corporations Act* - A prospectus, securities exchange issuer circular, or take over bid circular has been filed under the *Securities Act* in respect of the debentures; the trust indenture will be governed by the *Trust Indenture Act of 1939* of the United States, which contains provisions that are substantially similar to the requirements of the Act

Exemption Order

The Bank of New York Mellon Corporation

Section 91 of the *Business Corporations Act*, S.B.C. 2002, c.57

Background

- ¶ 1 The Bank of New York Mellon Corporation (the Trustee) has applied for an exemption from sections 90 to 101 of the *Business Corporations Act* (British Columbia) (the Act).

Representations

- ¶ 2 The Trustee represents that:
1. the Trustee is a banking corporation duly organized and existing under the laws of the State of New York;
 2. Manulife Financial Corporation (MFC) has advised it that MFC is incorporated under the *Insurance Companies Act* (Canada), is a reporting issuer under the *Securities Act* (British Columbia) and is not in default of any requirement of the *Securities Act* (British Columbia) or the *Securities Rules*, B.C. Reg. 194/97;
 3. MFC has advised it that it may distribute debt securities in the United States (the U.S. Debt Securities) from time to time under a registration statement filed under the Multijurisdictional Disclosure System (the distributions);
 4. MFC has also filed a shelf prospectus in British Columbia in connection with the distributions;
 5. any U.S. Debt Securities will be issued under a trust indenture, as amended or supplemented from time to time (the trust indenture), to be entered into between MFC and the Trustee;

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6. the trust indenture will be governed by the laws of the State of New York and the *Trust Indenture Act* of 1939, as amended (the TIA), which contains provisions that are substantially similar to the provisions of sections 90 to 101 of the Act;
7. the trust indenture will permit the issuance of an unlimited amount of U.S. Debt Securities;
8. the trust indenture will provide that the terms of any series of U.S. Debt Securities to be issued thereunder shall be established in or pursuant to a resolution of the board of directors of MFC, and set forth in an officers' certificate of MFC, or established in one or more supplemental indentures, each of which complies with the terms of the trust indenture; and
9. any issuance of the U.S. Debt Securities will comply with the applicable laws of the jurisdiction in which they are being issued and any distribution in Canada or to a resident of Canada will be completed in compliance with applicable securities legislation, rules and published policies.

Order

¶ 3 Considering that it is not prejudicial to the public interest, the executive director orders under section 91(3) of the Act that sections 90 to 101 of the Act do not apply to the trust indenture, provided that the trust indenture complies in all material respects with the provisions of the TIA that are substantially similar to the provisions of sections 90 to 101 of the Act.

¶ 4 September 2, 2010

Martin Eady, CA
Director, Corporate Finance
British Columbia Securities Commission