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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from registration and prospectus requirements of the legislation to enable a Schedule III bank to have the same exemptions as Schedule I and II banks, subject to certain conditions.

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34, 44(2)(a), 45(2)(2), 45(2)(20), 45(2)(27), 46(a)(iv), 48, 61(1), 74(2)(1), 74(2)(4), 76

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

AND

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

AND

IN THE MATTER OF ABN AMRO BANK N.V.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador and in each of the territories of Nunavut, the Northwest Territories and Yukon Territory (the “Jurisdictions”) has received an application (the “Application”) from ABN AMRO BANK N.V. (“ABN AMRO”), for a decision (the “Decision”) pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that ABN AMRO is exempt from various registration, prospectus and filing requirements of the Legislation in connection with the banking activities to be carried on by ABN AMRO in the Jurisdictions;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission (the “OSC”) is the principal regulator for this Application;

AND WHEREAS ABN AMRO has represented to the Decision Makers that:

1. ABN AMRO is organized under the laws of the Netherlands. The principal office of ABN AMRO is located in the Netherlands.
2. ABN AMRO is the fifth largest European banking group and, together with its subsidiaries, provides a comprehensive range of financial services including corporate and investment banking, lease and trade financing, venture capital and asset management and investment management services.
3. ABN AMRO has approximately 1,000 branches in the Netherlands. ABN AMRO also operates branches in 60 countries outside the Netherlands. In Canada, ABN AMRO has a

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wholly-owned subsidiary, ABN AMRO Bank Canada, which is a Schedule II chartered bank under the *Bank Act* (Canada) (the "Bank Act").

4. As at December 31, 2000, ABN AMRO had total assets of _543.2 billion (approximately Cdn.\$751.11 billion).
5. ABN AMRO is not, and has no current intention of becoming, a reporting issuer in any province of Canada, nor are any of its securities listed on any stock exchange in Canada.
6. In 1999, amendments to the Bank Act were made to permit foreign banks to operate directly in Canada through branches, rather than through separate subsidiary Schedule II banks.
7. On October 5, 2000, ABN AMRO submitted an application (the "Bank Act Application") to the Office of the Superintendent of Financial Institutions Canada ("OSFI") for an order establishing a full service foreign bank branch in Canada and for an order approving the commencement and carrying on of business in Canada pursuant to sections 524 and 534 of the Bank Act.
8. Upon approval of the Bank Act Application, ABN AMRO will establish and commence business as a foreign bank branch under the Bank Act. ABN AMRO expects to receive all OSFI approvals by the end of 2001.
9. The operations of ABN AMRO's foreign bank branch will be primarily comprised of wholesale deposit-taking, commercial lending and related treasury functions.
10. ABN AMRO intends to provide deposit-taking, commercial lending and related treasury functions primarily to the following investors:
 - (a) Her Majesty in right of Canada or in right of a province or a territory, an agent of Her Majesty in either of those rights and includes a municipal or public body empowered to perform a function of government in Canada, or an entity controlled by Her Majesty in either of those rights;
 - (b) the government of a foreign country or any political subdivision thereof, an agency of the government of a foreign country or any political subdivision thereof, or an entity that is controlled by the government of a foreign country or any political subdivision thereof;
 - (c) an international agency of which Canada is a member, including an international agency that is a member of the World Bank Group, the Inter-American Development Bank, the Asian Development Bank, the Caribbean Development Bank and the European Bank for Reconstruction and Development and any other international regional bank;
 - (d) a financial institution (i.e.: (a) a bank or an authorized foreign bank under the Bank Act; (b) a body corporate to which the *Trust and Loan Companies Act* (Canada) applies; (c) an association to which the *Cooperative Credit Association Act* (Canada) applies; (d) an insurance company or fraternal benefit society to which the *Insurance Companies Act* (Canada) applies; (e) a trust, loan or insurance corporation incorporated by or under an Act of the legislature of a province or territory in Canada; (f) a cooperative credit society incorporated and regulated by or under an Act of the legislature of a province or territory in Canada; (g) an entity that is incorporated or formed by or under an Act of Parliament or of the legislature of a province or territory in Canada that is primarily engaged in dealing in securities, including portfolio management and investment counselling and is registered to act in such capacity under the applicable Legislation; and (h) a foreign institution that is (i) engaged in the banking, trust, loan or insurance business, the business of a cooperative credit society or the business of dealing in securities or is otherwise engaged primarily in the business of providing financial services, and (ii) is incorporated or

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formed otherwise than by or under an Act of Parliament or of the legislature of a province or territory in Canada);

(e) a pension fund sponsored by an employer for the benefit of its employees or employees of an affiliate that is registered and has total plan assets under administration of greater than \$100 million;

(f) a mutual fund corporation that is regulated under an Act of the legislature of a province or territory in Canada or under the laws of any other jurisdiction and has total assets under administration of greater than \$10 million;

(g) an entity (other than an individual) that has gross revenues on its own books and records of greater than \$5 million as of the date of its most recent annual financial statements; or

(h) any other person, if the transaction is in an aggregate amount of greater than \$150,000.

collectively referred to for purposes of this Decision as "Authorized Customers".

11. The only advising activities which ABN AMRO intends to undertake will be incidental to its primary banking business and it will not advertise itself as an adviser or allow itself to be advertised as an adviser in the Jurisdictions.

12. Under the current Legislation, banks chartered under Schedules I and II of the Bank Act have numerous exemptions from various aspects of the Legislation. Since ABN AMRO's foreign bank branch will not be chartered under Schedule I or II of the Bank Act, the existing exemptions relating to the registration, prospectus and filing requirements will not be available to it.

13. In order to ensure that ABN AMRO, as an entity listed on Schedule III to the Bank Act, will be able to provide banking services to businesses in the Jurisdictions, it requires similar exemptions enjoyed by banking institutions incorporated under the Bank Act to the extent that the current exemptions applicable to such banking institutions are relevant to the banking business to be undertaken by ABN AMRO in the Jurisdictions.

AND WHEREAS under the System, this MRRS Decision Document evidences the Decision of each of the Decision Makers;

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. ABN AMRO is exempt from the requirement under the Legislation, where applicable, to be registered as an underwriter with respect to trading in the same types of securities that an entity listed on Schedule I or II to the Bank Act may act as an underwriter in respect of without being required to be registered under the Legislation as an underwriter.

2. ABN AMRO is exempt from the requirement under the Legislation to be registered as an adviser where the performance of the services as an adviser is solely incidental to its primary banking business.

3. A trade of a security to ABN AMRO, where ABN AMRO purchases the security as principal, shall be exempt from the registration and prospectus requirements of the Legislation of the Jurisdiction in which the trade takes place (the "Applicable Legislation") provided that:

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- (i) the forms that would have been filed and the fees that would have been paid under the Applicable Legislation if the trade had been made, on an exempt basis, by an entity listed on Schedule I or II to the Bank Act (referred to in this Decision as a "Schedule I or II Bank Exempt Trade") are filed and paid in respect of the trade to ABN AMRO;
- (ii) except in Quebec, the first trade in a security acquired by ABN AMRO pursuant to this Decision is deemed a distribution or primary distribution to the public under the Applicable Legislation unless the conditions in subsections 2 or 3, as applicable, of section 2.5 of Multilateral Instrument 45-102 - *Resale of Securities* are satisfied;
- (iii) in Quebec, the first trade in a security acquired by ABN AMRO pursuant to this Decision will be a distribution unless,
 - (a) at the time ABN AMRO acquired the security: (i) the issuer of the security is a reporting issuer in Quebec; (ii) the issuer is not a Capital Pool Company as defined in Policy 2.4 of The Canadian Venture Exchange Inc.; (iii) the issuer has a class of securities listed on an acceptable exchange, has not been advised that it does not meet the requirements to maintain that listing and is not designated inactive, or the issuer has a class of securities that has an approved rating from an approved rating organization; for purposes of this Decision, the acceptable exchanges include the Toronto Stock Exchange, tier 1 and 2 of The Canadian Venture Exchange Inc., the American Stock Exchange, Nasdaq National Market, Nasdaq SmallCap Market, the New York Stock Exchange and the London Stock Exchange Limited; and (iv) the issuer has filed an annual information required under section 159 of the Regulation made under the *Securities Act* (Quebec), as amended from time to time, (the "Quebec Act") within the time period contemplated by that section, or, if not required to file an annual information, has filed a prospectus that contains the most recent financial statements;
 - (b) the issuer has been a reporting issuer in Quebec for 4 months immediately preceding the trade;
 - (c) ABN AMRO has held the securities for at least 4 months;
 - (d) no extraordinary commission or other consideration is paid;
 - (e) no effort is made to prepare the market or to create a demand for the securities;
 - (f) if ABN AMRO is an insider of the issuer, ABN AMRO has no reasonable grounds to believe that the issuer is in default under the Quebec Act; and
 - (g) ABN AMRO files a report within 10 days of the trade prepared and executed in accordance with the requirements of the Quebec Act that would apply to a trade made in reliance on section 43 or 51 of the Quebec Act.

4. ABN AMRO is exempt from the registration and prospectus requirements of the Legislation for trades by ABN AMRO of bonds, debentures or other evidences of indebtedness of or guaranteed by ABN AMRO with Authorized Customers.

5. Evidences of deposit issued by ABN AMRO to Authorized Customers shall be exempt from the registration and prospectus requirements of the Legislation.

THE FURTHER DECISION of the Decision Maker in Ontario is that:

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A. Subsection 25(1)(a) of the *Securities Act* (Ontario) R.S.O. 1990 c. S.5, as amended, (the "Ontario Act") does not apply to a trade by ABN AMRO:

- (i) of a type described in subsection 35(1) of the Ontario Act or section 151 of the Regulation made under the Ontario Act; or
- (ii) subject to paragraph 4 above, the securities described in subsection 35(2) of the Ontario Act.

B. Subsection 25(1)(a) and section 53 of the Ontario Act do not apply to a trade by ABN AMRO in:

(i) a security of a mutual fund, if the security is sold to a pension plan, deferred profit sharing plan, retirement savings plan or other similar capital accumulation plan maintained by the sponsor of the plan for its employees, and

(a) the employees deal only with the sponsor in respect of their participation in the plan and the purchase of the security by the plan, or

(b) the decision to purchase the security is not made by or at the direction of the employee; or

(ii) in a security of a mutual fund that:

(a) is administered by a body corporate to which the *Trust and Loan Companies Act* (Canada) applies or a trust, loan or insurance corporation incorporated by or under an Act of the legislature of a province or territory in Canada;

(b) consists of a pool of funds that:

(A) results from, and is limited to, the combination or commingling of funds of pension or other superannuation plans registered under the *Income Tax Act* (Canada), and

(B) is established by or related to persons or companies that are associates or affiliates of or that otherwise do not deal at arms length with the promoters of the mutual fund, except the trust, loan or insurance corporation that administers the fund; and

(c) is managed, in whole or in part, by a person who is registered or who is exempt from registration under the Ontario Act.

C. Except as provided for in paragraph 3 of this Decision, section 28 of Schedule I to the Regulation made under the Ontario Act shall not apply to trades made by ABN AMRO in reliance on this Decision.

DATED the 28th day of December, 2001.

Paul M. Moore

H. Lorne Morphy