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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, SASKATCHEWAN, MANITOBA, 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 HSBC BANK USA

MRRS DECISION DOCUMENT

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

AND WHEREAS, pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS it has been represented by HBUS to the Decision Makers that:

1. HBUS is a corporation duly organized and existing under the laws of the State of New York and is a validly existing banking organization under the banking laws of the State of New York. HBUS is a wholly-owned subsidiary and the principal banking subsidiary of HSBC USA Inc., an indirectly-held, wholly-owned subsidiary of HSBC Holding plc.
2. HBUS is the third largest depository institution and has the most extensive branch network in the State of New York, with more than 420 branches. It also has branches in Florida, Pennsylvania, California and Panama. In addition to its branch network, HBUS has the third largest factoring service in the United States of America and is the largest US bank-owned factor. It also conducts one of the world's largest precious metals operations and has also entered into Internet banking.

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3. HSBC 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.
4. HBUS does not currently have a presence in Canada. An affiliate of HBUS, HSBC Bank Canada, currently provides retail banking, commercial lending and corporate treasury products in Canada. The full service branch of HBUS intends to leverage its AA credit rating to provide commercial lending services to corporate and institutional banking clients which have credit requirements that exceed the single name limit in Canada (an A credit rating). In addition, HBUS plans to engage in certain treasury related activities;
5. In June 1999, amendments to the *Bank Act* were proclaimed that permit foreign commercial banks to establish direct branches in Canada. These amendments have created a new Schedule III listing foreign banks permitted to carry on banking activities through branches in Canada;
6. In October, 2001, HBUS made an application (the "Bank Act Application") to the Office of the Superintendent of Financial Institutions Canada ("OSFI") for an order under the *Bank Act* permitting it to establish a full service branch under the *Bank Act* and designating it on Schedule III to the Bank Act;
7. Upon approval of the Bank Act Application, HBUS will establish and commence business as a foreign bank branch under the Bank Act. HBUS expects to receive all OSFI approvals on or before March 1, 2002.
8. HBUS will only be involved in wholesale deposit-taking, commercial lending and related treasury functions;
9. HBUS will only accept deposits from the following:
 - (a) Her Majesty in right of Canada or in right of a province or 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 a 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 and that is primarily engaged in dealing in securities, including portfolio management and investment counseling, 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 trade is in a security which has an aggregate acquisition cost to the purchaser of greater than \$150,000;

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

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

11. The Legislation applicable in each Jurisdiction currently refers to either "Schedule I and Schedule II banks", "banks", "savings institutions" or "financial institutions" in connection with certain exemptions however no reference is made in any of the Legislation to entities listed on Schedule III to the *Bank Act*;

12. In order to ensure that HBUS, as an entity listed on Schedule III to the *Bank Act*, is 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 being undertaken by HBUS in the Jurisdictions;

AND WHEREAS pursuant to 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 pursuant to the Legislation is that upon the establishment by HBUS of a branch designated on Schedule III to the *Bank Act* and in connection with the banking business to be carried on by HBUS in the Jurisdictions by such branch:

1. HBUS 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. HBUS is exempt from the requirement under the Legislation to be registered as an adviser where the performance of the service as an adviser is solely incidental to its primary banking business;

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3. A trade of a security to HBUS where HBUS 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:

- (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, to an entity listed on Schedule I or II to the *Bank Act* purchasing as principal (referred to in this Decision as a "Schedule I or II Bank Exempt Trade") are filed and paid in respect of the trade to HBUS;
- (ii) except in Quebec, the first trade in a security acquired by HBUS 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; and
- (iii) in Quebec, the first trade in a security acquired by HBUS pursuant to this Decision will be a distribution unless,
 - (a) at the time HBUS 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) HBUS 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 HBUS is an insider of the issuer, HBUS has no reasonable grounds to believe that the issuer is in default under the Quebec Act; and
 - (g) HBUS 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. Provided HBUS only trades the types of securities referred to in this paragraph 4 with Authorized Customers, trades of bonds, debentures or other evidences of indebtedness of or guaranteed by HBUS shall be exempt from the registration and prospectus requirements of the Legislation; and

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

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

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

(i) of a type described in subsection 35(1) of the Act or section 151 of the Regulations made under the Act; or

(ii) subject to paragraph 4 above, in securities described in subsection 35(2) of the Act;

B. Subsection 25(1)(a) and section 53 of the Ontario Act do not apply to a trade by HBUS 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; and

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

DATED February 26, 2002.

Paul M. Moore

R. Stephen Paddon