

# 2006 BCSECCOM 609

September 1, 2006

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - *Securities Act* s. 76 - Prospectus Requirements - An issuer that is not a reporting issuer in Canada is seeking first trade relief for securities that it will issue or has issued to Canadian residents - The issuer meets all of the conditions of section 2.14 of National Instrument 45-102 *Resale of Securities* except that residents of Canada will own more than 10% of the securities of the class and will represent more than 10% of the total number of holders of the securities of the class; the issuer is listed on an exchange outside of Canada; the issuer is not seeking to create a market for its securities in Canada by offering its securities to new Canadian investors; the issuer will provide security holders who are resident in Canada with the same continuous disclosure materials that are provided to foreign shareholders

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 61 and 76

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Ontario and Québec  
(the “Jurisdictions”)

and

In the Matter of  
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of  
Mastercard Incorporated  
(the “Company”)

MRRS Decision Document

## Background

The local securities regulatory authority or regulator (the “Decision Maker”) in each of the Jurisdictions has received an application from the Company for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the prospectus requirements contained in the Legislation do not apply to the first trade of the Canadian Shares (as defined below) (the “Requested Relief”), subject to certain terms and conditions.

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Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Ontario Securities Commission is the principal regulator for this application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

Defined terms contained in National Instrument 14-101 Definitions have the same meaning in this decision unless they are defined in this decision.

### **Representations**

1. The Company is a corporation incorporated under the laws of the State of Delaware. The principal executive offices of the Company are located at 2000 Purchase Street, Purchase, New York, U.S.A. 10577.
2. The Company is not a reporting issuer or its equivalent in any jurisdiction of Canada and the Company has no present intention of becoming a reporting issuer in any jurisdiction of Canada.
3. The Company is registered with the Securities and Exchange Commission (the "SEC") in the United States of America and is subject to the requirements of the *Securities Exchange Act of 1934* (the "1934 Act") and the rules and regulations of the New York Stock Exchange (the "NYSE").
4. The authorized capital of the Company consists of:
  - (a) 3,000,000,000 shares of Class A common stock par value US\$0.0001 per share ("Class A Shares"), of which 79,631,922 Class A Shares were issued and outstanding as of July 20, 2006;
  - (b) 1,200,000,000 shares of Class B common stock, par value US\$0.0001 per share, of which 55,337,407 shares were issued and outstanding as of July 20, 2006;
  - (c) 1,000,000 shares of Class M common stock, par value US\$0.0001 per share, of which 1,570 shares were issued and outstanding as of July 20, 2006; and
  - (d) 300,000,000 shares of preferred stock, par value US\$0.0001 per share, of which none was issued and outstanding as of July 20, 2006.

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5. The Class A Shares are listed and posted for trading on the NYSE under the symbol “MA”. Other than the foregoing, none of the Company’s securities are listed or quoted on any exchange or market either in Canada or outside of Canada.
6. On May 31, 2006, the Company completed an initial public offering of its Class A Shares (the “Offering”) outside of Canada pursuant to which the Company issued a total of 66,134,989 Class A Shares (including a total of 4,614,077 Class A Shares issued on exercise by the underwriters for the Offering of the over-allotment option) at an initial public offering price of US\$39.00 per share. As part of the Offering, and based on the information provided to the Company by the underwriting syndicate for the Offering, the Company issued and sold, through the underwriting syndicate, a total of 1,146,100 Class A Shares (representing less than 1.5% of the total 79,631,922 Class A Shares issued and outstanding as of July 20, 2006) on a private placement basis to a total of 114 investors in the Jurisdictions (the “Canadian Investors”) which, based on information provided to the Company by ADP Investor Communications Services, represented, as of June 15, 2006, less than 0.5% of the total number of holders of Class A Shares, in reliance on the prospectus exemptions contained in National Instrument 45-106 - *Prospectus and Registration Exemptions* (the “Canadian Offering Shares”).
7. As disclosed in the prospectus and the Canadian offering memorandum, each dated May 24, 2006, prepared and filed by the Company in connection with the Offering, concurrently with the Offering, the Company donated a total of 13,496,933 newly issued Class A Shares, representing approximately 17% of the total issued and outstanding Class A Shares (the “Canadian Foundation Shares” and together with the Canadian Offering Shares, the “Canadian Shares”), to The MasterCard Foundation, a private charitable foundation incorporated in Canada (the “Foundation”). Pursuant to the terms of the donation, the Foundation may not sell or otherwise transfer the Canadian Foundation Shares prior to April 30, 2027, except to the extent necessary to comply with charitable disbursement requirements under Canadian law starting on May 31, 2010.
8. The Canadian Offering Shares represented approximately 18.4% of the issued and outstanding Class A Shares as of July 20, 2006. Based on information provided to the Company by ADP Investor Communications Services, the Canadian Investors, together with the Foundation, (collectively, the “Canadian Owners”), represented, as of June 15, 2006, less than 0.5% of the total number of holders of Class A Shares.

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9. In the absence of an order granting relief, the first trade in Canadian Shares will be deemed to be a distribution pursuant to National Instrument 45-102 – *Resale of Securities* (“NI 45-102”) unless, among other things, the Company has been a reporting issuer for four months immediately preceding the trade in one of the jurisdictions set forth in Appendix B to NI 45-102.
10. The Canadian Owners are not able to rely on the exemption provided for by section 2.14 of NI 45-102 to resell the Canadian Offering Shares as the criteria set out in subsection 2.14(b)(i) of NI 45-102 is not met in that, at the distribution date of the Canadian Shares, residents of Canada (including the Foundation) owned more than 10% of the Class A Shares.
11. No market for the Class A Shares exists in Canada and none is expected to develop. It is intended that any resale of the Canadian Shares by the Canadian Owners be effected through the facilities of the NYSE or any other exchange or market outside of Canada on which Class A Shares may be quoted or listed at the time that the trade occurs or to a person or company outside of Canada, in accordance with the rules and regulations of such foreign market.
12. In accordance with the current requirements of the NYSE, holders of Canadian Shares will receive copies of all shareholder materials provided to all other holders of Class A Shares.

### **Decision**

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 the Requested Relief is granted provided that:

- (a) at the date of the first trade of the Canadian Shares, the Company is not a reporting issuer in any jurisdiction of Canada where such concept exists; and
- (b) the first trade of the Canadian Shares is made through an exchange, or a market, outside of Canada or to a person or company outside of Canada.

Robert L. Shirriff, Q.C.  
Commissioner  
Ontario Securities Commission

Paul K. Bates  
Commissioner  
Ontario Securities Commission