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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief granted from the registration requirements for trades by former participants and permitted transferees of securities acquired under an employee stock plan – relief granted from the issuer bid requirements for acquisitions of shares under the plan – revocation of a previous order relating to the plan

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 105-108, 110, 114 and 171

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA AND ONTARIO

AND

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

AND

IN THE MATTER OF BANK OF AMERICA CORPORATION

MRRS DECISION DOCUMENT

- ¶ 1 WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta and Ontario (the “Jurisdictions”) has received an application from Bank of America Corporation (the “Filer”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that:
- (a) the registration requirement will not apply to certain trades in shares of the common stock of the Filer (the “Shares”) under the Bank of America Corporation Key Employee Stock Plan (the “Plan”), and
 - (b) the requirements relating to the delivery of an offer and issuer bid circular and any notices of change or variation thereto, minimum deposit periods and withdrawal rights, take-up and payment for securities tendered to an issuer bid, disclosure, restrictions upon purchases of securities, financing, identical consideration, collateral benefits and form filing (the “Issuer Bid Requirements”) will not apply to certain acquisitions of Shares by the Filer under the Plan;

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- ¶ 2 AND WHEREAS the Filer was previously granted a decision by the Decision Makers in British Columbia and Alberta dated February 12, 2001 (the “Previous Decision”) under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”) that provided relief from the Registration Requirement for trades in securities under the Plan;
- ¶ 3 AND WHEREAS the Filer has also applied to the Decision Makers in British Columbia and Alberta for a decision under the Legislation revoking the Previous Decision;
- ¶ 4 AND WHEREAS under the System, the British Columbia Securities Commission is the principal regulator for this application;
- ¶ 5 AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions* or in Québec Commission Notice 14-101;
- ¶ 6 AND WHEREAS the Filer has represented to the Decision Makers as follows:
1. the Filer is incorporated under the laws of Delaware;
 2. the Filer, together with its affiliates (collectively, the “Bank of America Companies”), provide a diversified range of banking and non-banking financial services and products in the U.S. and in selected international financial markets;
 3. the Filer is registered with the Securities Exchange Commission (the “SEC”) in the U.S. under the U.S. Securities Exchange Act of 1934 (the “Exchange Act”) and is not exempt from the reporting requirements of the Exchange Act;
 4. the Filer is not a reporting issuer in any of the Jurisdictions and has no present intention of becoming a reporting issuer in any of the Jurisdictions;
 5. the Filer’s authorized share capital consists of 5,000,000,000 Shares and 100,000,000 shares of preferred stock (“Preferred Shares”) of which, as of March 1, 2002, there were 1,536,219,076 Shares and 1,483,324 Preferred Shares outstanding;
 6. the Shares are listed for trading on the New York Stock Exchange (“NYSE”), the Pacific Stock Exchange, the London Stock Exchange, and certain Shares are listed on the Tokyo Stock Exchange;

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7. the Filer intends to use the services of one or more agents/brokers in connection with the Plan (each an “Agent”); Salomon Smith Barney Inc. (“SSB”) has initially been appointed by the Filer to act as an Agent for the Plan;
8. SSB is not registered to trade in any of the Jurisdictions, but is registered under applicable U.S. securities or banking legislation to conduct retail trades and has been authorized by the Filer to provide services under the Plan;
9. if SSB is replaced, or if additional Agents are appointed, the replacement or additional Agents will also not be registered to trade in any of the Jurisdictions, but will be registered under applicable U.S. securities or banking legislation to conduct retail trades and will be authorized by the Filer to provide services under the Plan;
10. the purpose of the Plan is to promote the success and enhance the value of the Filer by linking the personal interests of the Participants (as defined below) to those of the Filer’s shareholders, and to provide Participants with an incentive for outstanding performance;
11. subject to adjustment as described in the Plan, the maximum number of Shares that may be issued under the Plan is 0.75% of the outstanding Shares as of the first business day of each calendar year from 1995 through 1998, and 1.50% of the outstanding Shares as of the last day of the immediately preceding calendar year of each calendar year from 1999 through 2004, plus an additional 38,724,102 Shares that became available for issuance on the occurrence of other corporate events between 1995 and 1998;
12. under the Plan, options on Shares (“Options”), stock appreciation rights (“SARs”), performance Shares (“Performance Shares”) and restricted stock (“Restricted Shares”) (Options, SARs, Performance Shares, Restricted Shares and Shares are collectively “Awards”) may be granted to eligible employees of the Bank of America Companies (“Participants”);
13. there are 61 Participants in Canada eligible to receive Awards under, or participate in, the Plan;
14. participation in the Plan is entirely voluntary and employees will not be induced to participate in the Plan by expectation of employment or continued employment with the Bank of America Companies;
15. all necessary securities filings have been made in the U.S. in order to offer the Plan to Participants resident in the U.S.;

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16. a prospectus prepared according to U.S. securities laws describing the terms and conditions of the Plan will be delivered to each Participant who receives an Award under the Plan; the annual reports, proxy materials and other materials the Filer provides to its U.S. shareholders will be provided or made available upon request to Participants resident in the Jurisdictions who acquire and retain Shares under the Plan at substantially the same time and in substantially the same manner as such documents would be provided to U.S. shareholders;
17. the Plan is administered by the board of directors (the "Board") of the Filer or a committee appointed by the Board (the "Committee");
18. generally, in order to exercise an Option granted under the Plan, an optionee must submit a written notice of exercise to the Filer or to the Agent identifying the Option, the number of Shares being purchased and the method of payment;
19. the Plan provides that, on exercise of Options, the exercise price to acquire the Shares may be paid (a) in cash, (b) by the surrender of Shares owned by the Option holder to the Filer for cancellation ("Stock-Swap Exercises") or to the Agent for resale, (c) by the retention of a number of Shares by the Filer from the total number of Shares into which the Option is exercised, (d) by a combination of the foregoing, or (e) by such other consideration and method of payment permitted by the Committee at an exercise price determined in accordance with the terms of the Plan;
20. Options will vest and will be exercisable as specified in the Option agreement as determined by the Committee; the exercise price for each Option will be established in the discretion of the Board, provided that the exercise price per Share cannot be less than the Fair Market Value (as defined in the Plan) of a Share on the effective date of grant of the Option;
21. the term of each Option will be fixed by the Committee, provided, however, that terms will be no more than ten (10) years from the date of grant; the date of exercise will be chosen by the Option holder;
22. the Committee may grant SARs unrelated or related to Options or any combination of both; generally, a SAR will entitle a Participant to receive a payment in cash, Shares of equivalent value, or a combination thereof in an amount determined in accordance with the terms of the Plan; SARs will be exercisable at such time and subject to such terms and conditions as determined by the Committee in its sole discretion;

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23. Restricted Shares will be subject to such restrictions as the Committee may impose; unless otherwise determined by the Committee, upon termination of employment for any reason all Restricted Shares still subject to restriction will be forfeited and reacquired by the Filer;
24. Performance Shares may be granted to Participants in such amount and upon such terms, at any time and from time to time, as determined by the Committee; the number and/or vesting of Performance Shares granted will be contingent on the attainment of certain performance goals or other conditions over a period of time, all as determined by the Committee and evidenced by an Award agreement;
25. the Filer has the right to deduct applicable taxes from any payment under the Plan by withholding, at the time of delivery or vesting of cash or Shares under the Plan, an appropriate amount of cash or Shares (“Share Withholding Exercises”) or a combination thereof, or to take such other action as may be necessary in the opinion of the Filer or the Committee to satisfy all obligations for the withholding of such taxes;
26. Awards and rights under the Plan are not transferable by a Participant other than by will or beneficiary designation or by the laws of intestacy, unless otherwise provided for by the Committee;
27. following the termination of a Participant’s relationship with the Bank of America Companies for reasons of disability, retirement, termination, change of control or any other reason (such Participants are “Former Participants”), and where Awards have been transferred by will or pursuant to a beneficiary designation or the laws of intestacy or otherwise on the death of a Participant (beneficiaries of such Awards are “Permitted Transferees”), the Former Participants and Permitted Transferees will continue to have rights in respect of the Plan (“Post-Termination Rights”);
28. Post-Termination Rights may include, among other things, (a) the right to exercise Awards for a period determined in accordance with the Plan; and (b) the right to sell Shares acquired under the Plan through the Agent;
29. Post-Termination Rights will only be effective where such rights accrued under the Plan while the Participant had a relationship with the Bank of America Companies;
30. the Agent may (a) disseminate information and materials to Participants in connection with the Plan (b) assist with the administration of and general record keeping for the Plan; (c) hold Shares on behalf of Participants, Former

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Participants and Permitted Transferees in limited purpose brokerage accounts; (d) facilitate Option exercises (including cashless exercises and Stock Swap Exercises) under the Plan; (e) facilitate the payment of withholding taxes, if any, by cash or the tendering or withholding of Shares; (f) facilitate the reacquisition of Awards under the terms of the Plan; and (g) facilitate the resale of Shares issued in connection with the Plan;

31. as there is no market for the Shares in Canada and none is expected to develop, it is expected that the resale by Participants, Former Participants and Permitted Transferees of the Shares acquired under the Plan will be effected through the NYSE;
32. as of February 1, 2002, Canadian shareholders did not own, directly or indirectly, more than 10% of the issued and outstanding Shares and did not represent in number more than 10% of the Filer's shareholders;
33. under the Plan, the acquisition of Shares by the Filer under a Stock Swap Exercise or Share Withholding Exercise may constitute an issuer bid;
34. the issuer bid exemptions in the Legislation may not be available for such acquisitions by the Filer since the acquisitions may occur at a price that is not calculated in accordance with the "market price", as defined in the Legislation, and may be made from Permitted Transferees; and
35. the Legislation of all of the Jurisdictions does not contain exemptions from the Registration Requirement for all the intended trades in Awards under the Plan;

¶ 7 AND WHEREAS under the System, this Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

¶ 8 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;

¶ 9 THE DECISION of the Decision Makers under the Legislation is that:

- (a) the registration requirement will not apply to the first trade by Former Participants and Permitted Transferees in Shares acquired under the Plan provided that the conditions in subsection 2.14(1) of Multilateral Instrument 45-102 *Resale of Securities* are satisfied; and
- (b) the Issuer Bid Requirements will not apply to the acquisition by the Filer of Shares from Participants, Former Participants or Permitted Transferees

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provided such acquisitions are made in accordance with the terms of the Plan.

¶ 10 THE FURTHER DECISION of the Decision Makers in British Columbia and Alberta under the Legislation is that the Previous Decision is revoked.

¶ 11 DATED October 25, 2002.

Brenda Leong
Director