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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 – relief from adviser registration requirements to enable the Schedule III bank to provide transition management services to institutional accredited investors, subject to conditions – previous decision document is revoked and replaced in British Columbia and Alberta

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34, 44(2)(a), 45(2)(27), 46(a)(iv), 48, 61(1), 76 and 171

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

AND

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

AND

IN THE MATTER OF MELLON BANK, N.A.

MRRS DECISION DOCUMENT

- ¶ 1 WHEREAS the local securities regulatory authority or regulator in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, Nunavut and the Yukon Territory (the “Original Jurisdictions”) made decisions on December 4, 2000 under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”) pursuant to the securities legislation of the Original Jurisdictions that Mellon Bank, N.A. (“Mellon Bank”) is exempt from various registration, prospectus and filing requirements in connection with the banking activities carried on by Mellon Bank in Canada (the “Prior Decision”);
- ¶ 2 AND WHEREAS the Prior Decision was revoked and replaced in Ontario by a local order of the Ontario Securities Commission dated December 31, 2002;
- ¶ 3 AND WHEREAS the Prior Decision was revoked and replaced in British Columbia and Alberta by a decision of the British Columbia Securities

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Commission and the Alberta Securities Commission made under the System dated April 4, 2003 (the “April 2003 Decision”);

- ¶ 4 AND WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia and Alberta has received an application from Mellon Bank for a decision under the securities legislation (the “Legislation”) of British Columbia and Alberta (the “Jurisdictions”) to revoke and replace the April 2003 Decision in the Jurisdictions with a new decision clarifying the business of Mellon Bank to be carried on in the Jurisdictions;
- ¶ 5 AND WHEREAS pursuant to the System, the British Columbia Securities Commission is the principal regulator for this application;
- ¶ 6 AND WHEREAS it has been represented by Mellon Bank to the Decision Makers that:
1. Mellon Bank is a United States commercial bank and is the principal bank subsidiary of Mellon Financial Corporation in the United States;
 2. in June 1999, amendments to the *Bank Act* (Canada) (the “Bank Act”) were proclaimed that permit foreign commercial banks to establish direct branches in Canada; these amendments have created a new Schedule III to the Bank Act, which lists foreign banks permitted to carry on banking activities through branches in Canada;
 3. on November 10, 2000, Mellon Bank received 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;
 4. Mellon Bank is a provider of trust and custodial and related services, such as securities lending, investment accounting, trade processing, performance measurement, investment-related foreign exchange, risk management and fiduciary monitoring in sub-custodian relationships with banks; Mellon Bank is a participant in the interbank market and accepts term deposits from major Canadian and multi-national corporations;
 5. Mellon Bank only accepts 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;

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- (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 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 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;

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- (g) an entity (other than an individual) that has, for the fiscal year immediately preceding the initial deposit, gross revenues on its own books and records of greater than \$5 million;
- (h) any other entity, where the deposit facilitates the provision of the following services by the authorized foreign bank to the entity, namely,
 - (i) lending money,
 - (ii) dealing in foreign exchange,
 - (iii) dealing in securities, other than debt obligations of the authorized foreign bank, or
 - (iv) any other person if the deposit is in an aggregate amount of greater than \$150,000,

collectively referred to for purposes of this decision as “Authorized Customers”;

6. Mellon Bank provides investment counselling and portfolio management services for equity, fixed income, asset allocation, foreign currency and overlay portfolios; as part of these services, Mellon Bank engages in foreign exchange, options, over-the-counter derivative products, financial futures, commodity futures contracts, commodity futures options and exchange contracts; additional banking activities include commercial loans, foreign exchange, current accounts, lock-box and cash management services to companies operating in Canada; treasury operations of Mellon Bank provide funding and liquidity for commercial lending activities of Mellon Bank and dealings in foreign exchange;
7. Mellon Bank also provides certain portfolio transitioning services for large institutional clients during periods where, typically, such entities are transitioning their investment portfolios from one investment adviser to another investment adviser (all such services and activities collectively referred to as “Transition Management services”). In providing Transition Management services, Mellon Bank seeks to transition the portfolio’s securities in a timely manner, monitor cash and hedge the account’s exposure (if requested by the client), reduce transaction costs, maintain the risk and performance characteristics of the investment portfolio throughout the transition process and provide the successor investment adviser access to the new investment portfolio as quickly as possible. In the course of providing

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Transition Management services, Mellon Bank places all trade orders with appropriately registered affiliated and third-party brokers and dealers.

8. Mellon Bank is considered a “bank” under the provisions of the United States’ *Investment Advisers Act of 1940* (the “1940 Act”); accordingly, Mellon Bank, and its officers, directors, agents and employees (“Individual Representatives”), are exempt from the requirements under the 1940 Act to be registered as an investment adviser for the purpose of advising others in the United States as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or otherwise issuing or promulgating analyses or reports concerning securities;

9. in order to ensure that Mellon Bank, as an entity listed on Schedule III to the Bank Act, is able to provide banking services to persons 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 Mellon Bank in the Jurisdictions;

¶ 7 AND WHEREAS under the System, this MRRS 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 Makers with the jurisdiction to make the Decision has been met;

¶ 9 THE DECISION of the Decision Makers under the Legislation is that the April 2003 Decision is revoked;

¶ 10 IT IS THE FURTHER DECISION of the Decision Makers under the Legislation that in connection with the banking business to be carried on by Mellon Bank in the Jurisdictions:

1. Mellon Bank is exempt from the requirement under the Legislation 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. a trade of a security to Mellon Bank, where Mellon Bank purchases the security as principal, is exempt from the registration and prospectus requirements of the 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 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 are filed and paid in respect of the trade to Mellon Bank, and
 - (ii) the first trade in a security acquired by Mellon Bank under this Decision is deemed a distribution under the 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;
- 3. trades of bonds, debentures or other evidences of indebtedness of or guaranteed by Mellon Bank to Authorized Customers are exempt from the registration and prospectus requirements of the Legislation;
- 4. evidences of deposit issued by Mellon Bank to Authorized Customers are exempt from the registration and prospectus requirements of the Legislation;
- 5. Mellon Bank is exempt from the requirements under the Legislation to be registered as an adviser, solely for the purpose of providing Transition Management services to certain accredited investors, as defined in section 1.1 of Multilateral Instrument 45-103 Capital Raising Exemptions, but excluding paragraphs (l) and (m) thereof, or where the performance of the service as an adviser is solely incidental to its principal business, provided that:
 - (a) Mellon Bank's Individual Representatives are registered as investment advisers under the 1940 Act, unless exempt from the registration requirement under the 1940 Act, and comply with all applicable U.S. securities and exchange laws, regulations and policies; and
 - (b) Mellon Bank does not prominently or exclusively feature its Transition Management services or solely incidental advisory services in advertisements that are published by Mellon Bank for use on or through a public medium in British Columbia.

¶ 11 June 6, 2003

L. E. Evans, C.A.
Director, Capital Markets Regulation