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### Headnote

An issuer is issuing debentures under a trust indenture and wants an exemption from the trust indenture requirements contained in sections 90 to 101 of the *Business Corporations Act* - A prospectus, securities exchange issuer circular, or take over bid circular has been filed under the Securities Act in respect of the debentures; the trust indenture will be governed by the Trust Indenture Act of 1939 of the United States, which contains provisions that are substantially similar to the requirements of the Act

### Exemption Order

#### The Bank of New York and Credit Suisse

#### Section 91(3) of the *Business Corporations Act*, S.B.C. 2002, c.57

### Background

- ¶ 1 The Bank of New York (the Applicant) has applied for an exemption from the requirements of sections 90 to 101 of the British Columbia *Business Corporations Act* (the Act).

### Representations

- ¶ 2 The Applicant represents that:
1. it is a banking corporation organized under the laws of New York and is neither resident nor authorized to do business in British Columbia;
  2. it is the trustee under an indenture (the Indenture) dated March 29, 2007 and entered into with Credit Suisse (CS), the final form of which was filed with the United States Securities and Exchange Commission as an exhibit to CS's registration statement dated March 29, 2007;
  3. it has been advised by CS that CS is a Swiss corporation with its head office located at Paradeplatz 8, CH-8070, Zurich, Switzerland;
  4. CS proposes to sell up to \$2 billion of medium term notes (the Debt Securities) in Canada under the Indenture;
  5. the Debt Securities are issuable in series and the Indenture provides that the terms of any series to be issued under the Indenture, including any conversion features, will be established in a resolution of CS's board of directors or one or more supplemental indentures, each of which is to comply with the terms of the Indenture;

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6. it has been advised by CS that CS will file a short form base shelf prospectus (the Shelf Prospectus) pursuant to National Instrument 44-102 *Shelf Distributions* to qualify the distribution of the Debt Securities in each of the provinces and territories of Canada, and that no public offers and sales of the Debt Securities will be made in the United States;
7. it has been advised by CS that CS currently anticipates that as at the date of this decision document, it will apply for some or all of the Debt Securities to be listed on a stock exchange;
8. the Indenture is governed by the laws of the State of New York and is subject to and governed by the provisions of the United States Trust Indenture Act of 1939 (the TIA);
9. as CS will file the Shelf Prospectus in British Columbia, sections 90 to 101 of the Act will apply to the Indenture;
10. the Indenture provides that there will always be a trustee party to it that satisfies the requirements of the TIA and that the terms of such Indenture will be consistent with the requirements of the TIA; and
11. since the TIA regulates trustees and trust indentures of publicly offered debt securities in the United States in a manner that is consistent with sections 90 to 101 of the Act, holders of Debt Securities in British Columbia will not derive any additional material benefit from having the Indenture be subject to sections 90 to 101 of the Act.

### **Order**

¶ 3 Because it is not prejudicial to the public interest, the Executive Director orders under subsection 91(3) of the Act, that sections 90 to 101 of the Act do not apply to the Indenture, provided that the Indenture complies in all material respects with the provisions of the TIA that are substantially similar to the provisions of sections 90 to 101 of the Act.

¶ 4 February 12, 2008

Martin Eady, CA  
Director, Corporate Finance  
British Columbia Securities Commission