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Headnote

Mutual Reliance Review System for Exemptive Relief Application – 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 UNION BANK OF CALIFORNIA, N.A.

MRRS DECISION DOCUMENT

1. 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, Yukon Territory, Northwest Territories, and Nunavut Territory (the “Jurisdictions”) has received an application (the “Application”) from Union Bank of California, N.A. and its Canadian branch (“UBOC”) for a decision pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that UBOC is exempt from various registration, prospectus and filing requirements of the Legislation in connection with the banking activities to be carried on by UBOC in Canada;
2. AND WHEREAS, pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Alberta Securities Commission is the principal regulator for the Application;

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3. AND WHEREAS it has been represented by UBOC to the Decision Makers that:
 - 3.1 UBOC is organized under the laws of the United States of America. The head office of UBOC is located in San Francisco, California;
 - 3.2 UBOC provides a wide range of financial services to consumers, small businesses, middle-market companies and major corporations, primarily in the states of California, Oregon and Washington, but also nationally and internationally as well. UBOC's operations are divided into four primary segments: The Community Banking and Investment Services Group; The Commercial Financial Services Group; The International Banking Group; and The Global Markets Group;
 - 3.3 UnionBanCal Corporation, a California corporation, is the commercial bank holding company of UBOC, and had consolidated assets of US\$36 billion as at December 31, 2001. UBOC was the third largest commercial bank in California, based on total assets and total deposits in California, as at December 31, 2001;
 - 3.4 UBOC 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;
 - 3.5 in 1999, amendments to the Bank Act (Canada) (the "Bank Act") were made to permit foreign banks to operate directly in Canada through branches, rather than through separate subsidiary Schedule II banks;
 - 3.6 UBOC submitted an application (the "Bank Act Application") to the Office of the Superintendent of Financial Institutions Canada ("OSFI") for an order establishing a full service foreign bank branch in Canada and for an order approving the commencement and carrying on of business in Canada pursuant to Sections 524 and 534 of the Bank Act;
 - 3.7 the Bank Act Application was approved, and on June 24, 2002, the Secretary of State (International Financial Institutions), on behalf of the Minister of Finance, granted an order permitting UBOC to establish a branch in Canada to carry on business in Canada;
 - 3.8 the operations of UBOC's foreign bank branch in Canada will be primarily comprised of commercial lending and related treasury functions primarily to the following investors:

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- 3.8.1 Her Majesty in right of Canada or in right of a province or a 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;
- 3.8.2 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;
- 3.8.3 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;
- 3.8.4 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 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 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);

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- 3.8.5 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;
- 3.8.6 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;
- 3.8.7 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
- 3.8.8 any other person, if the transaction is in an aggregate amount of greater than \$150,000;

collectively referred to for purposes of the Decision (as defined below) as “Authorized Customers”.

- 3.9 the only advising activities which UBOC intends to undertake will be incidental to its primary banking business and it will not advertise itself as an adviser or allow itself to be advertised as an adviser in the Jurisdictions;
 - 3.10 under the current Legislation, banks chartered under Schedules I and II of the Bank Act have numerous exemptions from various aspects of the Legislation. Since UBOC’s foreign bank branch will not be chartered under Schedule I or II of the Bank Act, these existing exemptions relating to the registration, prospectus and filing requirements will not be available to it;
 - 3.11 In order to ensure that UBOC, as an entity listed on Schedule III to the Bank Act, will be 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 to be undertaken by UBOC in the Jurisdictions.
4. AND WHEREAS pursuant to the System this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);

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5. 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;
6. THE DECISION of the Decision Makers pursuant to the Legislation is that in connection with the banking business to be carried on by UBOC in the Jurisdictions by its Canadian branch:
 - 6.1 UBOC is exempt from the requirement under the Legislation of the Jurisdictions, where applicable, to be registered as 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;
 - 6.2 UBOC is exempt from the requirement under the Legislation to be registered as an adviser where the performance of the services as an adviser is solely incidental to its primary banking business;
 - 6.3 with respect to a trade of a security to UBOC where UBOC purchases the security as principal, the trade 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:
 - 6.3.1 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 are filed and paid in respect of the trade to UBOC;
 - 6.3.2 in all Jurisdictions except Québec, the first trade in a security acquired by UBOC will be a distribution, unless the conditions in section 2.5 of Multilateral Instrument 45-102 are satisfied;
 - 6.3.3 in the Province of Québec, the first trade in a security acquired by UBOC will be a distribution unless:
 - 6.3.3.1 at the time UBOC acquired the security: (i) the issuer of the security is a reporting issuer in Québec; (ii) the issuer is not a Capital Pool Company as defined in Policy 2.4 of the Toronto Venture Exchange Inc.; (iii) the issuer has a class of equity securities listed on the Toronto Stock Exchange

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Inc., Tier 1 or 2 of the Toronto Venture Exchange Inc., the American Stock Exchange, Nasdaq National Market, Nasdaq SmallCap Market, the New York Stock Exchange or the London Stock Exchange Limited, 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 outstanding that has an approved rating from an approved rating organization; and (iv) the issuer has filed an annual information form required under section 159 of the Regulation made under the Securities Act (Québec), as amended from time to time, (the “Québec Act”) within the time period contemplated by that section, or, if not required to file an annual information form, has filed a prospectus that contains the most recent annual financial statements;

- 6.3.3.2 the issuer has been a reporting issuer in Québec for 4 months immediately preceding the trade;
- 6.3.3.3 UBOC has held the securities for at least 4 months;
- 6.3.3.4 no extraordinary commission or other consideration is paid;
- 6.3.3.5 no effort is made to prepare the market or to create a demand for the securities;
- 6.3.3.6 if UBOC is an insider of the issuer, UBOC has no reasonable grounds to believe that the issuer is in default under the Québec Act; and
- 6.3.3.7 UBOC files a report within 10 days of the trade prepared and executed in accordance with the requirements of the Québec Act that would apply to a trade made in reliance on section 43 or 51 of the Québec Act;
- 6.3.3.8 UBOC files a report within 10 days of the trade prepared and executed in accordance with the requirements of the Applicable Legislation that

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would apply to a trade, on an exempt basis, to an entity listed on Schedule I or II of the Bank Act; and

- 6.4 provided UBOC 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 UBOC shall be exempt from the registration and prospectus requirements of the Legislation;
7. THE FURTHER DECISION of the Decision Maker in Ontario is that with respect to the Province of Ontario only, pursuant to subsection 74(1) of the Securities Act (Ontario) (the "Ontario Act"), except as provided for in paragraph 3 of this Decision, section 28 of Schedule I to the Regulations made under the Ontario Act shall not apply to trades made by UBOC.

DATED this 23rd day of January, 2003

Glenda A. Campbell, Q.C., Vice-Chair

David W. Betts, Member