

## **2003 BCSECCOM 742**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – relief from 12 month reporting history requirement to allow wholly-owned Canadian subsidiary of an MJDS-eligible U.S. issuer to distribute guaranteed medium term notes – relief also granted from requirement that financial statements be reconciled to Canadian GAAP and that auditor’s report be accompanied by statement of auditor, subject to conditions – relief granted from certain continuous disclosure requirements, including material change, proxy, insider reporting, and annual and interim financial statement requirements, subject to conditions

### **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 85, 87, 91, 117(2) and 119(2)(b)

*Securities Rules*, B.C. Reg. 194/97, ss. 144, 145 and 149

National Instrument 44-101 *Short Form Prospectus Distributions*

**IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH  
COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO,  
QUEBEC, NEW BRUNSWICK, PRINCE EDWARD ISLAND, NOVA  
SCOTIA AND NEWFOUNDLAND AND LABRADOR**

**AND**

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

**AND**

**IN THE MATTER OF WELLS FARGO & COMPANY AND WELLS  
FARGO FINANCIAL CANADA CORPORATION**

### **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Prince Edward Island, Nova Scotia and Newfoundland and Labrador (the “Jurisdictions”) has received an application (the “Application”) from Wells Fargo & Company (“WFC”) and Wells Fargo Financial Canada Corporation (“WFFC” or the “Issuer” and together with WFC, the “Applicants”) for a decision under the securities legislation of the Jurisdictions (the

## 2003 BCSECCOM 742

“Legislation”) that the Applicants be exempted from the following requirements contained in the Legislation:

- (a) the requirements in section 2.5(1) of National Instrument 44-101 (“NI 44-101”) that a person or company guaranteeing non-convertible debt issued by an issuer be a reporting issuer with a 12 month reporting history in a Canadian province or territory and have a current annual information form (an “AIF”) (the “Eligibility Requirement”) in order to permit the Issuer to issue non-convertible debt securities, and in particular Notes (as defined below), with an approved rating (as defined in NI 44-101) which will be fully and unconditionally guaranteed by WFC (any issue of the Notes being referred to as an “Offering”);
- (b) the requirement pursuant to NI 44-101 to reconcile financial statements included in a short form prospectus and prepared in accordance with generally accepted accounting principles (“GAAP”) of a foreign jurisdiction to Canadian GAAP (the “GAAP Reconciliation Requirement”), and with the requirements to provide, where financial statements included in a short form prospectus are audited in accordance with generally accepted auditing standards (“GAAS”) of a foreign jurisdiction, a statement by the auditor disclosing any material differences in the auditor’s report and confirming that the auditing standards of the foreign jurisdiction are substantially equivalent to Canadian GAAS (the “GAAS Reconciliation Requirement” and together with the GAAP Reconciliation Requirement, the “Reconciliation Requirement”);
- (c) the requirement that a short form prospectus include the information set forth in items 12.1(1)(1), 12.1(1)(2), items 12.1(1)(5) to 12.1(1)(8), items 12.2(1) and 12.2(4) of Form 44-101F3 of NI 44-101 (“Form 44-101F3”) (the “Prospectus Disclosure Requirements”);
- (d) the requirement that the Issuer issue and file with the Decision Makers press releases, and file with the Decision Makers material change reports (together, the “Material Change Requirements”);
- (e) the requirement that the Issuer comply with the proxy and proxy solicitation requirements under the Legislation, including filing an information circular or report in lieu thereof annually (the “Proxy Requirements”);

## 2003 BCSECCOM 742

- (f) the requirement that insiders of the Issuer file insider reports with the Decision Makers (the “Insider Reporting Requirements”);
- (g) the requirement that the Issuer file with the Decision Makers and send to its security holders audited annual financial statements and an annual report, where applicable, including without limitation management’s discussion and analysis thereon (the “Annual Filing Requirement”);
- (h) the requirement that the Issuer file with the Decision Makers and send, where applicable, to its security holders unaudited interim financial statements, including without limitation management’s discussion and analysis thereon (the “Interim Financial Statement Requirements”);
- (i) the requirement in NI 44-101 and under the Legislation of Ontario (Ontario Securities Commission Rule 51-501), Quebec (section 159 of the Regulation to the *Securities Act* (Quebec)) and Saskatchewan (Saskatchewan Instrument 51-101) that the Issuer have a current annual information form (“AIF”) and file renewal AIFs (the “AIF Requirement”) with the Decision Makers.

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal regulator for the Application;

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or in Quebec Commission Notice 14-101;

AND WHEREAS WFC and the Issuer have represented to the Decision Maker that:

1. WFC is a diversified financial services company organized under the laws of the State of Delaware and registered as a bank holding company and financial holding company under the *Bank Holding Company Act of 1956, as amended*. The principal executive offices of WFC are located in San Francisco, California. Based on assets at June 30, 2003, WFC was the fourth largest bank holding company in the United States.
2. WFC is not a reporting issuer or the equivalent thereof in any Jurisdiction and has no present intention of becoming a reporting issuer or the

## 2003 BCSECCOM 742

equivalent thereof in any Jurisdiction. All of the directors and senior officers of WFC reside outside Ontario.

3. WFC became a reporting company under the *Securities Exchange Act of 1934* of the United States (the "Exchange Act") many years ago. WFC has filed with the United States Securities and Exchange Commission (the "SEC") all periodic reports required to be filed with the SEC under sections 13(a) and 15(d) of the Exchange Act.
4. At June 30, 2003, WFC had approximately \$58.5 billion in long-term debt outstanding (on a consolidated basis). All of WFC's outstanding long-term debt is rated A+ by Standard & Poor's, AA by Fitch, Inc. and Aa1 by Moody's Investors Service.
5. WFFC is an unlimited liability company amalgamated under the laws of the Province of Nova Scotia and is a wholly-owned indirect subsidiary of WFC. The principal executive offices of WFFC are located in Toronto, Ontario. The main business of WFFC is to raise capital for its Canadian affiliates for use in their consumer finance and related businesses. In addition, WFFC provides commercial revolving lines of credit to small businesses in Canada. Debt obligations relating to these lines of credit currently represent approximately 10% of the total assets of WFFC.
6. WFFC is a reporting issuer or the equivalent thereof in each Jurisdiction.
7. WFFC has established a medium term note program (the "MTN Program") and has issued \$950,000,000 principal amount of medium term notes (together with any further medium term notes issued under the MTN Program or any renewal thereof, including any Additional Notes (as defined below) issued under the Proposed Offering (as defined below), the "Notes") under a short form base shelf prospectus dated October 3, 2001, as amended by amendment no. 1 dated March 13, 2003. WFFC may issue up to \$1,500,000,000 principal amount of Notes (or the equivalent thereof in US dollars) under the prospectus from time to time over a twenty-five month period which began October 3, 2001.
8. WFC has unconditionally guaranteed the payment of principal, premium (if any) and interest due under the currently outstanding Notes, and as such WFC is a credit supporter (as defined under NI 44-101) in respect of the currently outstanding Notes. Accordingly, WFC files copies of its Exchange Act filings with Canadian provincial securities regulatory authorities.

## 2003 BCSECCOM 742

9. The Issuer proposes to “renew” the MTN Program by filing another short form base shelf prospectus (the “Proposed Offering”) pursuant to NI 44-101 and National Instrument 44-102 (“NI 44-102” and together with NI 44-101, the “Shelf Requirements”) to provide the ability to raise funds through the issuance of additional Notes (the “Additional Notes”) from time to time over a 25 month period. The Additional Notes will be fully and unconditionally guaranteed by WFC as to payment of principal, interest and all other amounts due thereunder. All Additional Notes will have an Approved Rating (as defined in the Shelf Requirements) and will be rated by a recognized security evaluation agency in one of the categories determined by the Commission des valeurs mobilières du Québec (an “Approved Rating”). The Issuer may also renew the MTN Program again in the future by filing additional short form prospectuses in each of the Jurisdictions for Notes (the “Future Offerings”).
10. WFC satisfies the criteria set forth in paragraph 3.1(a) of National Instrument 71-101 (“NI 101”) and is eligible to use the multi-jurisdictional disclosure system (“MJDS”) (as set out in NI 71-101) for the purposes of distributing approved rating non-convertible debt in Canada based on compliance with United States (“US”) prospectus requirements with certain additional Canadian disclosure.
11. Except for the fact that the Issuer is not incorporated under US law, an Offering would comply with the eligibility criteria under the MJDS as set forth in paragraphs 3.1 and 3.2 of NI 71-101.
12. In connection with an Offering (which, for great certainty, includes the Proposed Offering and any Future Offerings):
  - (a) a short form base shelf prospectus and a prospectus supplement or supplements will be prepared pursuant to the Shelf Requirements, with the disclosure required by Item 12 (documents incorporated by reference) and Item 13 (issues of guaranteed securities) of Form 44-101F3 being addressed by incorporating by reference WFC’s public disclosure documents including WFC’s most recently filed Form 10-K and the disclosure required by Item 7 (earnings coverage ratios) of Form 44-101F3 of NI 44-101 and section 8.4 (requirement to update earnings coverage ratios) of NI 44-102 being addressed by fixed charge coverage ratio disclosure with respect to WFC in accordance with US requirements;
  - (b) each prospectus will include all material disclosure concerning the Issuer;

## 2003 BCSECCOM 742

- (c) each prospectus will incorporate by reference the most recent WFC 10-K (as filed under the Exchange Act) together with all Form 10-Qs and Form 8-Ks of WFC filed under the Exchange Act in respect of the financial year following the year that is the subject of the WFC Form 10-K, as would be required were WFC to file a registration statement on Form S-3 in the United States, and will incorporate by reference any documents of the foregoing type filed after the date of the prospectus and prior to termination of the particular Offering and will state that purchasers of the Notes will not receive separate continuous disclosure information regarding the Issuer;
- (d) the consolidated annual and interim financial statements of WFC that will be included in or incorporated by reference into the short form prospectus are prepared in accordance with U.S. GAAP and otherwise comply with the requirements of U.S. law, and in the case of audited annual financial statements, such financial statements are audited in accordance with U.S. GAAS;
- (e) in respect of the prospectus filed in connection with the Proposed Offering only, the audited annual financial statements of the Issuer for the fiscal years ended December 31, 2002 and 2001 and the unaudited interim financial statements of the Issuer for three months ended and March 31, 2003 and the six months ended June 30, 2003;
- (f) in respect of a prospectus filed in connection with any Future Offering:
  - (i) the annual comparative selected financial information (the “Annual Selected Financial Information”) derived from the audited annual financial statements of the Issuer for its most recently completed financial year and the financial year immediately preceding such financial year, prepared in accordance with Canadian GAAP, accompanied by a specified procedures report of the auditors to the Issuer, which shall define and include at least the following line items (or such other line items that provide substantially similar disclosure): (1) total income; (2) net income; (3) notes receivable — related parties; (4) finance receivables, net (together with a descriptive note on the allowance for credit losses); (5) total assets; (6) short-term

## 2003 BCSECCOM 742

debt; (7) long-term debt (which shall include the Notes);  
(8) total liabilities; and (9) total shareholder's equity; and

- (ii) the interim comparative selected financial information (the "Interim Selected Financial Information") derived from the unaudited interim financial statements of the Issuer for its most recently completed interim period and the corresponding interim period in the previous financial year, prepared in accordance with Canadian GAAP, which shall define and include at least the line items which set out above in paragraph 12(f)(i) (or such line items that provide substantially similar disclosure);
- (g) WFC will fully and unconditionally guarantee the payments to be made by the Issuer on the Notes, together with any other amounts that may be due under any provisions of the trust indenture relating to the Notes;
- (h) the Notes will have an Approved Rating;
- (i) WFC will sign each prospectus as credit supporter; and
- (j) WFC will undertake to file with the Decision Maker in each Jurisdiction in electronic format through SEDAR (as defined in National Instrument 13-101) under the Issuer's SEDAR profile all documents that it files under sections 13 (other than sections 13(d), (f) and (g) which relate, *inter alia*, to holdings by WFC of securities of other public companies) and 15(d) of the Exchange Act, together with appropriate filing fees, until such time as the Notes are no longer outstanding.

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

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;

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

- (A) the Applicants be exempted from the Eligibility Requirement and the Reconciliation Requirement in connection with any Offering (which, for

## **2003 BCSECCOM 742**

greater certainty, includes the Proposed Offering and any Future Offering) provided that:

- (i) each of WFC and the Issuer complies with paragraph 12 above;
  - (ii) the Issuer complies with all of the filing requirements and procedures set out in NI 44-101 except as varied by the Decision or as permitted by National Instrument 44-102;
  - (iii) WFC financial statements that are included or incorporated by reference in the Prospectus are prepared in accordance with US GAAP and, in the case of the audited annual financial statements, such financial statements are audited in accordance with US GAAS;
  - (iv) WFC, or any successor thereto, maintains direct or indirect 100% ownership of the voting shares of the Issuer; and
  - (v) WFC continues to satisfy the eligibility criteria set forth in paragraph 3.1 of NI 71-101 (or any applicable successor provision) for using MJDS (or any successor instrument) for the purpose of distributing approved rating non-convertible debt in Canada based on compliance with US prospectus requirements with certain additional Canadian disclosure; and
- (B) the Prospectus Disclosure Requirements shall not apply to a prospectus for any Offering provided that each of the Issuer and WFC complies with paragraph 12 above.
- (C) the AIF Requirement shall not apply to the Issuer, provided that (i) WFC complies with the AIF requirements of NI 44-101 as if it is the issuer by filing an AIF in the form of WFC's most recently filed Form 10-K (as filed under the Exchange Act) and (ii) each of the Issuer and WFC complies with all of the conditions in the Decisions above and below.

DATED October 31, 2003.

Iva Vranic

AND THE FURTHER DECISION of the Decision Makers under the Legislation is that:



## 2003 BCSECCOM 742

- (A) the Material Change Requirements shall not apply to the Issuer in connection with any Notes (which, for greater certainty, includes Notes currently outstanding and any Notes issued under the Proposed Offering and Future Offerings), provided that:
  - (i) WFC files with the Decision Makers, in electronic format through SEDAR under the Issuer's SEDAR profile, the current reports on Form 8-K of WFC which are filed by it with the SEC promptly after they are filed with the SEC provided such current reports would be required to be incorporated by reference in a Form S-3 registration statement of WFC;
  - (ii) WFC promptly issues in each Jurisdiction and the Issuer files with the Decision Makers, in electronic format through SEDAR under the Issuer's SEDAR profile, any news release that discloses material information and which is required to be issued in connection with the Form 8-K requirements applicable to WFC; and
  - (iii) if there is a material change in respect of the business, operations or capital of the Issuer that is not a material change in respect of WFC, the Issuer will comply with the requirements of the Legislation to issue a press release and file a material change report notwithstanding that the change may not be a material change in respect of WFC;
- (B) the Proxy Requirements shall not apply to the Issuer in connection with any Notes (which, for greater certainty, includes Notes currently outstanding and any Notes issued under the Proposed Offering and Future Offerings), provided that:
  - (i) WFC complies with the requirements of the Exchange Act and the rules and regulations made thereunder relating to proxy statements, proxies and proxy solicitations in connection with any meeting of the holders of its notes;
  - (ii) WFC files with the Decision Makers, in electronic format through SEDAR under the Issuer's SEDAR profile, materials relating to any such meeting filed by WFC with the SEC promptly after they are filed with the SEC; and
  - (iii) such documents are provided to any holder of Notes whose last address as shown on the books of the Issuer is in Canada, in the

## 2003 BCSECCOM 742

manner, at the time and if required by applicable US law to be sent to WFC debt holders resident in the US.

- (C) The Insider Reporting Requirements shall not apply to insiders of the Issuer in connection with any Notes (which, for greater certainty, includes Notes currently outstanding and any Notes issued under the Proposed Offering and Future Offerings), provided that such insiders file with the SEC on a timely basis the reports, if any, required to be filed with the SEC pursuant to section (16)(a) of the Exchange Act and the rules and regulations thereunder;
- (D) The Annual Filing Requirements shall not apply to the Issuer in connection with any Notes (which, for greater certainty, includes Notes currently outstanding and any Notes issued under the Proposed Offering and Future Offerings), provided that:
  - (i) The Issuer files with the Decision Makers, in electronic format through SEDAR under the Issuer's SEDAR profile, the Annual Selected Financial Information, accompanied by a specified procedures report of the auditors to the Issuer, in accordance with paragraph 12(f)(i) above, commencing with the fiscal year ended December 31, 2003;
  - (ii) WFC files with the Decision Makers, in electronic format through SEDAR under the Issuer's SEDAR profile, the annual reports in Form 10-K filed by it with the SEC within one business day after they are filed with the SEC; and
  - (iii) such documents are provided to security holders whose last address as shown on the books of the Issuer in Canada, in the manner, at the time and, if required, by applicable US law to be sent to WFC debt holders; and
- (E) The Interim Financial Statement Requirements shall not apply to the Issuer in connection with any Notes (which, for greater certainty, includes Notes currently outstanding and any Notes issued under the Proposed Offering and Future Offerings), provided that:
  - (i) The Issuer files with the Decision Makers, in electronic format through SEDAR under the Issuer's SEDAR profile, the Interim Selected Financial Information in accordance with paragraph 12(f)(ii) above commencing with the interim period ended September 30, 2003;

## 2003 BCSECCOM 742

- (ii) WFC files with the Decision Makers quarterly reports on Form 10-Q in electronic format through SEDAR under the Issuer's SEDAR profile, filed by it with the SEC within one business day after they are filed with the SEC; and
- (iii) such documents are provided to security holders whose last address as shown on the books of the Issuer is in Canada, in the manner, at the time and, if required, by applicable US law to be sent to WFC debt holders;

further provided that (for A through E):

- (a) the Issuer does not issue additional securities to the public other than securities fully guaranteed by WFC;
- (b) each of the Issuer and WFC comply with paragraph 12 above;
- (c) the Notes maintain an Approved Rating;
- (d) WFC, or any successor thereto, maintains direct or indirect 100% ownership of the voting shares of the Issuer;
- (e) WFC maintains a class of securities registered pursuant to section 12 of the Exchange Act or is required to file reports under section 15(d) of the Exchange Act;
- (f) WFC continues to satisfy the eligibility criteria set forth in paragraph 3.1 of NI 71-101 (or any applicable successor provision) for using MJDS (or any successor instrument) for the purpose of distributing approved rating non-convertible debt in Canada based on compliance with US prospectus requirements with certain additional Canadian disclosures;
- (g) the Issuer carries on no other business other than that set out in paragraph 5 above;
- (h) WFC continues to fully and unconditionally guarantee payment of the principal and interest on the Notes, together with any other amounts that may be due under any provisions of the trust indenture relating to the Notes; and

## **2003 BCSECCOM 742**

- (i) all filing fees that would otherwise be payable by the Issuer in connection with the Material Change Requirements, the Proxy Requirements, the Insider Reporting Requirements, the Annual Filing Requirements and the Interim Financial Statement Requirements and the AIF requirement are paid.

DATED October 31, 2003.

Paul K. Bates

Wendell S. Wigle