

# 2002 BCSECCOM 703

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – distribution of shares of a non-reporting issuer as a dividend in specie is not subject to the registration and prospectus requirements – de minimis Canadian shareholders

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61, 76

## **IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUÉBEC, AND NEWFOUNDLAND AND LABRADOR**

**AND**

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

**AND**

## **IN THE MATTER OF MFC BANCORP LTD. AND MYMETICS CORPORATION**

## **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, and Newfoundland and Labrador (the “Jurisdictions”) has received an application from MFC Bancorp Ltd. (the “Corporation”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirement to be registered to trade in a security and the prospectus requirement contained in the Legislation (the “Registration and Prospectus Requirements”) shall not apply to the distribution by the Corporation of common shares (“Mymetics Shares”) of Mymetics Corporation (“Mymetics”) to its shareholders (“MFC Shareholders”) resident in Canada as a dividend *in specie* (the “Distribution”).

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

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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;

AND WHEREAS the Corporation has represented to the Decision Makers that:

1. the Corporation is organized under the laws of the Yukon Territory, is a reporting issuer in British Columbia, Alberta and Québec and is not in default of any requirement under the Legislation;
2. the Corporation owns companies that operate in the financial services industry, focusing on merchant banking, and provides specialized banking and corporate finance services internationally;
3. the authorized capital of the Corporation consists of an unlimited number of common shares and an unlimited number of Class A Preferred Shares issuable in series;
4. as of July 16, 2002, approximately 14,763,361 common shares (including 1,870,000 shares held by a subsidiary, but excluding shares held by wholly-owned subsidiaries and shares pending cancellation) and no Class A Preferred Shares of the Corporation were outstanding;
5. the Corporation's common shares are quoted for trading on the NASDAQ National Market under the symbol "MXBIF" and on the Frankfurt Stock Exchange under the symbol "MFC GR", and its 8% convertible subordinated bonds due April 1, 2008 are listed for trading on the TSX Venture Exchange under the symbol "MXB.DB.U";
6. Mymetics was incorporated under the laws of the Commonwealth of Pennsylvania in 1994 and was reincorporated under the laws of the State of Delaware in November 1996;
7. Mymetics is not a reporting issuer or equivalent in any Jurisdiction and has no intention of becoming a reporting issuer or the equivalent in any Jurisdiction;
8. the Mymetics Shares are registered with the U.S. Securities and Exchange Commission (the "SEC") under Section 12 of the U.S. *Securities Exchange Act of 1934* and Mymetics has been filing continuous disclosure reports with the SEC since 1995;
9. the Mymetics Shares are quoted for trading on the OTC Bulletin Board in the United States;

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10. the authorized capital of Mymetics consists of 80,000,000 Mymetics Shares, par value \$0.01 per share, and 5,000,000 preferred shares, par value \$0.01 per share;

11. as of July 16, 2002, approximately 34,504,213 Mymetics Shares, and 15,372 preferred shares (which are convertible into 16,393,316 Mymetics Shares) of Mymetics, were outstanding;

12. the Corporation directly or indirectly owns or controls approximately 14,298,293 Mymetics Shares representing approximately 41% of the outstanding Mymetics Shares;

13. under the Distribution, the Corporation intends to distribute approximately 14,025,193 of the Mymetics Shares held by it to MFC Shareholders as a dividend *in specie* on the basis of 0.95 of a Mymetics Share for each outstanding common share of the Corporation; no fractional shares will be issued in connection with the Distribution; the number of Mymetics Shares to be received by MFC Shareholders will be rounded down to the nearest whole share in the event that a shareholder is entitled to a fractional share representing 0.5 or less of a Mymetics Share and will be rounded up to the nearest whole share in the event that a shareholder is entitled to a fractional share representing more than 0.5 of a Mymetics Share;

14. the Distribution will comply with the laws of the Yukon Territory and the State of Delaware, the U.S. *Securities Exchange Act of 1934*, the U.S. *Securities Act of 1933*, and other applicable securities laws of the United States;

15. as of July 16, 2002, of the Corporation's outstanding shares, approximately 14,763,361 shares were entitled to participate in the Distribution, of which approximately 3,025,577 were held by approximately 65 holders of record in Canada as follows:

<b>Province</b>	<b>Number of MFC Shares Held</b>	<b>Number of Holders of Record</b>	<b>Percentage of Total Outstanding MFC Shares</b>
British Columbia	1,373,825	6	8.52%
Alberta	3,031	3	0.018%
Manitoba	3,106	4	0.019%
Saskatchewan	1,916	7	0.012%

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Ontario	1,583,966	25	9.82%
Quebec	49,606	18	0.308%
Newfoundland	10,127	2	0.063%
	3,025,577	65	18.76%

16. upon completion of the Distribution, holders of Mymetics Shares resident in Canada will hold approximately 9.7% of the total outstanding Mymetics Shares and will represent less than 10% of the holders of Mymetics Shares;

17. Mymetics has filed a registration statement on Form S-1 with the SEC to register the Mymetics Shares to be distributed to MFC Shareholders and the 16,393,316 Mymetics Shares issuable upon conversion of the 15,372 preferred shares of Mymetics; the Corporation will mail the prospectus forming part of the registration statement to MFC Shareholders in Canada;

18. after the Distribution, Mymetics will concurrently send to holders of Mymetics Shares resident in Canada all disclosure materials it sends to holders of Mymetics Shares resident in the United States;

19. the Distribution would be exempt from the Registration and Prospectus Requirements of the Legislation but for the fact that Mymetics is not a reporting issuer or equivalent under the Legislation;

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

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 the Registration and Prospectus Requirements shall not apply to trades by the Corporation of Mymetics Shares in connection with the Distribution provided that the first trade in Mymetics Shares acquired under this Decision in a Jurisdiction shall be deemed to be a distribution or primary distribution to the public under the Legislation of such Jurisdiction (the “Applicable Legislation”) unless:

- (a) except in Québec, the conditions in section 2.14(1) of Multilateral Instrument 45-102 *Resale of Securities* are satisfied; or

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(b) in Québec, the alienation is made through an exchange, or a market, outside of Canada or to a person or company outside of Canada.

DATED August 7, 2002

Noreen Bent  
Acting Director