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Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 48, 76 Other - Exemption from s. 34(1)(a) requirement to be registered as a dealer for a trade and s. 61 requirement to file a prospectus for a distribution other than in connection with a corporate acquisition or reorganization; business associates; debt settlements; or employee investment plans and consultants - A federal trust company is being continued as a retail association under the Co-operative Credit Associations Act (CCA); once it becomes a retail association under the CCA, it wants exemptions from various requirements of the legislation to put it in the same position under the legislation as a Schedule I Bank is in - The retail association will carry on the same activities of a Schedule I bank and will be regulated in the same way as a Schedule I bank by the same regulators; the trades for which the retail association requires the exemptions are trades that Schedule I banks under the Bank Act (Canada) can undertake without having to register or file a prospectus under the Securities Act; in its current state as a trust company, the retail association has these exemptions available to it, and also has an existing exemption to cover trades in private mutual funds

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 48 and 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

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of
Concentra Financial Services Association/
Association De Services Financiers Concentra,
an association under
the Cooperative Credit Associations Act (Canada)

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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 (the “Jurisdictions”) has received an application (the “Application”) from Co-operative Trust Company of Canada (“CTCC”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that CTCC, as continued under the name and style of Concentra Financial Services Association/Association de services financiers Concentra (“Concentra Financial”), an association under the *Cooperative Credit Associations Act* S.C. 1991, c. 48, as amended (the “CCA Act”), be exempt from various registration requirements, prospectus requirements and filing requirements of the Legislation in connection with the business activities to be carried on by Concentra Financial in Canada;

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Saskatchewan Financial Services Commission is the principal regulator for this application;

AND WHEREAS defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this Decision unless they are defined in this Decision;

AND WHEREAS it has been represented to the Decision Makers that:

1. CTCC is a federal corporation having been continued under a special Act of the Parliament of Canada entitled *An Act respecting Co-operative Trust Company Limited*, identified as Chapter 49 16-17 Elizabeth II, by Letters Patent issued on December 21, 1967, as amended May 17, 1973, November 27, 1974, June 17, 1980, January 29, 1982, and December 15, 1997. CTCC was initially incorporated by an Act of the Legislature of the Province of Saskatchewan on March 24, 1952, before being continued as a federal corporation;
2. CTCC operates as a federal trust company under the *Trust and Loan Companies Act* (Canada), is currently licensed to carry on business as a trust company in each province and territory of Canada and is licensed to accept deposits in all provinces and territories except Quebec. CTCC is a member of the Canada Deposit Insurance Corporation (“CDIC”). CTCC is not presently a member of the Quebec Deposit Insurance Corporation (“QDIC”);
3. CTCC is owned by Credit Union Central of Saskatchewan and various other provincial centrals, credit unions and co-operative entities;

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4. CTCC is not a reporting issuer in any province or territory of Canada, nor are any of its securities listed on any stock exchange in Canada;
5. CTCC wishes to continue as Concentra Financial, an association under the provisions of Section 31.1(1) of the CCA Act. Concurrent with that continuance, Concentra Financial will seek an order of the Minister of Finance under s. 375.1 of the CCA Act, that Concentra Financial be permitted to operate as a retail association under the CCA Act;
6. Under the CCA Act, a retail association will have essentially all of the powers of a retail bank and will be subject to prudential rules similar to those applicable to a Schedule I chartered bank under the *Bank Act* (Canada) (a “Schedule I Bank”) and oversight by the Office of the Superintendent of Financial Institutions (“OSFI”) and the Minister of Finance, Canada. In addition, as a condition to accepting deposits, a retail association must be a member of CDIC and, if it wishes to accept deposits in Quebec, a member of QDIC. Concentra Financial will have the benefit of CTCC’s existing membership in CDIC, amended as necessary following continuance;
7. Following continuance as a retail association, Concentra Financial intends to provide a wide range of financial services to the general public in each of the Jurisdictions as may be permitted under the CCA Act (the “Products and Services”), subject to any restrictions on such activities placed on Concentra Financial under the CCA Act, the Regulations thereunder or pursuant to any order, decision or ruling of the Minister of Finance, which Products and Services may include the following:
 - (a) provide financial services;
 - (b) subject to being a member of CDIC the taking of deposits in each of the Jurisdictions except Quebec;
 - (c) subject to being a member of QDIC, the taking of deposits in Quebec;
 - (d) providing lending services;
 - (e) providing investment counselling and portfolio management services;
 - (f) issue payment, credit or charge cards and, either alone or in cooperation with others, operate a payment, credit, and/or charge card plan;
 - (g) provide electronic banking services;

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- (h) providing lease and mortgage services, and in connection therewith Concentra Financial may hold, manage or deal with personal and real property;
 - (i) acting as a custodian of property on behalf of members and other clients;
 - (j) providing management, investment, administrative, advisory, educational, promotional, technical, research and consultative services to members of the credit union system;
 - (k) collecting, transmitting and manipulating financial or economic data;
 - (l) investing in other entities, including financial institutions; and
 - (m) advertising and promotion of the services and products of Concentra Financial.
8. Upon obtaining an Order to Commence Business (the “Order”) issued by the Superintendent of Financial Institutions (the “Superintendent”) appointed pursuant to the *Office of the Superintendent of Financial Institutions Act* (Canada), Concentra Financial will be subject to the same prudential rules, policies and substantially the same regulation that apply to a Schedule I Bank and other Canadian financial institutions that accept retail deposits, namely:
- (a) Concentra Financial will be subject to the same capital adequacy guidelines and liquidity requirements that apply to all Canadian retail deposit taking institutions;
 - (b) Concentra Financial will be subject to the same regulatory provisions that enable the Superintendent under the CCA Act to limit the scope of the financial services that may be provided by a federal financial institution. As with other federal financial institutions, the Superintendent may also take control of Concentra Financial if the Superintendent views its business practices to be unsafe;
 - (c) The Superintendent under the CCA Act must annually inspect Concentra Financial and its business operations;
 - (d) Concentra Financial must advise the Superintendent of the directors of the association and the Superintendent may require a replacement of directors;
 - (e) Except as authorized under the CCA Act, Concentra Financial must not deal in goods, wares or merchandise or engage in any trade or business

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other than that of a federal financial institution, and the downstream investments of Concentra Financial will be limited to investments in other financial service providers and financial service support service providers as are specifically set forth in the CCA Act;

- (f) As specifically set forth in the CCA Act, Concentra Financial will be subject to portfolio limits on categories of investments. Unlike a bank, but similar to a trust company, Concentra Financial will be limited in the percentage of commercial loans it may have as a percentage of its total assets; and
- (g) Concentra Financial will be required to provide ongoing information returns to OSFI and all records of the retail association are available for inspection by OSFI.

- 9. Under the current Legislation, Canadian financial institutions have numerous exemptions from various aspects of the Legislation;
- 10. Concentra Financial will continue to be subject to OSFI and CDIC oversight and regulation as well as applicable provincial regulation; however the existing exemptions relating to the registration, prospectus and filing requirements available to Canadian financial institutions are not currently available to Concentra Financial because an association under the CCA Act is not currently recognized as a Canadian financial institution under the Legislation;
- 11. In order to ensure that Concentra Financial will be able to provide the Products and Services in the Jurisdictions it requires similar exemptions enjoyed by Canadian financial institutions;
- 12. Concentra Financial shall be an association under the CCA Act and shall be federally regulated by OSFI and CDIC on an ongoing basis, on terms substantially similar to the federal regulation of a Schedule I Bank, and CTCC has advised OSFI and CDIC of the nature and existence of the Application;

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

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;

The Decision of the Decision Makers under the Legislation is that:

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1. Concentra Financial is exempt from the adviser registration requirement under the Legislation where the performance of the services as an adviser is solely incidental to its principal business;
2. Concentra Financial is exempt from the underwriter registration requirement under the Legislation, where applicable, for the purpose of any trading in securities in the same circumstances that a Schedule I Bank could act as an underwriter without being subject to the underwriter registration requirement under the Legislation in that Jurisdiction;
3. Except in Ontario, a trade of a security to Concentra Financial, where Concentra Financial purchases the security as principal, shall be exempt from the dealer registration requirement and prospectus requirement of the Legislation of the Jurisdiction in which the trade takes place (the “Applicable Legislation”) provided that:
 - (a) 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 a Canadian financial institution or, for the purposes of Quebec, a sophisticated purchaser as defined in the Quebec Act, purchasing as principal are filed and paid in respect of the trade to Concentra Financial;
 - (b) except in Quebec, the first trade in a security acquired by Concentra Financial pursuant to this Decision is deemed a distribution or primary distribution to the public under the Applicable Legislation unless the conditions in subsection (2) of section 2.5 of Multilateral Instrument 45-102 – *Resale of Securities* are satisfied;
 - (c) in Quebec, the alienation of a security acquired by Concentra Financial pursuant to this Decision will be a distribution unless:
 - (i) the issuer of the securities is a reporting issuer in Quebec;
 - (ii) the issuer has been a reporting issuer in Quebec for the 4 months immediately preceding the alienation;
 - (iii) Concentra Financial has held the securities for at least 4 months;
 - (iv) no extraordinary commission or other consideration is paid in respect of the alienation;

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- (v) no effort is made to prepare the market or to create a demand for the securities; and
- (vi) if Concentra Financial is an insider of the issuer, Concentra Financial has no reasonable grounds to believe that the issuer is in default under the Quebec Act;

where the issuer becomes a reporting issuer in Quebec by the filing of a prospectus in Quebec, and this, after the initial trade of the securities to Concentra Financial, the issuer does not have to comply with the condition provided at subparagraph (ii) above;

- (d) In Newfoundland and Labrador, the exemption in this paragraph 3 is not available to a market intermediary;
4. (a) Concentra Financial is exempt from the dealer registration requirement of the Legislation for the execution of an unsolicited order to purchase or sell through a registered dealer as agent for a person or company provided Concentra Financial, or any affiliate, does not advertise or otherwise promote or market this service; and
 - (b) The trade by the person or company in placing the unsolicited order referred to in subparagraph 4(a) is exempt from the dealer registration requirement unless, in Ontario and Newfoundland and Labrador, the person or company is a market intermediary;
5. Concentra Financial is exempt from the dealer registration requirement of the Legislation for trades in a bond or debenture by way of an unsolicited order given to Concentra Financial, provided Concentra Financial is acting as principal, and the bond or debenture is acquired by Concentra Financial for the purpose of the trade from, or sold by Concentra Financial following the trade to, a registered dealer;
 6. The trade of bonds, debentures or other evidences of indebtedness of or guaranteed by Concentra Financial is exempt from the dealer registration requirement and prospectus requirement of the Legislation, provided that in British Columbia, Alberta, Saskatchewan, Ontario, Quebec, Nova Scotia, and Prince Edward Island such bonds, debentures or other evidences of indebtedness of or guaranteed by Concentra Financial are not subordinate in right of payment to deposits held by the issuer or guarantor of such bonds, debentures or other evidences of indebtedness;

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7. A registered dealer or registered salesperson, partner or officer of a registered dealer that executes a trade on the instructions of Concentra Financial is not required to make inquiries to determine the general investment needs and objectives of the client and the suitability of a proposed purchase or sale of a security for the client;
8. Except in Nova Scotia and British Columbia, Concentra Financial is exempt from the dealer registration requirement and prospectus requirement of the Legislation for distributions of securities where the trade is made by Concentra Financial as principal or agent in shares or units of mutual funds if the shares or units are sold to a pension plan, deferred profit sharing plan, retirement savings plan or other similar capital accumulation plan maintained by the sponsor of such plan for its employees and the decision to purchase the shares or units is not made by or at the direction of those employees;
9. In Nova Scotia, Concentra Financial is exempt from the dealer registration requirement and prospectus requirement of the legislation of Nova Scotia for the following trades:
 - (a) a trade made in a security of a mutual fund that:
 - (i) is administered by Concentra Financial;
 - (ii) has no promoter other than Concentra Financial or its affiliates;
 - (iii) has no manager who is not a portfolio manager or a person or company that is exempt from the requirement to be registered in the category of portfolio manager; and
 - (iv) consists solely of:
 - (1) a pool of funds maintained by Concentra Financial in which money belonging to various estates and trusts in its care are commingled, with the authority of the settlor, testator or trustee thereof, for the purpose of facilitating investment where no general solicitations are made with a view to the sale of participations in the pooled fund, or
 - (2) a pool of funds maintained solely to serve retirement savings plans, deferred profit sharing plans, retirement income funds, pension plans or other plans registered under the *Income Tax Act* (Canada), or any combination thereof; or

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(b) a trade made in a security of a mutual fund that:

- (i) is administered by Concentra Financial;
- (ii) has no manager who is not a portfolio manager or a person or company that is exempt from the requirement to be registered in the category of portfolio manager;
- (iii) consists of a pool of funds that results from and is limited to, the combination or commingling of funds of pension or other superannuation plans registered under the *Income Tax Act* (Canada); and
- (iv) is established by a promoter, other than Concentra Financial, for the purpose of investment by pension or other superannuation plans registered under the *Income Tax Act* (Canada) for the employees of the promoter, persons or companies which are related to or otherwise do not deal at arms length with the promoter and their affiliates, or any of them;

10. In British Columbia, Concentra Financial is exempt from the dealer registration requirement and prospectus requirement of the legislation of British Columbia for a trade made in a security of a mutual fund that is administered by Concentra Financial but which has no promoter or manager other than Concentra Financial, and consists of

- (a) a pooled fund that is maintained solely to serve registered retirement savings plans, retirement income plans, deferred profit sharing plans, pension plans or other similar plans registered under the *Income Tax Act* (Canada);
- (b) a common trust fund as defined by the *Financial Institutions Act* (British Columbia); or
- (c) a pooled fund that is maintained by Concentra Financial in which money, belonging to various estates and trusts in its care, is commingled, with the authority of the settlor, testator or trustee, for the purpose of facilitating investment if no general solicitations are made to sell securities in the fund;

11. The trade by Concentra Financial of evidences of deposit issued by Concentra Financial and any trade by any person or company in evidences of deposit

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issued by Concentra Financial shall be exempt from the dealer registration requirement and prospectus requirement of the Legislation;

12. In Newfoundland and Labrador, Subsection 26(1)(a) of the Securities Act (Newfoundland and Labrador) R.S.N 1990, c. S-13 (as amended) (the "Newfoundland and Labrador Act") does not apply to a trade by Concentra Financial:
 - (a) of a type described in subsections 36(1) of the Newfoundland and Labrador Act; or
 - (b) in securities described in subsection 36(2) of the Newfoundland and Labrador Act;
13. This Decision shall be conditional upon the Superintendent issuing the Order;
14. This Decision shall remain in effect only for so long as Concentra Financial is an association under the CCA Act and subject to the same prudential rules, policies and substantially the same regulation that apply to a Schedule I Bank that accepts deposits;
15. As relates to any particular Jurisdiction, any provision in this Decision Document providing an exemption (other than the exemption referred to in paragraph 11 above) for a trade by Concentra Financial or for a trade in securities of Concentra Financial is not available if, at the relevant time, there is not a corresponding exemption under the Legislation of the Jurisdiction for the trade if the trade were being made by a Schedule I Bank instead of Concentra Financial or if the trade were a trade in the securities of a Schedule I Bank instead of Concentra Financial;

THE FURTHER DECISION of the Decision Maker in Ontario is that Concentra Financial is not subject to section 25 of the Securities Act (Ontario) R.S.O. 1990 c. S.5 (as amended) (the "Ontario Act") for trades referred to in Ontario Securities Commission Rule 32-502 *Registration Exemption for Certain Trades by Financial Intermediaries* ("OSC Rule 32-502"), as if Concentra Financial were at the relevant time a Schedule I Bank, on the same basis that the Schedule I Bank would not be subject to section 25 of the Ontario Act under OSC Rule 32-502 if the trades were being made by the Schedule I Bank instead of Concentra Financial. This further decision shall be conditional upon the Superintendent issuing the Order and only for so long as Concentra Financial is an association under the CCA Act and is subject to the same prudential rules, policies and substantially the same regulation that apply to a Schedule I Bank that accepts deposits.

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THE FURTHER DECISION of the Decision Maker in Ontario is that Concentra Financial is recognized as an “accredited investor” under paragraph (u) of the definition of “accredited investor” in section 1.1 of Ontario Securities Commission Rule 45-501 *Exempt Distributions*. This further decision shall be conditional upon the Superintendent issuing the Order and only for so long as Concentra Financial is an association under the CCA Act and is subject to the same prudential rules, policies and substantially the same regulation that apply to a Schedule I Bank that accepts deposits.

DATED at Regina, Saskatchewan, on December 22, 2004.

Dave Wild
Chair
Saskatchewan Financial Services Commission