

# **2003 BCSECCOM 141**

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – relief from the registration and prospectus requirements for trades in connection with an employee stock option plan – relief from issuer bid requirements for acquisitions by the issuer of its securities for award exercises under stock option plan – issuer with de minimis Canadian presence

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61, 76, 105-108, 110 and 114(2)(c)

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

**AND**

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

**AND**

**IN THE MATTER OF WELLS FARGO & COMPANY**

## **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (collectively the “Decision Makers”) in each province of Canada (collectively, the “Jurisdictions”) has received an application from Wells Fargo & Company (“Wells Fargo” or the “Company”) for a decision of the Decision Makers pursuant to the securities legislation (the “Legislation”) of the Jurisdictions that (i) the requirements contained in the Legislation to be registered to trade in a security (the “Registration Requirements”) and the requirements to file and obtain a receipt for a preliminary prospectus and prospectus (the “Prospectus Requirements” and together with the Registration Requirements, the “Registration and Prospectus Requirements”) shall not apply to certain trades in securities of Wells Fargo made in connection with the Wells Fargo & Company Partnershares Stock Option Plan of the Company, as amended and restated effective October 1, 2000 (the “Plan”) (ii) the Registration Requirements shall not apply to first trades of shares of common stock of Wells Fargo (“Shares”) acquired under the Plan, including trades made through an Agent (defined below) provided such first trade is executed through a stock exchange or market outside of Canada; and (iii) the

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requirements contained in the Legislation relating to the delivery of an offer and issuer bid circular and any notices of change or variation thereto, minimum deposit periods and withdrawal rights, take-up and payment for securities tendered to an issuer bid, disclosure, restrictions upon purchases of securities, financing, identical consideration, collateral benefits, and form filing (the "Issuer Bid Requirements") shall not apply to certain acquisitions by Wells Fargo of Shares pursuant to the Plan in each of the Jurisdictions;

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator of this application;

AND WHEREAS it has been represented to the Decision Makers as follows:

1. Wells Fargo is a corporation incorporated under the laws of the State of Delaware. The principal executive offices of Wells Fargo are located in San Francisco, California.
2. Wells Fargo is not a reporting issuer or the equivalent thereof in any Jurisdiction and has no present intention of becoming a reporting issuer or the equivalent thereof in any Jurisdiction. The majority of the directors and senior officers of Wells Fargo reside outside of Canada.
3. The authorized capital of Wells Fargo consists of 4 billion Shares, 20 million shares of preferred stock and 4 million shares of preference stock. As at September 30, 2002 there were approximately 1,691,889,476 Shares, 5,641,979 shares of preferred stock and no shares of preference stock issued and outstanding.
4. The Company is subject to the requirements of the *Securities Exchange Act of 1934* of the United States (the "Exchange Act") including the reporting requirements of the Exchange Act.
5. Shares issued in connection with the Plan are registered with the Securities and Exchange Commission under the *Securities Act* of 1933.
6. The Shares are listed on the New York Stock Exchange (the "NYSE").
7. The purpose of the Plan is to enhance the profitability and value of the Company by providing performance based incentives and additional equity ownership opportunities to eligible employees of Wells Fargo and its affiliates ("Wells Fargo Companies").

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8. Awards which may be granted to employees of the Wells Fargo Companies under the Plan include (i) options (“Options”) to purchase Shares (ii) Shares and (iii) cash measured by the value of Shares (all of the foregoing are collectively referred to herein as “Awards”).
9. There are an aggregate of approximately 1943 employees of Wells Fargo Companies resident in Canada eligible to receive Awards including 175 in British Columbia, 119 in Alberta, 47 in Saskatchewan, 45 in Manitoba, 969 in Ontario, 240 in Quebec, 89 in New Brunswick, 144 in Nova Scotia, 14 in Prince Edward Island, and 101 in Newfoundland.
10. Participation in the Plan is voluntary and employees of Wells Fargo Companies are not induced to participate in the Plan by expectation of employment or continued employment with the Wells Fargo Companies.
11. Wells Fargo may use the services of one or more agents/brokers (each an “Agent”) under the Plan. The current Agent for the Plan is Wells Fargo Investments, LLC. The current Agent is, and if replaced, or if additional Agents are appointed, will be registered under applicable U.S. securities or banking legislation and have been or will be authorized by Wells Fargo to provide services under the Plan. The current Agents are not registered to conduct retail trades in any of the Jurisdictions and, if replaced, or if additional Agents are appointed, are not expected to be so registered in any of the Jurisdictions.
12. The Agents’ role in the Plan may include (i) assisting with the administration of the Plan, including record-keeping functions; (ii) facilitating the exercise of Awards granted under the Plan (including Cashless Exercises (as defined below)); (iii) holding Shares issued under the Plan on behalf of employees of the Wells Fargo Companies who participate in the Plan (“Participants”), Former Participants (as defined below) and Permitted Transferees (as defined below); (iv) facilitating the cancellation and surrender of Awards as permitted by the Plan; (v) facilitating Share Withholding Exercises (as defined below); and (vi) facilitating the resale of Shares issued in connection with the Plan.
13. The Plan is administered by a committee or committees (the “Committee”) consisting of one or more directors of the Company who are appointed by the directors of the Company.
14. The Committee has discretionary authority to determine which employees will be granted Awards, the type and amount of each Award to be granted, the date of issue and duration of each Award and the exercise price of each Award. The Committee may adopt such rules or guidelines as it deems appropriate to

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determine which employees will be granted Awards, the terms of Awards and what other conditions or restrictions should apply to Awards made under the Plan.

15. Each Award granted under the Plan will be evidenced by a notice of the grant therefore containing (i) the terms, conditions and restrictions of the Award (ii) if an Award is an Option, the exercise price and acceptable methods of payment of the exercise price (iii) the duration of the Award (iv) the effect on the Award upon the death, disability, retirement or other termination of employment of the Participant and (v) the restrictions upon transfer, if any, on the Award or the Shares subject to the Award.
16. Following the termination of a Participant's relationship with the Wells Fargo Companies for reasons of death, disability or retirement, a former Participant ("Former Participant") and on the death of a Participant, where the Award(s) has been transferred to a beneficiary or beneficiaries in accordance with the Plan ("Permitted Transferees"), the Former Participants and Permitted Transferees may exercise such Award(s) for such period or periods as the Committee may determine. Except as otherwise determined by the Committee, following the termination of a Participant's relationship with the Wells Fargo Companies for reasons other than death, disability, or retirement, all of the Participant's Awards will terminate without notice. On the date that: (i) substantially all of the assets of the Company are acquired by another corporation; (ii) there is a reorganization of the Company involving an acquisition of the Company by another entity; or (iii) a majority of the board of directors (the "Board") of the Company shall be persons other than persons (i) for whose election proxies shall have been solicited by the Board or (ii) who are then serving as directors appointed by the Board to fill vacancies on the Board caused by death or resignation (but not by removal) or to fill newly-created directorships, then (A) all Options and other Awards that require exercise by Participants and/or payment by Participants to the Company will become immediately exercisable in full and (B) with respect to all other Awards, all conditions or restrictions to the receipt thereof will immediately terminate.
17. Except as otherwise determined by the Committee, Awards may not be assigned or otherwise transferred by the Participant except to a Permitted Transferee in accordance with the Plan.
18. The Company may withhold, at the time of any distribution of an Award or at the time an Option is exercised, all amounts necessary to pay any portion of the exercise price of an Award ("Cashless Exercises") or to satisfy any income tax withholding requirements ("Share Withholding Exercises"). Any such

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required payments may be satisfied by cash or the withholding of Common Shares issuable to a Participant in connection with an Award.

19. An aggregate of 67,000,000 Shares are available for Awards and as a basis for calculating Awards under the Plan, subject to adjustment in certain circumstances. If Awards for any reason terminate or expire unexercised, the Shares subject to those Awards will thereafter be available for other Awards under the Plan. Shares that are used to pay any portion of the exercise price of an Award or any portion of a Participant's income tax withholding resulting from an Award, and Shares that are used as a basis for calculating cash amounts that are used to pay any portion of the purchase price of an Award or any portion of a Participant's income tax withholding resulting from an Award, will also thereafter be available for Awards or as a basis for calculating Awards under the Plan.
20. As at September 30, 2002, Canadian shareholders did not hold, directly or indirectly, more than 10% of the issued and outstanding Shares of the Company and did not constitute more than 10% of the shareholders of the Company.
21. There is presently no market in any of the Jurisdictions for the Shares and no such market is expected to develop. It is therefore expected that the resale of Shares by Participants, Former Participants and Permitted Transferees will be effected through the facilities of the NYSE. Participants, Former Participants or Permitted Transferees may sell Shares acquired under the Plan through Agents.
22. The Legislation of certain of the Jurisdictions does not contain exemptions from the Registration and Prospectus Requirements for Award exercises by Participants, Former Participants or Permitted Transferees through an Agent where such Agent is not a registrant.
23. Where the Agent sells Shares on behalf of Canadian Participants, Former Participants or Permitted Transferees, the Canadian Participants, Former Participants and Permitted Transferees may not be able to rely on the exemption from the Registration Requirements contained in the Legislation of certain Jurisdictions to effect such sales.
24. The exemptions in the Legislation from the Issuer Bid Requirements may not be available for certain acquisitions of Shares from Participants, Former Participants or Permitted Transferees in accordance with the terms of the Plan, since acquisitions relating to Cashless Exercises and Share Withholding Exercises may occur at a price that is not calculated in accordance with the

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“market price”, as that term is defined in the Legislation, and may be made from Permitted Transferees.

25. A prospectus prepared in accordance with applicable U.S. securities laws, describing the terms and conditions of the Plan will be provided to each Participant resident in Canada who receives an award under the Plan. Annual reports, management information circulars and other materials the Company is required to file with the United States Securities and Exchange Commission will be provided or made available to Participants resident in Canada who receives an award under the Plan at the same time as such documents are provided to and in the same manner as the documents are provided or made available to Participants resident in the U.S.

AND WHEREAS pursuant to the System, this 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 pursuant to the Legislation is that:

- (a) The Registration and Prospectus Requirements shall not apply to any trade or distribution of Awards or Shares made in connection with the Plan, including trades and distributions involving an Agent, Participants, Former Participants, and Permitted Transferees, provided that the first trade in Shares acquired through the Plan pursuant to the Decision in a Jurisdiction other than Quebec shall be deemed a distribution or primary distribution to the public under the Legislation of such Jurisdiction unless the conditions in section 2.14(1) of MI 45-102, Resale of Securities are satisfied and in the case of the first trade of such Shares in Quebec, the first trade is either made (i) between Canadian Participants, Former Canadian Participants or Permitted Transferees or (ii) outside of Quebec;
- (b) The first trade by Participants, Former Participants or Permitted Transferees in Shares acquired pursuant to the Plan, including first trades effected through an Agent, shall not be subject to the Registration Requirements, provided such first trade is executed through a stock exchange or market outside of Canada; and
- (c) The Issuer Bid Requirements of the Legislation shall not apply to the acquisition by the Company of Shares from Participants, Former

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Participants or Permitted Transferees provided such acquisitions are made in accordance with the terms of the Plan.

DATED this 31st day of January 2003.

Howard I. Wetston

Robert L. Shirriff