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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – 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, QUÉBEC, 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 UNITED OVERSEAS BANK LIMITED

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, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Nunavut Territory and Yukon Territory (the "Jurisdictions") has received an application (the "Application") from United Overseas Bank Limited ("UOB") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that UOB is exempt from various registration, prospectus and filing requirements of the Legislation in connection with the banking activities to be carried on by UOB in Canada;

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

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

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1. The United Overseas Bank Limited is Singapore's largest bank, validly existing under the banking laws of Singapore.
2. The UOB Group offers a wide range of financial services through its global network of branches, offices and subsidiaries - commercial and corporate banking, personal financial services, private banking, trust services, treasury services, asset management, corporate finance, capital market activities, venture capital management, proprietary investments, general insurance and life assurance. It also offers stockbroking services through its associate, UOB-Kay Hian Holdings Limited. UOB also has diversified interests in travel, leasing, property development, hotel management, healthcare, manufacturing and general trading.
3. The Applicant is currently represented in Canada by United Overseas Bank (Canada) ("UOBC") and it does not conduct any other business activities in Canada. The Applicant intends to provide the current business services of UOBC which includes consumer, commercial and corporate lending, treasury functions, and deposit-taking (including to facilitate the lending of money, dealing in foreign exchange or dealing in securities, other than debt obligations of UOB for clients). It also plans to secure additional business opportunities (retail and corporate) through the full service branch.
4. In November, 2001, UOB made an application (the "*Bank Act* Application") to the office of the Superintendent of Financial Institutions Canada ("OSFI") for an order under the *Bank Act* permitting it to establish a full service branch under the *Bank Act* and designating it on Schedule III to the *Bank Act*.
5. Upon approval of the *Bank Act* application, UOB will establish and commence business as a foreign bank branch under the *Bank Act*. UOB expects to receive all OSFI approvals by June 30, 2002.
6. UOB will be primarily involved in wholesale deposit-taking as well as taking deposits to facilitate the lending of money, dealing in foreign exchange or dealing in securities, other than debt obligations of UOB, consumer, commercial and corporate lending and treasury functions;
7. UOB intends to provide deposit-taking, consumer, commercial and corporate lending and treasury functions primarily to the following investors:
 - (a) 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;

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- (b) 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;
- (c) 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;
- (d) 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 a 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 and 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);
- (e) 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;
- (f) 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;

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- (g) 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
 - (h) any other entity, where the deposit facilitates the provision of the following services by UOB to the entity, namely,
 - (i) lending money,
 - (ii) dealing in foreign exchange, or
 - (iii) dealing in securities, other than debt obligations of UOB.
 - (i) any other person, if the trade is in a security which has an aggregate acquisition cost to the purchaser of greater than \$150,000;
- collectively referred to for purposes of this Decision as "Authorized Customers".
8. The only advising activities which UOB intends to undertake will be incidental to its primary business and it will not advertise itself as an adviser or allow itself to be advertised as an adviser in the Jurisdictions;
9. 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 UOB's foreign bank branch will not be chartered under Schedule I or II of the *Bank Act*, the existing exemptions relating to the registration, prospectus and filing requirements will not be available to it;
10. In order to ensure that UOB, as an entity listed on Schedule III to the *Bank Act*, is 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 being undertaken by UOB in the Jurisdictions;

AND WHEREAS pursuant to 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;

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THE DECISION of the Decision Makers pursuant to the Legislation is that upon the establishment by UOB of a branch designated on Schedule III to the *Bank Act* and in connection with the banking business to be carried on by UOB in the Jurisdictions by such branch:

1. UOB is exempt from the requirement under the Legislation, where applicable, to be registered as an 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;
2. UOB is exempt from the requirement under the Legislation to be registered as an adviser where the performance of the service as an adviser is solely incidental to its primary banking business;
3. A trade of a security to UOB, where UOB purchases the security as principal, 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:
 - (i) 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 UOB;
 - (ii) except in Quebec, the first trade in a security acquired by UOB pursuant to this Decision is deemed a distribution or primary distribution to the public under the Applicable Legislation unless the conditions in subsections 2 or 3, as applicable, of section 2.5 of Multilateral Instrument 45-102 - Resale of Securities are satisfied; and
 - (iii) in Quebec, the first trade in a security acquired by UOB pursuant to this Decision will be a distribution unless,
 - (a) at the time UOB acquired the security: (i) the issuer of the security is a reporting issuer in Quebec; (ii) the issuer is not a Capital Pool Company as defined in Policy 2.4 of The Canadian Venture Exchange Inc.; (iii) the issuer has a class of securities listed on an acceptable exchange, 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 that has an approved rating from an approved rating organization; for purposes of this Decision, the acceptable exchanges include the Toronto Stock Exchange, tier 1 and 2 of The

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

- (b) the issuer has been a reporting issuer in Quebec for 4 months immediately preceding the trade;
 - (c) UOB has held the securities for at least 4 months;
 - (d) no extraordinary commission or other consideration is paid;
 - (e) no effort is made to prepare the market or to create a demand for the securities;
 - (f) if UOB is an insider of the issuer, UOB has no reasonable grounds to believe that the issuer is in default under the Quebec Act; and
 - (g) UOB files a report within 10 days of the trade prepared and executed in accordance with the requirements of the Quebec Act that would apply to a trade made in reliance on section 43 or 51 of the Quebec Act.
4. Provided UOB only trades the types of securities referred to in this paragraph with Authorized Customers, trades of bonds, debentures or other evidences of indebtedness of or guaranteed by UOB shall be exempt from the registration and prospectus requirements of the Legislation.
5. Evidences of deposit issued by UOB to Authorized Customers shall be exempt from the registration and prospectus requirements of the Legislation.

July 5, 2002

Brenda Leong
Director Legal and Market Initiatives