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Headnote

An issuer is issuing debentures under a trust indenture and wants an exemption from the trust indenture requirements contained in sections 90 to 101 of the *Business Corporations Act* - A prospectus, securities exchange issuer circular, or take over bid circular has been filed under the *Securities Act* in respect of the debentures; the filer is not filing under MJDS; the trust indenture will be governed by the *Trust Indenture Act of 1939* of the United States, which contains provisions that are substantially similar to the requirements of the Act; the trustee has filed a Submission to Jurisdiction and Appointment of Agent of Process in the form similar to that under the MJDS rule (i.e. Form 71-101F1)

Exemption Order

The Bank of New York and Barclays Bank PLC

Section 91(3) of the *Business Corporations Act*, S.B.C. 2002, c. 57

Background

- ¶ 1 The Bank of New York (the Trustee) applied for an order exempting a trust indenture (the Trust Indenture) dated September 16, 2004 between the Trustee and Barclays Bank PLC (the Issuer) from sections 90 to 101 of the British Columbia *Business Corporations Act* (the Act);

Representations

- ¶ 2 The Trustee represents that it is a banking corporation organized under the laws of New York and is neither resident nor authorized to do business in British Columbia, and that it is the sole trustee under the Trust Indenture.
- ¶ 3 The Issuer represents that:
1. it is a public limited company registered in England and Wales and is not a reporting issuer in the Jurisdictions;
 2. it has applied through the Mutual Reliance Application System for relief from the reporting issuer requirements set out in paragraph 2.3(1)(b) of National Instrument 44-101 *Short Form Prospectus Distributions*;
 3. it currently offers medium term notes (the Notes) in the United States under an existing medium term note program (the Program);

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4. the Notes offered in the United States, which are registered under the United States *Securities Act of 1933*, as amended, are covered by the Registration Statement, as defined below;
5. the key documents relating to the Program are:
 - (a) a shelf registration statement (the Registration Statement) on Form F-3 filed with Securities and Exchange Commission that includes a prospectus dated September 21, 2005 (the US Prospectus), covering debt securities, preference shares and American depositary shares for up to an aggregate amount initial offering price of \$12,870,714,000 or the equivalent thereof in other currencies, and a prospectus supplement to the US Prospectus dated September 22, 2005 (the US Supplement); and
 - (b) the Trust Indenture;

For each offering in the United States, a pricing supplement under the US Prospectus and the US Supplement is prepared;

6. it proposes to file a base shelf prospectus (the Canadian Base Shelf Prospectus) with the Commission and each other securities regulator in Canada in accordance with National Instrument 44-101 and the shelf procedures set forth in National Instrument 44-102 *Shelf Distributions* which will qualify the Notes under the Program for distribution in Canada;
7. it may offer the Notes for sale in the United States, under the US Prospectus and US Supplement and one or more related pricing supplements and/or one or more free writing prospectuses; and it may offer the Notes for sale in Canada, under the Canadian Base Shelf Prospectus and one or more related pricing supplements, if the Issuer obtains a Mutual Reliance Review System decision for the Canadian Base Shelf Prospectus;
8. it intends to file the Canadian Base Shelf Prospectus with the Commission, accordingly, sections 90 to 101 of the Act will apply to the Trust Indenture; and
9. the Trust Indenture is subject to the United States *Trust Indenture Act of 1939*, as amended (the Trust Indenture Act) and the Issuer has been advised by counsel that provisions of the Trust Indenture Act regulate a trustee under trust indentures governing debt securities issued in the United States in a manner substantially similar to the provisions of sections 90 to 101 of the Act.

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Order

- ¶ 4 Because it is not prejudicial to the public interest, the Executive Director orders under section 91(3) of the Act, that sections 90 to 101 of the Act do not apply to the Trust Indenture, provided that
- (a) the Trust Indenture complies in all material respects with the provisions of the Trust Indenture Act that are substantially similar to the provisions of sections 90 to 101 of the Act; and
 - (b) the Trustee, or any trustee that replaces the Trustee under the terms of the Indenture, has filed with the Commission a submission to the non-exclusive jurisdiction of the courts and administrative tribunals of British Columbia and appointment of an agent for service of process in Canada.

- ¶ 5 August 1, 2006

Martin Eady, CA
Director, Corporate Finance
British Columbia Securities Commission