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March 4, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications

Securities Act s. 48,76 Employees & Consultants – Exemption from s. 34(1)(a) requirement to be registered as a dealer in connection with a trade and s. 61 requirement to file a prospectus in connection with a distribution involving employees, consultants, past employees and similar persons – A US issuer requires relief to grant securities to consultants of its Canadian subsidiary under a plan, and for first trades of those securities - Consultants do not meet the definition of *consultant* in MI 45-105 because they do not provide services under a written contract; consultants provide *bona fide* services to the issuer, and will spend a significant amount of time and attention on the affairs of the issuer; the issuer's plan complies with US securities laws; Canadian participants represent less than 10% of world-wide participants in plan; the issuer has a *de minimis* connection to Canada; the securities will be resold on an exchange outside of Canada or to a person outside of Canada

Securities Act s. 114(2) Issuer Bids - Exemption from the formal issuer bid requirements in Part 13 of the Act - A US company requires relief from all issuer bid requirements in connection with cashless exercises or stock swaps made under a stock option plan - Securityholders are directors, consultants or permitted transferees of the issuer; the holders do not meet the technical definitions in MI 45-105, or the transactions do not meet the technical requirements in MI 45-105 or the Act, to rely on existing issuer bid relief; the transactions are all contemplated in the issuer's plan, which complies with US securities law; the issuer has a *de minimis* connection to Canada

Applicable British Columbia Provisions

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

In the Matter of
the Securities Legislation of
Alberta, British Columbia, Saskatchewan, Manitoba and Ontario

and

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

and

In the Matter of Canada Safeway Limited and Safeway Inc.

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MRRS Decision Document

Background

1. The local securities regulatory authority or regulator (the Decision Maker) in each of Alberta, British Columbia, Saskatchewan, Manitoba and Ontario (the Jurisdictions) has received an application from Canada Safeway Limited (Canada Safeway) and Safeway Inc. (Safeway) (collectively the Filer) for a decision under the securities legislation of the Jurisdictions (the Legislation) that (i) the Dealer Registration Requirements and the Prospectus Requirement shall not apply to certain trades in securities of Canada Safeway and Safeway pursuant to stock option and share incentive plans of Canada Safeway and Safeway; (ii) the Dealer Registration Requirements, and in Manitoba the Prospectus Requirements, will not apply to certain first trades of securities acquired under the said stock option and share incentive plans of Canada Safeway and Safeway provided the conditions in section 2.14 of Multilateral Instrument 45-102 *Resale of Securities* (MI 45-102), are satisfied; and (iii) the requirements pertaining to Issuer Bids (Issuer Bid Requirements) shall not apply to certain acquisitions by Canada Safeway or Safeway of securities of Canada Safeway or Safeway pursuant to the said plans.
2. Under the Mutual Reliance Review System for Exemptive Relief Applications
 - 2.1 the Alberta Securities Commission is the principal regulator for this application; and
 - 2.2 this MRRS decision document evidence the decisions of each Decision Maker.

Interpretation

3. Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

4. The Filer has represented to the Decision Makers that:
 - 4.1 Canada Safeway is a corporation governed by the Business Corporation Act (Alberta) and is headquartered in Calgary, Alberta. Canada Safeway is an indirect fully owned subsidiary of Safeway.
 - 4.2 The authorized capital of Canada Safeway consists of an unlimited number of common shares with no par value. As of November 24, 2003, there were 280,000 common shares issued and outstanding.

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- 4.3 Safeway is a corporation governed by the laws of the State of Delaware whose principal executive offices are located in Pleasanton, California.
- 4.4 The authorized capital of Safeway consists of 1,500,000,000 shares of common stock, par value \$0.01 per share (the Safeway Shares), and 25,000,000 shares of preferred stock, par value of \$0.01 per share. As of March 25, 2004, there were issued and outstanding 445,097,748 Safeway Shares and no shares of preferred stock. As of January 3, 2004 there were 35,802,523 Safeway Shares reserved for issuance in connection with the exercise of outstanding options.
- 4.5 The Safeway Shares are listed and posted for trading on The New York Stock Exchange (the NYSE), trading under the symbol "SWY".
- 4.6 Safeway is registered with the Securities and Exchange Commission in the United States under the Securities Exchange Act of 1934, as amended (the Exchange Act), and is not exempt from the reporting requirements of the Exchange Act pursuant to Rule 12g 3-2.
- 4.7 Safeway had previously adopted a Stock Option and Incentive Plan for Key Employees, the Stock Option Plan for Consultants of Safeway Inc. and the Safeway Inc. Outside Director Equity Purchase Plan for the benefit of its eligible employees, consultants and outside directors, respectively (collectively, the Prior Plans). The Prior Plans have been amended from time to time and were amended, restated and consolidated in order to constitute an equity participation plan entitled "The 1999 Amended and Restated Equity Participation Plan of Safeway Inc." (as in effect and as such plan may be amended, supplemented, superceded, re-enacted or restated from time to time, the "Safeway Equity Participation Plan"). The Safeway Equity Participation Plan was made effective upon approval of the stockholders of Safeway.
- 4.8 The purposes of the Safeway Equity Participation Plan are: (a) to provide additional incentive for eligible independent directors, employees and consultants to further the growth, development and financial success of Safeway by personally benefiting through the ownership of Safeway stock and/or rights which recognize such growth, development and financial success; and (b) to enable Safeway to obtain or retain the services of eligible independent directors, employees and consultants considered essential to the long range success of Safeway by offering them an opportunity to own stock in Safeway and/or rights which reflect the growth, development and financial success of Safeway.

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- 4.9 “Option” means an option to acquire securities of Safeway (including Safeway Shares) granted by Safeway, or such other securities issued in substitution thereof, pursuant to the provisions of the Safeway Equity Participation Plan or the Prior Plans. Options can be granted under the Safeway Equity Participation Plan to employees, consultants and to independent directors of Safeway or of any corporation that is its subsidiary (collectively referred to herein as the Participants).
- 4.10 To be granted Options under the Safeway Equity Participation Plan, consultants must provide bona fide services to Safeway Inc.
- 4.11 Canada Safeway previously adopted a Share Appreciation Rights Plan (as in effect from time to time, the “Original Plan”) under which Canada Safeway could, from time to time, upon and subject to the terms and conditions in the Original Plan, grant “Stock Appreciation Rights” (as defined herein) to certain officers and employees of Canada Safeway and its subsidiary corporations who were also granted “Options” under the Safeway Equity Participation Plan (or the Prior Plans). The Original Plan was amended and restated in its entirety in 2001 and, as so amended and restated, is entitled “The 2001 Amended and Restated Share Appreciation Rights Plan of Canada Safeway Limited” (as in effect and as such plan may be amended, supplemented, superceded, re-enacted or restated from time to time, the “Plan”).
- 4.12 The purposes of the Plan are: (a) to further the growth, development and financial success of Canada Safeway by providing additional incentives to certain of the employees of Canada Safeway and its subsidiary corporations who have been or will be given responsibility for the management or administration of the business affairs of Canada Safeway and its subsidiary corporations; and (b) to enable Canada Safeway and its subsidiary corporations to obtain and retain the services of the type of professional, technical and managerial employees considered essential to the long range success of Canada Safeway.
- 4.13 As used herein and in the Plan, “Stock Appreciation Right” means a stock appreciation right granted under the Plan or the Original Plan or a security issued in substitution thereof pursuant to the provisions of the Plan.
- 4.14 Stock Appreciation Rights may be granted to those officers and employees of Canada Safeway or a subsidiary of Canada Safeway who

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have also been granted an Option under the Safeway Equity Participation Plan (or the Prior Plans, if applicable).

- 4.15 The Plan and the Safeway Equity Participation Plan are administered by a committee (the Administrator) of two or more non-employee members of the board of directors of Safeway.
- 4.16 Subject to certain provisions, the Administrator, on behalf of Safeway or Canada Safeway, as the case may be, is given discretion relative to the granting, vesting, termination, substitution, repurchase, surrender, exercise, assumption, substitution or adjustment of Stock Appreciation Rights and Options. Such discretion may be exercised in circumstances such as a redemption or acquisition of the Stock Appreciation Rights by Canada Safeway or the Options by Safeway, from Directors, consultants or permitted transferees for the purpose substituting similar securities.
- 4.17 Under the terms of the Plan and the Safeway Equity Participation Plan, Safeway and Canada Safeway may allow a Participant to settle payment for applicable taxes by electing to have Safeway or Canada Safeway, as applicable, withhold Safeway Shares otherwise issuable (or to allow the return of Safeway Shares).
- 4.18 Under the Safeway Equity Participation Plan and the Plan, Stock Appreciation Rights and Options issuable thereunder are non-transferable other than to a permitted transferee.
- 4.19 As at April 22, 2004, there were approximately 2,080 Canadians eligible to participate in the Plan and the Safeway Equity Participation Plan of a total of approximately 12,440 eligible participants in North America. As of that date, Canadian Participants had rights to acquire approximately 7.7% of the total number of Safeway Shares issuable under options being options to acquire approximately 0.6% of the total number of Safeway Shares issued and outstanding on March 25, 2004.
- 4.20 As at the date hereof, residents of Canada did not own, directly or indirectly more than ten percent (10%) of the outstanding Safeway Shares and did not represent more than ten percent (10%) of the number of owners, direct or indirect, of Safeway Shares.
- 4.21 Employees will not be induced to participate in the Plan or the Safeway Equity Participation Plan by expectation of employment or continued employment.

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- 4.22 Officers will not be induced to participate in the Plan or the Safeway Equity Participation Plan by expectation of appointment or employment or continued appointment or employment as an officer.
- 4.23 All necessary securities filings have been made in the United States to offer the Safeway Equity Participation Plan to Participants resident in the United States.
- 4.24 The Plan was structured to comply with United States securities laws. The Safeway Equity Participation Plan is based on the Plan.
- 4.25 All disclosure material relating to Safeway that Safeway is required to file with the Securities and Exchange Commission in the United States will be provided or made available upon request to Participants who acquire Safeway Shares pursuant to the Safeway Equity Participation Plan and the Plan, at the same time and in the same manner, as such materials are provided or made available upon request to holders of Safeway Shares who are resident in the United States.
- 4.26 Neither Safeway nor Canada Safeway are reporting issuers (where such concept exists) in any jurisdiction in Canada and neither Safeway nor Canada Safeway have any present intention of becoming a reporting issuer in any of the Jurisdictions.
- 4.27 There is no market for the Safeway Shares in Canada and none is expected to develop and accordingly, any resale of the Safeway Shares must be effected through the facilities of and in accordance with, the rules applicable to the NYSE or a stock exchange or other market outside of Canada on which the Safeway Shares may hereinafter be listed or quoted for trading.
- 4.28 There is no published market in respect of the Options or the Stock Appreciation Rights.

Decision

- 5. 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.
- 6. The Decision of the Decision Makers under the Legislation is that:
 - 6.1 the Dealer Registration and Prospectus Requirements will not apply to any trade or distribution of Options, Stock Appreciation Rights or

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Safeway Shares made in connection with the Safeway Equity Participation Plan (or the Prior Plans) or the Plan (or the Original Plan) to consultants of Safeway or Safeway Inc., provided that (i) consultants spend a significant amount of time and attention on the affairs and business of the Safeway, Safeway Inc. or an affiliated entity of Safeway or Safeway Inc. (ii) the first trade in Options, Stock Appreciation Rights or Safeway Shares acquired under the Safeway Equity Participation Plan (or the Prior Plans) or the Plan (or the Original Plan) pursuant to this decision will, in Alberta, British Columbia, Saskatchewan and Ontario be deemed to be a distribution, and in Manitoba will be deemed to be a primary distribution to the public;

- 6.2 the first trade of Safeway Shares acquired by a consultant under the Safeway Equity Participation Plan (or the Prior Plans) or the Plan (or the Original Plan) will not be subject to the Dealer Registration Requirements, provided the conditions in section 2.14 of MI 45-102, are satisfied;
- 6.3 the first trade of Safeway Shares acquired by a consultant in Manitoba, under the Safeway Equity Participation Plan (or the Prior Plans) or the Plan (or the Original Plan) will not be subject to the Prospectus Requirements, provided the conditions in section 2.14 of MI 45-102, are satisfied; and
- 6.4 the Issuer Bid Requirements shall not apply to acquisitions by Canada Safeway or Safeway of Stock Appreciation Rights, Options or Safeway Shares provided such acquisitions are made in accordance with the terms of the Safeway Equity Participation Plan (or the Prior Plans) or the Plan (or the Original Plan), as applicable.

Glenda A. Campbell, Q.C., Vice-Chair
Alberta Securities Commission

David W. Betts, CFA, Member
Alberta Securities Commission