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August 5, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 114(2) Takeover Bids - Exemption from the formal take over bid requirements in Part 13 of the Act - An issuer wants to complete a take over bid that meets some, but not all of the conditions set out in s. 98 (1)(e) of the Act required for an exempt take over bid - The bid is being done in compliance with the law of a jurisdiction that is not recognized for the purposes of s. 98(1)(e); the issuer does not maintain a share register, but the number of the issuer's shareholders in B.C. is believed to be de minimis; the bid will satisfy all other conditions required for an exempt take over bid

Securities Act s. 76 – Prospectus requirements - An issuer wants to distribute securities using an offering document other than a long form prospectus - The Applicant has made a share exchange take over bid; the bid is being done in accordance with foreign laws; in connection with the bid, the Applicant will send to British Columbia security holders any materials relating to the offer that are sent to security holders resident in the foreign countries; the Applicant cannot rely on the exemption in section 74(2)(26) of the Act to distribute securities under the bid because the materials may not be filed

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 61, 76, 105-110, and 114(2)

In the Matter of
the Securities Legislation

of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Québec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador

and

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

and

In the Matter of Unicredito Italiano S.p.A. (the “Filer”)

MRRS Decision Document

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Background

The local securities regulatory authority or regulator (the “Decision Maker”) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the following requirements do not apply to trades made in connection with the proposed offers (the “Offers”) by the Applicant for the outstanding shares (“HVB Shares”) of Bayerische Hypo-und Vereinsbank AG (“HVB”), the outstanding shares (“Bank Austria Shares”) of Bank Austria Creditanstalt AG (“Bank Austria”), and the outstanding shares (“BPH Shares”) of Bank BPH Spółka Akcyjna (“BPH”): (i) the formal take-over bid requirements in the Legislation, including the provisions relating to delivery of an offer and take-over bid circular and any notices of change or variation thereto, delivery of a directors’ circular and any notices of change or variation thereto, minimum deposit periods and withdrawal rights, take-up of and payment for securities tendered to a take-over bid, disclosure, financing, restrictions upon purchases of securities, identical consideration and collateral benefits (collectively, the “Take-over Bid Requirements”), (ii) the dealer registration requirements in the Legislation of Ontario, Québec and Prince Edward Island (the “Registration Requirements”), and (iii) the prospectus requirements in the Legislation of British Columbia, Ontario, Québec and Prince Edward Island (the “Prospectus Requirements”) (the “Requested Relief”);

Under the Mutual Reliance Review System for Exemptive Relief Applications

- (i) the Ontario Securities Commission (the “Commission”) is the principal regulator for this application;
- (ii) this MRRS decision document evidences that decision of each Decision Maker.

Interpretation

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

Representations

This decision is based on the following facts represented by the Filer:

1. The Applicant is a corporation incorporated under the laws of Italy. Shares of the Applicant are listed for trading on the Italian Stock Exchange, organized and operated by Borsa Italiana S.p.A.. The Applicant is the parent company of the UniCredit Group, which was the largest banking group in Italy in terms of market capitalization as of March 31, 2005.
2. The Applicant’s registered office is located at Via Dante 1, 16121 Genoa, Italy.

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3. The Applicant is not a reporting issuer or the equivalent in any of the Jurisdictions. The Applicant's securities are not listed or quoted for trading on any Canadian stock exchange or market.

The HVB Offer

4. HVB is a corporation incorporated under the laws of the Federal Republic of Germany, with its common bearer shares ("HVB Common Shares") admitted for trading at the Official Market (*Amtlicher Markt*) of the Stock Exchanges of Berlin-Bremen, Düsseldorf, Frankfurt, Hamburg, Hannover, Munich and Stuttgart and listed for trading on XETRA, SWX Swiss Exchange, Vienna Stock Exchange and Euronext Paris, while all of its non-voting preferred registered shares ("HVB Preferred Shares") have not been listed and are held by a foundation of the State of Bavaria. HVB also has a Sponsored-Level-1 OTC ADR Program available in the United States through Morgan Guarantee Trust Company of New York.¹ HVB is a leading German bank.
5. HVB's registered office is located in Munich, Germany.
6. HVB's issued and outstanding share capital consists of 736,145,540 HVB Common Shares and 14,553,600 HVB Preferred Shares. None of the HVB Preferred Shares are held by persons resident in Canada.
7. HVB is not a reporting issuer or equivalent in any of the Jurisdictions. HVB's securities are not listed or quoted for trading on any Canadian stock exchange or market.
8. On June 12, 2005, the Applicant announced its decision to make a securities exchange tender offer whereby holders of HVB Shares of HVB would be invited to tender their HVB Shares in exchange for ordinary shares ("UniCredit Shares") of the Applicant at a ratio of five newly issued UniCredit Shares of the Applicant for every HVB Share tendered.
9. The HVB Offer is being made, and the offer document reflecting the terms of the HVB Offer (the "HVB Offer Document") is being prepared, in accordance with the laws of the Federal Republic of Germany and, in particular, in compliance with the German Securities Acquisition and Takeover Act.

¹ In addition to this unrestricted ADR program, HVB also has a restricted ADR program that has been inactive for some time and that does not currently hold, nor has it recently held, any underlying HVB Shares.

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10. The HVB Offer Document, which, in accordance with German law, includes as an annex a prospectus regarding the UniCredit Shares of the Applicant, is expected to be submitted to the applicable securities regulatory authority in Germany by August 8, 2005 for review. The HVB Offer Document, including the prospectus, is expected to be made available to the holders of HVB's Shares after approval by the German regulator, on or about August 26, 2005. In accordance with German law, the HVB Offer Document, including the prospectus, will be available on the internet under <http://www.unicredit.it> and a public announcement in a national German newspaper will specify where and how the shareholders may obtain a copy of the HVB Offer Document free of charge.
11. As permitted by German law, HVB has issued bearer securities and, except in respect of HVB Preferred Shares, does not maintain a share register. Accordingly, any information about shareholdings of HVB Common Shares in Canada can only be determined on a limited enquiry basis by HVB. Based on a recent shareholder survey of institutional investors (which enquiry accounted for 68.5% of the issued and outstanding shares of HVB) and a review of deposits maintained by HVB, the Applicant believes that there are 54 holders of HVB Common Shares resident in Canada, holding an aggregate of 1,232,132 HVB Common Shares representing approximately 0.17% of the HVB Common Shares outstanding. Of the total, the Applicant believes that four shareholders reside in Ontario holding an aggregate of 644,295 HVB Common Shares (representing less than 0.1% of the total issued and outstanding), two shareholders reside in British Columbia holding an aggregate of 189,445 HVB Common Shares (representing less than 0.1% of the total issued and outstanding) and three shareholders reside in Québec holding an aggregate of 373,258 HVB Common Shares (representing less than 0.1% of the total issued and outstanding). The Applicant has been unable to definitively confirm the accuracy of the shareholder survey or to determine the province in which the remaining 45 shareholders (holding 25,134 shares) reside.

The Bank Austria Offer

12. Bank Austria is a stock corporation incorporated under the laws of the Austria, with its shares admitted for trading on the over the counter market (*Freiverkehr*) of the Stock Exchanges of Berlin-Bremen, Frankfurt, Munich and Stuttgart and listed for trading on the Vienna Stock Exchange and the Warsaw Stock Exchange. Bank Austria is the biggest bank in the Austrian banking sector and operates one of the leading international banking networks in the growth region of Central and Eastern Europe.

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13. Bank Austria's registered office is located in Vienna, Austria.
14. Bank Austria's issued and outstanding share capital consists of a total of 147,031,740 Bank Austria Shares, consisting of 147,021,640 no par value bearer shares and 10,100 registered no par value voting shares.
15. Bank Austria is not a reporting issuer or equivalent in any of the Jurisdictions. Bank Austria's securities are not listed or quoted for trading on any Canadian stock exchange or market.
16. HVB is the majority shareholder of Bank Austria, holding approximately 77.5% of the Bank Austria Shares.
17. On June 12, 2005, the Applicant announced, in connection with its offer for all of the shares of Bank Austria's parent, HVB, its intention to make a securities exchange tender offer whereby holders of Bank Austria Shares would be invited to tender their Bank Austria Shares in exchange for UniCredit Shares at a ratio of 19.92 newly issued UniCredit Shares for every Bank Austria Share tendered. Shareholders of Bank Austria will also be offered a cash alternative in compliance with local regulations.
18. HVB has agreed not to tender its 77.5% interest in Bank Austria to the Bank Austria Offer.
19. The Bank Austria Offer is being made, and the offer document reflecting the terms of the Bank Austria Offer (the "Bank Austria Offer Document") is being prepared, in accordance with the laws of Austria.
20. Freshfields Bruckhaus Deringer, Austrian counsel to the Applicant, has advised the Applicant that Austrian law contains provisions according to which all holders of target securities must have sufficient time and information to enable them to reach a properly informed decision on the bid and must be treated equally.
21. The Bank Austria Offer Document, which will annex or refer to a prospectus regarding the UniCredit Shares, is expected to be submitted to the applicable securities regulatory authority in Austria by August 5, 2005 for review. It is expected that the Bank Austria Offer Document, including the prospectus, will be made available to the holders of Bank Austria Shares after approval by the Austrian regulator, on or about August 24, 2005. In accordance with Austrian law, a public announcement in a national Austrian newspaper will specify where and how the shareholders may obtain a copy of the Bank Austria Offer Document free of charge. The Bank Austria Offer Document, including the

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prospectus, will be available from the Applicant as well as from an Austrian bank who will act as paying agent.

22. As permitted by Austrian law, Bank Austria has issued bearer securities and does not maintain a share register for such securities. Accordingly, any information about Bank Austria shareholdings in Canada can only be determined on a limited enquiry basis by Bank Austria. Based on a recent shareholder survey of institutional investors by Bank Austria (which enquiry accounted for 89.76% of the issued and outstanding shares of Bank Austria), the Applicant believes that there are five holders of Bank Austria Shares resident in Canada, holding an aggregate of 48,406 Bank Austria Shares representing approximately 0.03% of the Bank Austria Shares outstanding. Of the total, the Applicant believes that two shareholders reside in Ontario holding an aggregate of 23,571 Bank Austria Shares, one shareholder resides in British Columbia holding an aggregate of 12,600 Bank Austria Shares and two shareholders reside in Québec holding an aggregate of 12,235 Bank Austria Shares. The Applicant is unable to definitively confirm the accuracy of the shareholder survey.

The BPH Offer

23. BPH is a bank incorporated under the laws of the Republic of Poland, with its shares listed for trading on the Warsaw Stock Exchange and global depositary receipts listed for trading on the London Stock Exchange. BPH is one of the major Polish banks.
24. BPH's registered office is located in Kraków, Poland.
25. BPH's issued and outstanding share capital consists of a total of 28,716,230 BPH Shares.
26. BPH is not a reporting issuer or equivalent in any of the Jurisdictions. BPH's securities are not listed or quoted for trading on any Canadian stock exchange or market.
27. HVB's subsidiary, Bank Austria, is the majority shareholder of BPH, holding approximately 71.0% of the BPH Shares.
28. On June 12, 2005, the Applicant announced, in connection with its offer for all of the shares of BPH's indirect parent, HVB, its intention to make a securities exchange tender offer whereby holders of BPH Shares would be invited to tender their BPH Shares in exchange for UniCredit Shares at a ratio of 33.13 newly issued UniCredit Shares for every BPH Share tendered. The exchange

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ratio in Poland is subject to the Polish securities regulations involving minimum reference price. Shareholders of BPH will also be offered a cash alternative.

29. HVB, as the indirect parent of BPH, has agreed to use its best efforts to ensure that Bank Austria does not tender its 71.0% interest in BPH to the BPH Offer.
30. The BPH Offer is being made, and the offer document reflecting the terms of the BPH Offer (the “BPH Offer Document”) is being prepared, in accordance with the laws of the Republic of Poland.
31. Freshfields Bruckhaus Deringer, German counsel to the Applicant, acting on the advice of qualified counsel in Poland, has advised the Applicant that according to Polish securities legislation, all holders of target securities must be treated equally under Polish law.
32. The BPH Offer Document is expected to be submitted to the applicable securities regulatory authority in Poland and to the Warsaw Stock Exchange as soon as reasonably possible, upon which the BPH Offer shall be deemed commenced. It is expected that the BPH Offer Document will be made available via a public announcement in a national Polish newspaper immediately after it has been submitted to and approved by the applicable securities regulatory authority in Poland and to the Warsaw Stock Exchange.
33. The BPH Offer shall require, prior to or upon its completion, the admission of the Applicant’s shares for trading on a public market in Poland, based on the single passport principle provided for in the European Union 2003 Prospectus Directive. This action in Poland will be possible after approval of the Applicant’s prospectus (the “Applicant’s Prospectus”) by the Italian Stock Market regulator which is expected in late July 2005. In accordance with Polish law, a public announcement in a national Polish newspaper containing a Polish-language summary of the Applicant’s Prospectus will be made.
34. As permitted by Polish law, BPH has issued uncertificated securities and does not maintain a share register. Accordingly, any information about BPH shareholdings in Canada can only be determined on a limited enquiry basis by BPH. Based on a recent shareholder survey of institutional investors by BPH (which enquiry accounted for 86.48% of the issued and outstanding shares of BPH), the Applicant believes that there is only one holder of BPH Shares resident in Canada (in the province of Québec), holding 6,689 BPH Shares representing approximately 0.02% of the BPH Shares outstanding. The Applicant is unable to definitively confirm the accuracy of the shareholder survey.

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35. If any material relating to the Offers is required by law to be sent by the Applicant to holders of HVB Shares in Germany, or to holders of Bank Austria Shares in Austria or to holders of BPH Shares in Poland, such material will also be sent, as applicable, to holders of such shares residing in the Jurisdictions (if addresses are known), along with an English translation for convenience purposes, and will be concurrently filed with the Commission and the securities regulatory authorities in the Non-Principal Jurisdictions.
36. A public announcement in English in a Canadian newspaper and in French in a newspaper that is widely circulated within Quebec, will be made at the same time as the public announcement of each of the HVB Offer, the Bank Austria Offer and the BPH Offer in Germany, Austria and Poland, respectively, is made in a national newspaper in those jurisdictions or as soon as practicable after receipt of the order requested hereby, and will specify where and how all Canadian shareholders may obtain a copy of the relevant offer document free of charge.
37. All of the holders of HVB Shares, Bank Austria Shares and BPH Shares to whom the Offers are made will be treated equally.
38. In Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia and Newfoundland and Labrador, the *de minimis* take-over bid exemption is not available to the Applicant since none of the Offers is being made in compliance with the laws of a jurisdiction that is recognized by the applicable Decision Makers for the purposes of the *de minimis* take-over bid exemption. Also, because none of HVB, Bank Austria or BPH maintains a share register (with the exception of HVB in respect of HVB Preferred Shares, all of which shares are held by a foundation of the State of Bavaria), the Applicant is unable to determine conclusively the number of holders of the HVB Common Shares, Bank Austria Shares and BPH Shares resident in each of the Jurisdictions, or the number of such shares held by any such persons.
39. An exemption from the Registration Requirements is not available in Québec and Prince Edward Island for trades made in connection with the Offers.
40. An exemption from the Prospectus Requirements is not available in British Columbia, Québec and Prince Edward Island for trades made in connection with the Offers.

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41. If the requested relief is not granted, holders of HVB Common Shares, Bank Austria Shares and BPH Shares resident in the Jurisdictions will not have the opportunity to participate in the Offers, as applicable.

Decision

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 under the Legislation is that the Requested Relief is granted provided that:

- A. in Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia and Newfoundland and Labrador, the Applicant is exempt from the Take-over Bid Requirements in making the HVB Offer to the shareholders of HVB who are resident in the Jurisdictions, the Bank Austria Offer to the shareholders of Bank Austria who are resident in the Jurisdictions and the BPH Offer to the shareholders of BPH who are resident in the Jurisdictions provided that:
 - (i) the HVB Offer and all amendments to the HVB Offer are made in compliance with the laws of Germany, the Bank Austria Offer and all amendments to the Bank Austria Offer are made in compliance with the laws of Austria and the BPH Offer and all amendments to the BPH Offer are made in compliance with the laws of Poland; and
 - (ii) any material relating to the Offers that is sent to the holders of the HVB Common Shares in Germany, Bank Austria Shares in Austria and BPH Shares in Poland will be sent to the holders of the HVB Common Shares, Bank Austria Shares and BPH Shares, respectively, resident in the Jurisdictions, and copies thereof filed with the Decision Maker in each Jurisdiction;
- B. in Ontario, Québec and Prince Edward Island, the Registration Requirements shall not apply to trades made in connection with the Offers; and
- C. in British Columbia, Ontario, Québec and Prince Edward Island, the Prospectus Requirements shall not apply to trades made in connection with the Offers provided that the first trade in British Columbia and Prince Edward Island in UniCredit Shares newly issued by the Applicant in connection with the Offers shall be a distribution unless the conditions of subsection (1) of section 2.14 of Multilateral Instrument 45-102 are

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satisfied, and in Quebec, the alienation (first trade) of the UniCredit Shares newly issued by the Applicant in connection with the Offers are executed through the facilities of an exchange or market outside Canada.

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Paul K. Bates