

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications -- Take-over bid -- Exemption from Part XX of Securities Act (Ontario) -- De minimis exemption unavailable because Japan is not a jurisdiction recognized for the purposes of clause 93(1)(e) of the Securities Act (Ontario) -- Bid exempted from the requirements of Part XX, subject to certain conditions.

## **Applicable Ontario Statutory Provisions**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 93(1)(e), 95-100, 104(2)(c).

## **Recognition Orders Cited**

In the Matter of the Recognition of Certain Jurisdictions (Clauses 93(1)(e) and 93(3)(h) of Act) (1997) 20 OSCB 1035.

**April 20, 2007**

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,  
MANITOBA, ONTARIO, QUEBEC, NOVA SCOTIA,  
NEW BRUNSWICK AND NEWFOUNDLAND AND  
LABRADOR  
(the "Jurisdictions")**

**AND**

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

**AND**

**IN THE MATTER OF  
CITIGROUP JAPAN INVESTMENTS LLC  
(the "Filer")**

**MRRS DECISION DOCUMENT**

## **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 formal take-over bid requirements

contained 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, 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") shall not apply to the proposed offer (the "Citigroup Japan Offer") by the Filer for the issued and outstanding shares of common stock, rights to subscribe for new shares of common stock and share purchase warrants (collectively, the "Nikko Cordial Securities") of Nikko Cordial Corporation ("Nikko Cordial").

Under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"):

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

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

### **Representations**

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

1. Citigroup Inc. ("Citigroup") is a corporation incorporated under the laws of Delaware. Citigroup is a leading global financial institution and has approximately 200 million customer accounts in more than 100 countries, providing retail and corporate customers, governments and institutions with a broad range of financial products and retail banking, credit card, consumer finance, investment banking, securities and asset management services.
2. The Filer is a limited liability company incorporated under the laws of Delaware. The Filer's registered office is located at 1290 Orange Street, Wilmington, Delaware, 19801. The Filer is a wholly-owned subsidiary of Citigroup and was established for the purpose of carrying out the Citigroup Japan Offer. The Filer is not a reporting issuer or the equivalent in any of the Jurisdictions.
3. Nikko Cordial is a joint stock corporation incorporated under the laws of Japan. Nikko Cordial primarily offers securities-related financial services. Specifically, Nikko Cordial has four core business lines: (i) the retail securities business providing mainly individual customers with investment consulting services for various financial instruments; (ii) the asset management business providing all types of investors, including individuals, companies and foreign investors, with asset management services; (iii) the investment banking business providing

comprehensive services for corporate clients relating to management and financial strategies, ranging from capital raising and asset management to IPO-related services and M&A-related advice; and (iv) the merchant banking business investing its own capital in equities, debt, securitized products and alternative investment products issued by both listed or privately held companies. Nikko Cordial's registered office and headquarters are located at 6-5, Nihonbashi kabutocho, Chuo-ku, Tokyo.

4. The issued and outstanding shares of common stock of Nikko Cordial (the "Nikko Cordial Shares") are listed on the Tokyo Stock Exchange, the Osaka Securities Exchange, the Nagoya Stock Exchange and the Stock Exchange of Singapore. Nikko Cordial is not a reporting issuer or the equivalent in any of the Jurisdictions. The Nikko Cordial Securities are not listed or quoted for trading on any Canadian stock exchange or market.

5. On March 13, 2007, Citigroup announced that it would make an offer through the Filer to acquire all of the Nikko Cordial Securities for, in the case of the Nikko Cordial Shares, cash consideration of 1,700 yen per share, in the case of the rights to subscribe for Nikko Cordial Shares, cash consideration of 1 yen per right and in the case of the share purchase warrants, cash consideration of between 1 and 312,000 yen per warrant, depending on the series of warrant.

6. The Citigroup Japan Offer is being made in accordance with the Securities and Exchange Law of Japan, the Securities and Exchange Law Enforcement Order, various Ministry ordinances issued by the Cabinet Office of Japan, the Corporate Law of Japan and the regulations of the Tokyo Stock Exchange (the "Laws of Japan"). In the context of take-over bids, the shareholder protections contained under the Laws of Japan are comparable to those contained in the Legislation, including treating all shareholders of the same class similarly, requiring an offeror to make full and prompt disclosure of all material information, giving shareholders sufficient information, advice and time to reach an informed decision, and avoiding oppression of minority shareholders.

7. On March 14, 2007, the Filer issued a detailed press release, in both the Japanese and English languages, outlining the terms of the Citigroup Japan Offer, and filed a Japanese language registration statement (the "Registration Statement"), which is available on-line at [www.edinet.go.jp/EdiHTML/main.htm](http://www.edinet.go.jp/EdiHTML/main.htm). The Filer has prepared an English translation of the Registration Statement as well as the Japanese press release summarizing the Registration Statement and has made those documents available on the Nikko Citigroup Limited (English language) website at [http://www.nikkocitigroup.com/english/about\\_us/press\\_releases/citigroup\\_0315.html](http://www.nikkocitigroup.com/english/about_us/press_releases/citigroup_0315.html). This website will be updated with all amendments to the Registration Statement.

8. The Registration Statement contains disclosure of information with respect to, among other things: (i) The Filer as the offeror; (ii) Citigroup as the parent of the Filer; (iii) elements of the capital structure and the recent performance of Nikko Cordial; (iv) reasons for the Citigroup Japan Offer; (v) particulars of the Nikko Cordial Securities; (vi) Citigroup's primary intentions if the transaction is completed as contemplated in the Registration Statement; (vii) procedures for accepting the Citigroup Japan Offer; and (viii) other material information. The Filer has filed a copy of the Registration Statement with the Decision Maker in each of the Jurisdictions.

9. The Filer expects that the offer will be open for acceptance from March 15, 2007 to April 26, 2007.

10. Nikko Cordial's issued share capital as at February 1, 2007 consisted of 963,824,552 Nikko Cordial Shares. The Nikko Cordial Shares constitute "voting securities" for the purposes of the definition of "take-over bid" in the Legislation.

11. Based on the best information available to the Filer as of April 3, 2007 (including the shareholders list and other information provided by Nikko Cordial to the Filer, in addition to investigations by the Filer and the Filer's tender offer agent), the Filer has identified no known registered holders of Nikko Cordial Securities in the Jurisdictions; however, the Filer has identified the following number of beneficial holders of Nikko Cordial Shares resident in the Jurisdictions holding the following number of Nikko Cordial Shares:

<b>Jurisdiction</b>	<b>Number of Nikko Cordial Shareholders</b>	<b>Number of Nikko Cordial Shares Held</b>	<b>Percentage of Outstanding Nikko Cordial Shares</b>
Ontario	4	16,086,600	1.67%
British Columbia	2	41,506,500	4.31%
Québec	1	167,036	0.02%
<b>TOTAL</b>	<b>7</b>	<b>57,760,136</b>	<b>6.00%</b>

12. Except for the information provided in paragraph 11 hereof, the Filer is not aware of any additional beneficial holders of Nikko Cordial Securities resident in the Jurisdictions.

13. If the Filer sends any material(s) relating to the Citigroup Japan Offer generally to holders of Nikko Cordial Securities in Japan, it will also send such materials to holders of Nikko Cordial Securities resident in the Jurisdictions (if addresses are known), along with an English translation for convenience purposes.

14. On April 14, 2007, a public announcement was made in a national Canadian newspaper and in a French language newspaper widely distributed in Québec specifying where and how the holders of Nikko Cordial Shares may obtain a copy of the Registration Statement or an English convenience translation free of charge.

15. In accordance with the Laws of Japan, the Citigroup Japan Offer treats all holders of Nikko Cordial Securities (including those holders of Nikko Cordial Securities resident in the Jurisdictions) equally and holders of Nikko Cordial Securities resident in the Jurisdictions will be entitled to participate in the Citigroup Japan Offer on terms at least as favourable as the terms that apply to the general body of holders of Nikko Cordial Securities.

16. The *de minimis* take-over bid exemption as provided for in the Legislation is not available to the Filer because the Citigroup Japan Offer is not being made in compliance with the laws of a jurisdiction that is recognized by the Decision Maker in each of the Jurisdictions for this purpose.

## **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 Filer is exempt from the Take-over Bid Requirements in making the Citigroup Japan Offer to the holders of Nikko Cordial Securities who are resident in the Jurisdictions, provided that:

(a) the Citigroup Japan Offer and all amendments to the Citigroup Japan Offer are made in compliance with the Laws of Japan, and

(b) any material relating to the Citigroup Japan Offer that is sent to the holders of the Nikko Cordial Securities in Japan will be sent to the holders of the Nikko Cordial Securities resident in the Jurisdictions whose addresses are known to the Filer, along with an English translation for convenience purposes, and copies thereof are concurrently filed with the Decision Maker in each Jurisdiction.

"Robert L. Shirriff"  
Ontario Securities Commission

"James Turner"  
Ontario Securities Commission