

IN THE MATTER OF THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA,
ONTARIO, QUEBEC, NEW BRUNSWICK, NOVA SCOTIA,
PRINCE EDWARD ISLAND, NEWFOUNDLAND, 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
MORGAN GUARANTY TRUST COMPANY OF NEW YORK

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 Morgan Guaranty Trust Company of New York ("Morgan Guaranty") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that Morgan Guaranty is exempt from various registration, prospectus and filing requirements of the Legislation in connection with the banking activities to be carried on by Morgan Guaranty in the Jurisdictions;

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

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

1. Morgan Guaranty is the principal bank subsidiary of J P Morgan & Co. Incorporated ("J P Morgan") in the United States. J P Morgan is a bank holding company formed under the laws of the United States for holding subsidiaries engaged globally in providing a wide range of financial services, including finance and advisory, sales and trading, and asset management services;
2. Morgan Guaranty currently conducts business in Canada through J.P. Morgan Canada ("Morgan Canada"), the Schedule II bank subsidiary of Morgan Guaranty listed in Schedule II to the *Bank Act* (Canada) (the "Bank Act"), J.P. Morgan Securities Canada Inc., a registered investment dealer, and J.P. Morgan Investment Management, which maintains a representative office in Canada;

3. Morgan Canada is involved in wholesale deposit-taking, commercial lending and related treasury functions;

4. Morgan Canada only accepts deposits from the following:

(a) Her Majesty in right of Canada or in right of a province or 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;

(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 counseling, 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 legislation 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;

(g) an entity (other than an individual) that has, for the fiscal year immediately preceding the initial deposit, gross revenues on its own books and records of greater than \$5 million; or

(h) 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 Purchasers".

5. Morgan Canada participates in the primary and secondary market in the following money market products: commercial paper, certificates of deposit, repurchase agreements and bankers' acceptances;

6. Morgan Canada engages in foreign exchange trading;

7. The only advising activities which Morgan Canada undertakes are incidental to its primary business and it has not and will not, nor will Morgan Guaranty, advertise itself as an adviser or allow itself to be advertised as an adviser in the Jurisdictions;

8. In June of 1999 amendments to the Bank Act were proclaimed that permit foreign commercial banks to establish direct branches in Canada. These amendments have created a new Schedule III listing foreign banks permitted to carry on banking activities through branches in Canada;

9. Morgan Guaranty has been granted an order under the Bank Act on April 17, 2000 permitting it to establish a full service branch under the Bank Act and designating it on Schedule III to the Bank. Morgan Guaranty will take over the wholesale deposit-taking, corporate lending and treasury functions currently conducted by Morgan Canada;

10. The Legislation applicable in each Jurisdiction refers to either "Schedule I and Schedule II banks", "banks", "savings institutions" or "financial institutions" in connection with certain exemptions however no reference is made in any of the Legislation to entities listed on Schedule III to the Bank Act;

11. In order to ensure that Morgan Guaranty, 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 Morgan Guaranty 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;

THE DECISION of the Decision Makers pursuant to the Legislation is that in connection with the banking business to be carried on by Morgan Guaranty in the Jurisdictions:

1. Morgan Guaranty 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. Morgan Guaranty 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 Morgan Guaranty where Morgan Guaranty 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 (referred to in this Decision as a "Schedule I or II Bank Exempt Trade") are filed and paid in respect of the trade to Morgan Guaranty, and

(ii) the first trade in a security acquired by Morgan Guaranty pursuant to this Decision is deemed a distribution (or primary distribution to the public) under the Applicable Legislation unless:

(a) the issuer of the security is a reporting issuer, or the equivalent, under the Applicable Legislation and, if Morgan Guaranty is in a special relationship (where such term is defined in the Applicable Legislation) with such issuer, Morgan Guaranty has reasonable grounds to believe that such issuer is not in default of any requirements of the Applicable Legislation;

(b) (i) the securities are listed and posted for trading on a stock exchange, that is recognized by the Decision Maker of the applicable Jurisdiction for purposes of the resale of a security acquired in a Schedule I or II Bank Exempt Trade, and comply with the requirements set out in paragraph (a) or (b) of Appendix A to this Decision and have been held at least six months from the date of the initial exempt trade to Morgan Guaranty or the date the issuer became a reporting issuer, or the equivalent, under the Applicable Legislation,

whichever is the later, or

(ii) the securities are bonds, debentures or other evidences of indebtedness issued or guaranteed by an issuer or are preferred shares of an issuer and comply with the requirements set out in paragraph (a) or (a) of Appendix A to this Decision and have been held at least six months from the date of the initial exempt trade to Morgan Guaranty or the date the issuer became a reporting issuer, or the equivalent, under the Applicable Legislation, whichever is the later, or

(iii) the securities are listed and posted for trading on a stock exchange, that is recognized by the Decision Maker of the applicable Jurisdiction for purposes of the resale of a security acquired in a Schedule I or II Bank Exempt Trade, or are bonds, debentures or other evidences of indebtedness issued or guaranteed by the reporting issuer, or the equivalent, under the Applicable Jurisdiction whose securities are so listed, and have been held at least one year from the date of the initial exempt trade to Morgan Guaranty or the date the issuer became a reporting issuer, or the equivalent, under the Applicable Legislation, whichever is later, or

(iv) the securities have been held at least eighteen months from the date of the initial exempt trade to Morgan Guaranty or the date the issuer became a reporting issuer, or the equivalent, under the Applicable Legislation, whichever is later; and

(c) Morgan Guaranty files a report within 10 days of the trade prepared and executed in accordance with the requirements of the Applicable Legislation that would apply to a Schedule I or II Bank Exempt Trade,

provided that no unusual effort is made to prepare the market or to create a demand for such securities and no extraordinary commission or consideration is paid in respect of such trade and provided Morgan Guaranty does not hold sufficient number of securities to materially affect the control of the issuer of such securities but any holding by Morgan Guaranty of more than 20 per cent of the outstanding voting securities of the issuer of such securities shall, in the absence of evidence to the contrary, be deemed to affect materially the control of such issuer;

4. Provided Morgan Guaranty only trades the types of securities referred to in this paragraph 4 with Authorized Purchasers, trades of bonds, debentures or other evidences of indebtedness of or guaranteed by Morgan Guaranty shall be exempt from the registration and prospectus requirements of the Legislation; and

5. Evidences of deposit issued by Morgan Guaranty to Authorized Purchasers shall be exempt from the registration and prospectus requirements of the Legislation.

THE FURTHER DECISION of the Decision Maker in Ontario is that:

A. Subsection 25(1)(a) of the *Securities Act* (Ontario) R.S.O. 1990 c. S.5 (as amended) (the "Ontario Act") does not apply to a trade by Morgan Guaranty:

(i) of a type described in subsection 35(1) of the Ontario Act or section 151 of the Regulations made under the Ontario Act; or

(ii) in securities described in subsection 35(2) of the Ontario Act; and

B. Except as provided for in paragraph 3 of this Decision, section 28 of Schedule I to the Regulations made under the Ontario Act shall not apply to trades made by Morgan Guaranty in reliance on this Decision.

DATED at Toronto this "20th" day of September, 2000.

APPENDIX A

(a) are preferred shares of a corporation if,

(i) the corporation has paid a dividend in each of the five years immediately preceding the date of the initial exempt trade at least equal to the specified annual rate upon all of its preferred shares, or

(ii) the common shares of the corporation are, at the date of the initial exempt trade, in compliance with paragraph (b) of this Appendix A;

(b) are fully paid common shares of a corporation that during a period of five years that ended less than one year before the date of the initial exempt trade has either,

(i) paid a dividend in each such year upon its common shares, or

(ii) had earnings in each such year available for the payment of a dividend upon its common shares,

of at least 4% of the average value at which the shares were carried in the capital stock account of the corporation during the year in which the dividend was paid or in which the corporation had earnings available for the payment of dividends as the case may be;

(c) are bonds debentures or other evidences of indebtedness issued or guaranteed by,

(i) a corporation if, at the date of the initial exempt trade, the preferred shares or the common shares of the corporation which comply with paragraph (a) or (b) of this Appendix A, or

(ii) a corporation if its earnings in a period of five years ended less than one year before the date of the initial exempt trade have been equal in sum total to at least ten times and in each of any four of the five years have been equal to at least 1-1/2 times the annual interest requirements at the date of the initial exempt trade on all indebtedness of or guaranteed by it, other than indebtedness classified as a current liability in its balance sheet, and, if the corporation at the date of the initial exempt trades owns directly or indirectly more than 50% of the common shares of another corporation, the earnings of the corporations during the said period of five years may be consolidated with due allowance for minority interests, if any, and in that event the interest requirements of the corporation shall be consolidated and such consolidated earnings and consolidated interest requirements shall be taken as the earnings and interest requirements of the corporation, and, for the purpose of this subclause, "earnings" mean earnings available to meet interest charges on indebtedness other than indebtedness classified as a current liability.