

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA,
ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUEBEC, NEW BRUNSWICK,
PRINCE EDWARD ISLAND, NOVA SCOTIA, NEWFOUNDLAND, THE NORTHWEST
TERRITORIES, NUNAVUT AND THE YUKON TERRITORY

AND

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

AND

IN THE MATTER OF
NATIONAL CITY BANK

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, Prince Edward Island, Nova Scotia, Newfoundland, the Northwest Territories, Nunavut and the Yukon Territory (the "Jurisdictions") has received an application from National City Bank (the "Bank") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that, upon being recognized as an "authorized foreign bank" (as defined in the Bank Act (Canada) (the "Bank Act")), the Bank be exempt from various registration, prospectus and filing requirements of the Legislation in connection with the authorized foreign bank activities of the Bank.

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 the Bank to the Decision Makers that:

1. The Bank is a United States incorporated bank and is a "foreign bank", as such term is defined in section 2 of the Bank Act.
2. The Bank currently conducts commercial lending activities in Canada through National City Canada, Inc. ("NCC"), its wholly-owned Canadian subsidiary. NCC is a private corporation incorporated under the Ontario Business Corporations Act and is not a financial institution regulated by the Bank Act.
3. Until recently, a foreign bank was not allowed under the Bank Act to establish a branch in Canada and could only carry on commercial lending activities by establishing a foreign bank subsidiary in Canada or, with the consent of the Minister of Finance, by establishing a private corporation. The Bank and NCC received an order of the Minister of Finance to establish NCC.

4. In 1999, the Bank Act was amended to add Part XII.1, which creates the concept of an "authorized foreign bank". Under the Bank Act, an "authorized foreign bank" is a foreign bank that has applied to the Minister of Finance (the "Minister") for an order under section 524(l) of the Bank Act (an "AFB Order") permitting such foreign bank to become an authorized foreign bank. An authorized foreign bank is permitted to establish a branch in Canada to, among other things, carry on commercial lending activities,

5. The Bank received an AFB Order on December 8, 2000. The Bank expects to commence commercial lending activities by setting up a Canadian branch upon receipt of this MRRS decision document. The Bank expects that it will likely wind up NCC once the new branch is in place. Once established, the Bank's branch operations will be limited to commercial lending activities. The Bank will not operate a retail lending business nor be a deposit taking institution in Canada.

6. For purposes of this Decision "Authorized Purchasers" shall mean:

(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 legislature 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 trade, gross revenues on its own books and records of greater than \$5 million; or

(h) any other person if the trade is, in the aggregate, greater than \$150,000.

7. The relief requested will be necessary to facilitate the daily operations of the branch to be established by the Bank pursuant to its AFB Order.

AND WHEREAS pursuant to the System this MRRS Decision Document evidences the decision of the 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 authorized foreign banking activities to be carried on by the Bank in the Jurisdictions:

1. The Bank is exempt from the requirement under the Legislation, where applicable, to be registered as an underwriter with respect to the same types of securities that an entity listed on Schedule I or 11 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. The Bank 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 the Bank where the Bank 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 the Bank, and

(ii) the first trade in a security acquired by the Bank 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 the Bank is in a special relationship (where such term is defined in the Applicable Legislation) with such issuer, the Bank 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 the Bank 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 (c), of Appendix A to this Decision, and have been held at least six months from the date of the initial exempt trade to the Bank 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 the Bank 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 the Bank or the date the issuer became a reporting issuer, or the equivalent, under the Applicable Legislation, whichever is later; and

(c) the Bank 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 the Bank does not hold sufficient number of securities to materially affect the control of the issuer of such securities but any holding by the Bank 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 the Bank 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 the Bank shall be exempt from the registration and prospectus requirements of the Legislation.

THE FURTHER DECISION of the Decision Maker in Ontario is that in connection with the authorized foreign banking activities to be carried on by the Bank in Ontario:

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

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

(ii) in securities described in subsection 35(2) of the Act.

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

DATED at Toronto this 5th day of January, 2001.

Headnote

MRRS -Underwriter and advisor registration relief for Schedule III Bank - prospectus and registration relief for trades where Schedule III Bank purchasing as principal and first trade relief for Schedule III Bank - prospectus and registration relief for trades of bonds, debentures and other evidences of indebtedness of or guaranteed by schedule III Bank provided trades involve only specified purchasers - fee relief for trades made in reliance on Decision.

Statutes -Cited

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 25(l)(a)&(c), 34(a), 35(l)(3)(i), 35(2)1(c), 53(i), 72(l)(a)(1), 73(l)(a) and 147.

Regulations Cited

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am., ss. 151, 206, 218, Schedule I s.28.

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,