

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, AND NORTHWEST TERRITORIES

AND

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

AND

IN THE MATTER OF  
STATE STREET BANK AND TRUST COMPANY

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland, and the Northwest Territories and Yukon Territory (with the exception of Nunavut) (the "Jurisdictions"), has received an application (the "Application") from State Street Bank and Trust Company ("State Street") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that State Street be exempt from various registration, prospectus and filing requirements of the Legislation in connection with the banking activities to be carried on by State Street 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 State Street to the Decision Makers that:

1. State Street was originally incorporated in the State of Massachusetts as the Union Bank in 1792. The charter under which it now operates was authorized by a special act of the Massachusetts Legislature in 1891, and its present name was adopted in 1960. It is a member of both the Federal Reserve System and the U.S. Federal Deposit Insurance Corporation. State Street has maintained an active presence in Canada since 1988. State Street Trust Company Canada ("SSTCC") is a federally incorporated trust company and is a wholly owned subsidiary of State Street International Holdings, which in turn is a wholly owned subsidiary of State Street. SSTCC is currently registered as a trust company in all provinces and territories (with the exception of Nunavut) under provincial trust or financial services legislation.
2. SSTCC was originally incorporated (as State Street Canada Inc.) on May 19, 1988 and was continued as a federal trust company on May 3, 1995. SSTCC has offices in Toronto and Montreal as well as a sales office in Vancouver. As at July 31, 2000, SSTCC had 356 employees in the following five divisions:

- (i) Pension and Institutional Custody which provides global custody services to collective investment funds including manager-sponsored pooled funds and fund accounting to pension funds and manager-sponsored pooled funds;
- (ii) Mutual Fund and Insurance which provides global custody services to Canadian registered mutual funds and insurance company segregated funds;
- (iii) Securities Operations which provides safekeeping and settlement services in relation to the Canadian securities of State Street's clients;
- (iv) Support Services which includes Finance, Human Resources, Sales and Marketing, Information Technology, and Legal divisions; and
- (v) State Street Global Markets ("SSGM") which provides foreign exchange trading services, money market services, currency risk management services, e-finance and deposit taking services for the custody clients of SSTCC and other third party funds.

3. SSTCC has other wholly owned subsidiaries. State Street Global Advisors, Ltd. ("SSgA"), provides investment counselling and portfolio management services to institutional clients and was incorporated under the *Canada Business Corporations Act* in May of 1990. It is registered in Ontario as a limited market dealer (conditional), investment counsel, portfolio manager and commodity trading manager. SSgA is also registered in the provinces of Quebec, Alberta, British Columbia, Manitoba, New Brunswick and Nova Scotia and is seeking registration in the remaining provinces. State Street Brokerage Services Canada Inc. ("SSBSC") was incorporated under the *Canada Business Corporations Act* in April of 1999 and provides brokerage services primarily, but not limited to, Canadian institutional investors. It is a member of the Toronto Stock Exchange and the Investment Dealers Association of Canada. SSBSC is registered as an investment dealer in Ontario, a non-resident investment dealer in Alberta and British Columbia and is in the process of obtaining registrations in Quebec.

4. The treasury function within SSTCC also engages in proprietary risk taking activities through the SSGM division including interest rate and currency trading. The treasury function also manages the investment portfolio of SSTCC holding Canadian government debt and the use of derivative products as asset/liability management tools.

5. State Street will only accept 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* (Canada); (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; (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 counselling, 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 initial deposit, gross revenues on its own books and records of greater than \$5 million; or

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

collectively referred to for purposes of this Decision Document as "Authorized Purchasers".

6. In June of 1999 amendments to the *Bank Act* (Canada) 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;

7. State Street has published on January 6, 2001, its notice of intention to apply for an order under the *Bank Act* (Canada) permitting it to establish a full-service branch under Schedule III to the *Bank Act* (Canada). State Street will take over the current wholesale deposit-taking, corporate lending, custody and treasury functions currently conducted by the SSGM division of SSTCC. State Street intends to restructure its present operations in Canada by establishing a full-service branch, while maintaining SSTCC to support its custodial and fiduciary activities.

8. 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* (Canada).

9. In order to ensure that State Street, as an entity listed on Schedule III to the *Bank Act* (Canada), is able to provide banking services to businesses in the Jurisdictions it requires similar exemptions applicable to banking institutions incorporated under the *Bank Act* (Canada) to the extent that the current exemptions applicable to such banking institutions are relevant to the banking business being undertaken by State Street 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 State Street in the Jurisdictions:

1. State Street 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* (Canada) may act as an underwriter in respect of without being required to be registered under the Legislation as an underwriter.

2. State Street 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 State Street where State Street 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* (Canada) 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 State Street; and

(ii) the first trade in a security acquired by State Street 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 State Street is in a special relationship (where such term is defined in the Applicable Legislation) with such issuer, State Street 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 State Street 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 State Street 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 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

State Street 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 State Street or the date the issuer became a reporting issuer, or the equivalent, under the Applicable Legislation, whichever is later; and

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

5. Evidences of deposit issued by State Street 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 the registration requirements of the Legislation of Ontario does not apply to a trade by State Street:

(i) of a type described in subsection 35(1) of the *Securities Act* (Ontario) R.S.O. 1990 c.S.5 (as amended) (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.

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 trades by State Street of the type described in s. 1.1 of Rule 32-503 to the Ontario Act.

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 State Street in reliance on this decision.

DATED May 10<sup>th</sup>, 2001.

"Howard I. Wetston"

"Robert W. Davis"

#### 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.

#### 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 a guaranteed by Schedule III Bank provided trades involve only specified purchases - prospectus and registration relief for evidences of deposits issued by Schedule III bank to specified purchases - fee relief for trades made in reliance on Decision.

#### Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c.S.5, as am., 25(1)(a)&(c), 34(a), 35(1)(3)(i), 35(2)1(c), 53(i), 72(l)(a)(i), 73(1)(a), 74(1), 147.

#### Regulations Cited

Regulation made under the Securities Act, R.R.O. Reg. 1015, as am., s.151, 206, 218. Schedule 1 Section 28.