

**IN THE MATTER OF  
THE SECURITIES LEGISLATION  
OF  
BRITISH COLUMBIA, ALBERTA, MANITOBA, SASKATCHEWAN, 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  
CITIBANK, N.A.**

**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 in each of the territories of Nunavut, the Northwest Territories and Yukon Territory (the "Jurisdictions") has received an application (the "Application") from Citibank N.A. ("Citibank"), for a decision (the "Decision") pursuant to the securities legislation of the Jurisdictions (the "Legislation") that Citibank is exempt from various registration, prospectus and filing requirements of the Legislation in connection with the banking activities to be carried on by Citibank in the Jurisdictions;

**AND WHEREAS** under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission (the "OSC") is the principal regulator for this Application;

**AND WHEREAS** Citibank has represented to the Decision Makers that:

1. Citibank is a full-service commercial bank chartered as a National Bank under the laws of the United States with its principal office in New York, New York.
2. Citibank Canada is a foreign bank subsidiary of Citibank and is currently listed on Schedule II to the *Bank Act* (Canada) (the "Bank Act").
3. Citibank is not, and has no current intention of becoming, a reporting issuer in any Province of Canada, nor are any of its securities listed on any stock exchange in Canada.

4. 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 through branches in Canada.

5. Citibank has submitted an application (the "Bank Act Application") to the Office of the Superintendent of Financial Institutions Canada ("OSFI") for an order establishing a full service foreign bank branch in Canada and for an order approving the commencement and carrying on of business in Canada pursuant to sections 524 and 534 of the Bank Act.

6. Upon approval of the Bank Act Application, Citibank will establish and commence business as a foreign bank branch under the Bank Act. The head office of Citibank in Canada will be located in Toronto, Ontario.

7. The operations of Citibank's foreign bank branch will be primarily comprised of wholesale deposit-taking, commercial lending and related treasury functions.

8. Citibank intends to offer its deposit-taking, commercial lending and related treasury services primarily to the following investors:

(a) Her Majesty in right of Canada or in right of a province or a 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 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 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 gross revenues on its own books and records of greater than \$5 million as of the date of its most recent annual financial statements; 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".

9. The only advising activities which Citibank intends to undertake will be incidental to its primary business and it will not advertise itself as an adviser or allow itself to be advertised as an adviser in the Jurisdictions;

10. Under the current legislation, banks chartered under Schedules I and II to the Bank Act have numerous exemptions from various aspects of the Legislation; however no reference is made in any of the Legislation to entities listed on Schedule III to the Bank Act. Since Citibank's foreign bank branch will not be chartered under Schedule I or II to the Bank Act, the existing exemptions relating to the registration, prospectus and filing requirements will not be available to it;

11. In order to ensure that Citibank, as an entity listed on Schedule III to the Bank Act, will be 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 to be undertaken by Citibank in the Jurisdictions;

**AND WHEREAS** under the System, this MRRS Decision Document evidences the Decision of each of the Decision Makers;

**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 under the Legislation is that upon the establishment by Citibank of a branch designated on Schedule III to the Bank Act and in connection with the banking activities to be carried on by Citibank in the Jurisdictions by such branch:

1. Citibank 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. Citibank is exempt from the requirement under the Legislation to be registered as an adviser where the performance of the services as an adviser is solely incidental to its primary banking business;
3. A trade of a security to Citibank where Citibank 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, by an entity listed on Schedule I or II to the Bank Act (referred to in this Decision as a "Schedule I or II Bank Exempt Trade") are filed and paid in respect of the trade to Citibank;

(ii) the first trade in a security acquired by Citibank 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 Citibank is in a special relationship (where such term is defined in the Applicable Legislation) with such issuer, Citibank 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 Citibank 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 Citibank 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 Jurisdiction whose securities are so listed, and have been held at least one year from the date of the initial exempt trade to Citibank 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 Citibank or the date the issuer became a reporting issuer, or the equivalent, under the Applicable Legislation, whichever is later; and

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

5. Evidences of deposit issued by Citibank 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 upon the establishment by Citibank of a branch designated on Schedule III to the Bank Act and in connection with the banking activities to be carried on in Ontario by Citibank through such branch:

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 Citibank:

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

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

(iii) in the security of a mutual fund, if the security is sold to a pension plan, deferred profit sharing plan, retirement savings plan or other similar capital accumulation plan maintained by the sponsor of the plan for its employees, and

(a) the employees deal only with the sponsor in respect of their participation in the plan and the purchase of the security by the plan, or

(b) the decision to purchase the security is not made by or at the direction of the employee; or

(iv) in a security of a mutual fund that

(a) is administered by a body corporate to which the *Trust and Loan Companies Act* (Canada) applies or a trust, loan or insurance corporation incorporated by or under an Act of the legislature of a province or territory in Canada,

(b) consists of a pool of funds that,

(A) results from, and is limited to, the combination or commingling of funds of pension or other superannuation plans registered

under the *Income Tax Act* (Canada),  
and

(B) is established by or related to persons or companies that are associates or affiliates of or that otherwise do not deal at arm's length with the promoters of the mutual fund, except the trust, loan or insurance corporation that administers the fund, and

(c) is managed, in whole or in part, by a person who is registered or who is exempt from registration under the Ontario Act; and

B. Section 53 of the Ontario Act does not apply to a trade by Citibank in:

(i) a security of a mutual fund, if the security is sold to a pension plan, deferred profit sharing plan, retirement savings plan or other similar capital accumulation plan maintained by the sponsor of the plan for its employees, and

(a) the employees deal only with the sponsor in respect of their participation in the plan and the purchase of the security by the plan, or

(b) the decision to purchase the security is not made by or at the direction of the employee, or

(ii) the security of a mutual fund that

(a) is administered by a body corporate to which the *Trust and Loan Companies Act* (Canada) applies or a trust, loan or insurance corporation incorporated by or under an Act of the Legislature of a province or territory in Canada,

(b) consists of a pool of funds that,

(A) results from, and is limited to, the combination or commingling of funds of pension or other superannuation plans registered under the *Income Tax Act* (Canada), and

(B) is established by or related to persons or companies that are associates or affiliates of or that otherwise do not deal at arm's length with the

promoters of the mutual fund except the trust, loan or insurance corporation that administers the fund, and

(c) is managed, in whole or in part, by a person who is registered or who is exempt from registration under the Ontario Act; and

C. 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 Citibank in reliance of this Decision.

**DATED** this "31st" day of August, 2001.

"Paul Moore"

"John Geller"

#### **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**

Mutual Reliance Review System - 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, subject to certain conditions - prospectus and registration relief for trades of bonds, debentures and other evidences of indebtedness of or guaranteed by Schedule III Bank provided trades with specified purchasers - prospectus and registration relief for evidences of deposits by Schedule III Bank to specified purchasers - registration relief similar to the relief available to financial intermediaries - fee relief for trades made in reliance on Decision.

### **Applicable Statutory Provisions**

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

### **Applicable Rules**

Rule 32-502 - Registration Exemption for Certain Trades by Financial Intermediaries.

### **Regulations Cited**

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am.