

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

AND

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

AND

IN THE MATTER OF  
COMERICA BANK

MRRS DECISION DOCUMENT

**WHEREAS** the Canadian 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 Labrador and the Northwest Territories, Nunavut Territory and Yukon Territory (the "Participating Jurisdictions") has received an application (the "Application") from Comerica Bank ("Comerica Bank") for a decision pursuant to the securities legislation of the Participating Jurisdictions (the "Legislation") that Comerica Bank is exempt from various registration, prospectus and filing requirements of the Legislation in connection with the banking activities to be carried on by Comerica Bank in the Participating 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 Comerica Bank to the Decision Makers that:

1. Comerica Bank is the principal bank subsidiary of Comerica Incorporated in the United States. Comerica Bank has maintained an active presence in Canada since 1996. Comerica Bank-Canada is a foreign bank subsidiary of Comerica Bank currently listed on Schedule II of the *Bank Act* (Canada) (the "Bank Act").

2. Comerica Bank-Canada provides a wide range of corporate banking services to Canadian companies and subsidiaries of U.S. companies carrying on business in Canada, including cash management, foreign exchange, credit and related banking services. Local treasury operations of Comerica Bank-Canada provide funding and liquidity for the various activities of Comerica Bank-Canada. Comerica Bank-Canada is an active participant in the overnight interbank market,

accepts term deposits from major Canadian and multinational corporations and derives a portion of its funding from brokered deposits. These deposits are evidenced by certificates of deposit registered in the holder's name, bearer deposit notes or printed confirmations addressed to the depositor. The treasury function within Comerica Bank-Canada also engages in derivatives activities.

3. Comerica Bank 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; (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 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 that 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 that has total assets under administration of greater than \$10 million;

(g) an entity (other than an individual), that for the fiscal year immediately preceding the initial deposit, had 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".

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 to the Bank Act listing foreign banks permitted to carry on banking activities through branches in Canada.

5. Comerica Bank is seeking an order under the Bank Act permitting it to establish a full service branch under the Bank Act to be listed on Schedule III to the Bank Act. Comerica Bank will take over the current corporate banking services and treasury functions currently conducted by Comerica Bank-Canada.

6. The Legislation applicable in each Participating 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.

7. In order to ensure that Comerica Bank, as an entity listed on Schedule III to the Bank Act, is able to provide banking services to businesses in the Participating Jurisdictions, it requires the same exemptions as other federally regulated banks to the extent that the current exemptions applicable to Schedule I and II banks are relevant to the business being undertaken by Comerica Bank-Canada in the Participating Jurisdictions.

8. Comerica Bank will be performing certain foreign exchange advisory services in connection with its principal banking business.

**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 upon the establishment by Comerica Bank of a branch designated on Schedule III to the Bank Act and in

connection with the banking business to be carried on by Comerica Bank through such branch in the Participating Jurisdictions:

1. Comerica Bank 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. Comerica 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 Comerica Bank and where Comerica Bank purchases the security as principal shall be exempt from the registration and prospectus requirements of the Legislation of the Participating Jurisdiction in which the trade takes place (the "Applicable Legislation") provided that:

(a) 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 Comerica Bank; and

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

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

(ii) (a) the securities are listed and posted for trading on a stock exchange, that is recognized by the Decision Maker of the applicable Participating Jurisdiction for purposes of the resale of a security acquired in a Schedule I or II Bank Exempt Trade, and comply with the requirements of either clause 433(1)(m) or (n), as the case may be, of the *Insurance Act* (Ontario) (the "Insurance Act"), set out in paragraph (a) or (b) of Appendix A to this Decision Document and have been held at least six months from the date of the initial exempt trade to Comerica Bank or the date the issuer became a reporting issuer, or the equivalent, under the Applicable Legislation, whichever is the later, or

(b) 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 of either of clause 433(1)(k) or (m) of the Insurance Act set out in paragraph (a) or (c) of Appendix A to this Decision Document, and have been held at least six months from the date of the initial exempt trade to Comerica Bank or the date the issuer became a reporting issuer, or the equivalent, under the Applicable Legislation, whichever is the later, or

(c) the securities are listed and posted for trading on a stock exchange, that is recognized by the Decision Maker of the applicable Participating 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 Participating Jurisdiction whose securities are so listed, and have been held at least one year from the date of the initial exempt trade to Comerica Bank or the date the issuer became a reporting issuer, or the equivalent, under the Applicable Legislation, whichever is later, or

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

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

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

A. Paragraph 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 Comerica Bank:

(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 Comerica Bank in reliance on this Decision.

DATED at Toronto this "28<sup>th</sup>" day of August , 2001.

"Paul M. Moore"

"R. Stephen Paddon"

#### APPENDIX A

Securities that are:

(a) 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) 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) 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., ss. 1(1) "underwriter", 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., s. 204, Schedule I s. 28.