

THE MORTGAGE DEALERS ACT)	Order No. 3902
)	
Section 55)	October 3, 2002

BNY TRUST COMPANY OF CANADA

WHEREAS:

(A) BNY Trust Company of Canada ("BNY") has applied to The Manitoba Securities Commission (the "Commission") for an order pursuant to section 55 of *The Mortgage Dealers Act* SM 1985-86, c.16 – Cap M210 (the "Act") exempting BNY from the registration requirements of section 2(1) of the Act;

(B) BNY has represented to the Commission that:

1. BNY was incorporated as 3812863 Canada Inc. by Certificate of Incorporation under the *Canada Business Corporations Act* on September 21, 2000. BNY is a wholly-owned subsidiary of The Bank of New York, which is the principal subsidiary of The Bank of New York Company, Inc.

2. BNY was continued as a federal trust company under the *Trust and Loan Companies Act* (Canada) on May 4, 2001, and became a member of the Canada Deposit Insurance Corporation.

3. The registered office and head office of BNY are located in Toronto, Ontario.

4. The address for service in Manitoba for BNY is c/o Aikins, MacAulay & Thorvaldson, 30th Floor, Commodity Exchange Tower, 360 Main Street, Winnipeg, Manitoba R3C 4G1.

5. As a provider of trust services in Canada, BNY serves both corporate and government issuers. BNY provides a full range of trust and agency services to Canadian debt issuers and non-Canadian issuers wishing to issue debt in the Canadian market. Such trust and agency services include acting as issuer trustee, indenture trustee, and custodian for securitizations, acting as trustee, paying agent and registrar for debt securities, acting as escrow agent, acting as bare trustee, acting as security and collateral agent, acting as insurance trustee, and acting as trustee for pooled and mutual funds.

6. BNY does not accept deposits and does not require deposit insurance in order to carry on its business. BNY is in the process of discontinuing its membership in the Canada Deposit Insurance Corporation. BNY will continue to be a federal trust company.

7. BNY will continue its activities relating to the securitization of mortgages. In this regard, BNY's services will include that of custodian, master servicer and special servicer. In its capacity of custodian, securitized mortgages will be registered in the name of BNY. As master servicer, BNY will perform the entirety of the administrative functions that would be performed by a mortgage lender. As special servicer, BNY will perform collection and enforcement functions in the event that a mortgagee defaults on its obligations under a mortgage.

8. BNY will maintain at its address for service in Manitoba a copy of all material contracts and records relating to its business in Manitoba.

9. The definition of "mortgage dealer" in section 1 of the Act includes a person who registers a mortgage, a mortgage of a mortgage, or a transfer of a mortgage in the mortgage dealer's name where another person or other persons have contributed mortgage monies or are entitled to share the proceeds of the mortgage, or both. Accordingly, the activities of BNY may bring it within the scope of the definition of "mortgage dealer" in the Act.

10. In most other jurisdictions, an exemption from the registration requirements of parallel legislation exists for trust companies or loan companies. However, the parallel exemption from the registration requirements in section 3(1) of the Act is available only to a trust company or loan company insured under a policy of deposit insurance issued by the Canada Deposit Insurance Corporation. Accordingly, the exemption in section 3(1)(c) of the Act will not apply to BNY.

11. All issuances of securities as part of securitization transactions in which BNY will conduct activities within the scope of the definition of "mortgage dealer" in the Act will be made in compliance with applicable securities legislation, and investors will have the benefit of statutorily mandated disclosure. The activities of BNY are regulated by the provisions of the *Trust and Loans Companies Act* (Canada) and are insured under insurance policies required to be maintained under such Act.

(C) In the opinion of the Commission it would not be prejudicial to the public interest to grant the order requested.

IT IS ORDERED:

1. THAT, pursuant to section 55 of the Act, BNY is exempt from the registration requirements of section 2(1) of the Act with respect to the activities of BNY as custodian, master servicer and special servicer, as described herein.

2. THAT the fee for this order shall be \$150.00.

BY ORDER OF THE COMMISSION

Deputy Director - Legal