

**IN THE MATTER OF THE  
SECURITIES ACT, R.S.N.S, 1989, c. 418, as amended  
(the "Act")**

**AND**

**IN THE MATTER OF  
MELLON BANK, N.A.**

**RULING  
(Subsection 79(1) of the Act)**

UPON an application from Mellon Bank, N.A. (the "**Applicant**" or the "**MBNA**") on its own behalf and on behalf of its affiliates to the Nova Scotia Securities Commission (the "**Commission**") for a ruling under section 79(1) of the Act that, where the Applicant or any of its affiliates have been appointed to act as administrator (a "**Plan Administrator**") of a dividend or distribution reinvestment plan ("**DRIP**") of an issuer, section 31 of the Act shall not apply to the trade made by the Applicant or any of its affiliates with a participant in the DRIP (a "**Plan Participant**") when the Applicant for itself and on behalf of its affiliates accepts a direction (a "**Sale Order**") from the Plan Participant to sell, on behalf of the Plan Participant, securities of the issuer, that are held under the DRIP for the Plan Participant, through appropriately registered broker-dealers;

AND UPON considering the application and the recommendations of the Staff of the Commission;

AND UPON the Applicant having represented to the Commission that:

1. MBNA is a Schedule III Bank under the *Bank Act* (Canada) with a branch in Toronto, Ontario. MBNA is a National Association chartered and supervised by the Office of the Comptroller of the Currency of the United States of America ("U.S.").
2. MBNA proposes to establish an office of its Toronto, Ontario branch in Halifax, Nova Scotia. The activities to be carried out at the Halifax office include the operation of a call centre operating as part of the global Plan Administrator business of MBNA and its affiliates.
3. MBNA and its affiliates act as Plan Administrators for a substantial number of DRIPs, employee stock option plans and employee stock purchase plans

which are maintained by a number of issuers in various jurisdictions around the world. Most of the Plan Administrator business is undertaken for domestic U.S. issuers of equity securities or issuers with American Deposit Receipt programs in the U.S.

4. As part of the call centre operations, staff of the Halifax office of MBNA will receive, by telephone, sale orders from Plan Participants. The staff will access the Plan Participant's DRIP account information electronically and enter the sale order information into MBNA or its affiliates' computer systems, verbally confirming the sale order with the Plan Participant during the telephone call.
5. The Plan Administrators will receive the sale order information, which is entered electronically by staff of the Halifax office. Such information will be transmitted electronically by staff at the Halifax office and then received electronically by the Plan Administrators' representatives at other locations outside of Canada. From such locations outside of Canada, instructions to execute the sale orders, which may be batched with other orders, including sale orders from Plan Participants received by the Plan Administrators through other means, such as mail, will be given by representatives of the Plan Administrators to registered broker-dealers, who may be affiliated with MBNA.
6. Only sell orders at the market price are accepted by the Plan Administrators and no advice regarding the decision to sell or hold the securities would be offered to any Plan Participants by the Plan Administrators.

AND UPON the Commission being satisfied that to do so would not be prejudicial to the public interest;

IT IS RULED pursuant to subsection 79(1) of the Act that section 31 of the Act shall not apply to the receipt by the Applicant for itself and on behalf of its affiliates of a Sale Order by a Plan Participant provided that:

- (a) the Applicant is, at the relevant time, an authorized foreign bank named in Schedule III of the *Bank Act* (Canada);
- (b) the Sale Order is not solicited, and for this purpose such sale will not be considered "solicited" by reason of the issuer, or the Applicant or any of its affiliates on behalf of the issuer, distributing from time to time to Plan Participants disclosure documents, notices, brochures, statements of account, or similar documents advising of the ability under the DRIP of the Applicant or any of its affiliates to facilitate sales of securities or by reason of the issuer or the Applicant or any of

its affiliates advising Plan Participants of that ability, and informing Plan Participants of the details of the operations of the DRIP in response to enquiries from time to time from Plan Participants by telephone or otherwise.

DATED at Halifax, Nova Scotia this 13<sup>th</sup> day of December, 2007

NOVA SCOTIA SECURITIES COMMISSION



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