



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

February 24, 2005

Paul R. Eckert, Esq.
Wilmer Cutler Pickering Hale and Dorr LLP
2445 M Street, N.W.
Washington, D.C. 20037

**Re: CIBC Mellon Trust Company—Waiver Request under Regulation A and
Rule 505 of Regulation D**

Dear Mr. Eckert:

This is in response to your letter dated today, written on behalf of CIBC Mellon Trust Company ("CMTC") and constituting an application for relief under Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D under the Securities Act of 1933 ("Securities Act"). You requested relief from disqualifications from exemptions available under Regulation A and Rule 505 of Regulation D that arise by virtue of the entry of a Final Judgment dated today by the United States District Court for the District of Columbia permanently enjoining CMTC from violating Section 5 of the Securities Act and Sections 10(b), 15(a), and 17A of the Securities Exchange Act of 1934 ("Exchange Act"), and Rule 10b-5 thereunder, and from aiding and abetting future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and ordering that CMTC pay disgorgement in the amount of \$889,773, prejudgment interest thereon, and a civil monetary penalty of \$5,000,000 pursuant to Section 20(d) of the Securities Act and Section 21(d) of the Exchange Act (the "Final Judgment").

For purposes of this letter, we have assumed as facts the representations set forth in your letter and the findings supporting entry of the Final Judgment. We have also assumed that CMTC will comply with the Final Judgment.

On the basis of your letter, I have determined that you have made a showing of good cause under Rule 262 and Rule 505(b)(2)(iii)(C) that it is not necessary under the circumstances to deny the exemptions available under Regulation A and Rule 505 of Regulation D by reason of the entry of the Final Judgment. Accordingly, pursuant to delegated authority, CMTC is granted relief from disqualifications from exemptions otherwise available under Regulation A and Rule 505 of Regulation D that arise as a result of entry of the Final Judgment.

Very truly yours,

A handwritten signature in cursive script that reads "Gerald J. Laporte".

Gerald J. Laporte
Chief, Office of Small Business Policy

February 24, 2005

Paul R. Eckert

BY HAND DELIVERY

Gerald J. Laporte, Esq.
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Re: In the Matter of Pay Pop, HO-7503

Dear Mr. Laporte:

This letter is submitted on behalf of our client, CIBC Mellon Trust Company ("CMTC"), the settling defendant in an injunctive action arising out of the above-captioned investigation. CMTC hereby requests, pursuant to Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D of the Securities and Exchange Commission (the "Commission") promulgated under the Securities Act of 1933 (the "Securities Act"), waivers of any disqualifications from exemptions under Regulations A and D that may be applicable to CMTC and any of its affiliates as a result of the entry of Final Judgment as to Defendant CIBC Mellon Trust Company (the "Final Judgment"), which is described below. CMTC requests that these waivers be granted effective upon the entry of the Final Judgment.¹ It is our understanding that the Division of Enforcement does not object to the grant of the requested waivers.

BACKGROUND

The staff of the Commission engaged in settlement discussions with CMTC in connection with an injunctive action arising out of the above-captioned investigation pursuant to Sections 20(b) and 22(a) of the Securities Act and Section 27 of the Securities Exchange Act of 1934 (the "Exchange Act"). As a result of these discussions, CMTC submitted a Consent to Entry of Judgment (the "Consent") that was presented by the staff of the Commission to the United States District Court for the District of Columbia (the "Court") on February 16, 2005, when the

¹ As a result of the settlement discussions, CMTC also submitted an Offer of Settlement of CIBC Mellon Trust Company (the "Offer") that was presented to the Commission. In the Offer, solely for the purpose of proceedings brought by or on behalf of the Commission or in which the Commission is a party, CMTC has consented to the entry of an Order Instituting Public Administrative Proceedings Pursuant to Sections 15(b) and 17A(c) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions (the "Order"), without admitting or denying the findings contained therein (other than those relating to the jurisdiction of the Commission which are admitted).

Commission filed its complaint (the "Complaint") against CMTC in a civil action captioned Securities and Exchange Commission v. CIBC Mellon Trust Company, 1:05 CV 00333 (PLF) (D.D.C. Feb. 16, 2005).

In the Consent, solely for the purpose of proceedings brought by or on behalf of the Commission or to which the Commission is a party, CMTC agreed to consent to the entry of the Final Judgment without admitting or denying the matters set forth therein (other than those relating to the jurisdiction of the district court over it and the subject matter of the action). Under the terms of the Final Judgment, which was entered on February 24, 2005, the Court permanently enjoined CMTC from future violations of Securities Act Section 5, Exchange Act Section 10(b) and Rule 10b-5, Exchange Act Section 17A, Exchange Act Section 15(a), and from aiding and abetting future violations of Exchange Act Section 10(b) or Rule 10b-5. The Final Judgment resolved the Complaint's allegations that CMTC had failed to register as a transfer agent with the Commission, that it had acted as a broker-dealer in connection with its administration of employee stock plans without registering with the Commission or acting pursuant to an exemption from registration, that it had issued "legend free" stock certificates of a company whose shares were not registered with the Commission, and that one of its senior managers had accepted payments of stock from that company's officers to issue the certificates. The Final Judgment also required that CMTC pay disgorgement in the amount of \$889,773 and prejudgment interest of \$140,270 and pay a civil monetary penalty of \$5,000,000 pursuant to Section 20(d) of the Securities Act and Section 21(d) of the Exchange Act.

DISCUSSION

CMTC understands that the entry of the Final Judgment may disqualify it and its affiliated entities from certain exemptions under Regulation A and Rule 505 of Regulation D promulgated under the Securities Act, insofar as the Final Judgment causes CMTC to be subject to an order, judgment, or decree of a court of competent jurisdiction permanently enjoining it from engaging in or continuing prescribed conduct in connection with the purchase or sale of any security. CMTC is concerned that, should be it deemed to be an "issuer" for the purposes of Securities Act Rule 262(a)(4), CMTC and those of its issuer affiliates who rely upon or may rely upon these offering exemptions when issuing securities would be prohibited from doing so. The Commission has the authority to waive the Regulation A and D exemption disqualifications upon a showing of good cause that such disqualifications are not necessary under the circumstances. See 17 C.F.R. §§ 230.262 and 230.505(b)(2)(iii)(C).

CMTC requests that the Commission waive any disqualifying effects that the Final Judgment may have under Regulation A and Rule 505 of regulation D with respect to CMTC or its issuer affiliates on the following grounds:

1. CMTC's conduct addressed in the Final Judgment does not pertain to Regulation A or D.

2. CMTC has undertaken to register as a transfer agent with the Commission and to improve its policies and procedures, which will help or has helped prevent recurrence of the conduct at issue. For example, CMTC has enhanced its procedures for the issuance of restricted securities, including strengthened procedures governing the documentation required for the issuance of restricted securities from treasury. CMTC has also undertaken to engage an independent consultant to review its procedures. Finally, CMTC expects to receive an order from the Commission exempting it from registration under Exchange Act Section 15(a) subject to specified conditions.

3. The disqualification of CMTC and any of its issuer affiliates from the exemptions under Regulation A and Rule 505 of Regulation D would be unduly and disproportionately severe given the nature of the violations addressed in the Final Judgment and the extent to which disqualification may affect the business operations of CMTC's affiliates by impairing the ability to issue securities pursuant to these exemptions to raise new capital or for other purposes. In addition, the disqualification of CMTC and its issuer affiliates from the regulatory exemptions may place CMTC or its issuer affiliates at a competitive disadvantage with respect to third parties that might seek to invest in securities that rely on the regulatory exemptions.

4. The disqualification of CMTC and any of its issuer affiliates from the exemptions under Regulation A and Rule 505 of Regulation D would also be unduly and disproportionately severe, given that: (a) the Final Judgment relates to activity that has already been addressed pursuant to CMTC's undertakings in a related Commission administrative proceeding and (b) CMTC must pay disgorgement and a significant civil monetary penalty pursuant to the Final Judgment.

In light of the grounds for relief discussed above, we believe that disqualification is not necessary, in the public interest or for the protection of investors, and that CMTC has shown good cause that relief should be granted. Accordingly, we respectfully urge the Commission to waive, effective upon the entry of the Final Judgment, the disqualification provisions in Regulation A and Rule 505 of Regulation D to the extent they may be applicable to CMTC and any of its affiliates as a result of the entry of the Final Judgment.²

² We note in support of this request that the Commission has granted relief under Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D for similar reasons. *See, e.g.*, Sybaris Clubs Int'l, Inc., S.E.C. No-Action Letter (pub. avail. July 1, 1996); The Cooper Companies, Inc., S.E.C. No-Action Letter (pub. avail. Dec. 20, 1994); Michigan Nat'l Corp., S.E.C. No-Action Letter (pub. avail. Dec. 17, 1993); General Electric Co., S.E.C. No-Action Letter (pub. avail. May 24, 1988); *see also* Prudential Securities Inc., S.E.C. No-Action Letter (pub. avail. July 10, 2003); Credit Suisse First Boston Corporation, S.E.C. No-Action Letter (pub. avail. Jan. 29, 2002); Dain Rauscher, Incorporated, S.E.C. No-Action Letter (pub. avail. Sept 27, 2001); Legg Mason Wood Walker, Incorporated, S.E.C. No-Action Letter (pub. avail. June 11, 2001); Prudential Securities Inc., S.E.C. No-Action Letter (pub. avail. Jan 29, 2001).

Gerald J. Laporte, Esq.
Chief, Office of Small Business Policy
U.S. Securities and Exchange Commission
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If you have any questions regarding this request, please contact me at the above-listed number.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Eckert", with a long horizontal flourish extending to the right.

Paul R. Eckert