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December 28, 2020

BY EMAIL AND FEDERAL EXPRESS

Emily W. Russell  
Chief Counsel  
Division of Trading and Markets  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington DC 20549

Re: Request for No-Action Relief from Broker-Dealer Registration for Amalco Trust Company and Amalco Parent Company

Dear Ms. Russell:

On behalf of Amalco Trust Company (“Amalco Trust”) and its parent company, Amalco Parent Company (“Amalco Parent”) (together, “Amalcos”),<sup>1</sup> we are writing to request that the Division of Trading and Markets staff (“Staff”) of the Securities and Exchange Commission (“Commission” or “SEC”) confirm that it would not recommend enforcement action against Amalcos for violation of Section 15(a) of the Securities Exchange Act of 1934, as amended (“Exchange Act”) in connection with their administration of certain dividend reinvestment and stock purchase plans, employee stock purchase plans, employee stock option plans and odd-lot programs with U.S. resident investors (“Stock Plans”) in reliance on the exemption issued by the Commission on June 18, 2009 (the “Broker-Dealer Order”) to CIBC Mellon Trust Company (“CIBC Mellon Trust”).<sup>2</sup> Subsequent to the Broker-Dealer Order, the Staff granted no-action relief to Canadian Stock Transfer Company, Inc. (“CST”) and its affiliate, CST Trust Company (“CST Trust”) in connection with their acquisition and operation of the CIBC Mellon Stock Plan

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<sup>1</sup> The ultimate names of Amalco Trust and Amalco Parent have not yet been finalized.

<sup>2</sup> Exchange Act Release No. 60136 (June 18, 2009).

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business on the same terms as those set forth in the Broker-Dealer Order.<sup>3</sup> As a result of corporate name changes, CST and CST Trust are currently known as AST Trust Company (“AST Trust”) and AST Investor Services, Inc. (“AST Investor Services”).

TMX Group, Limited (“TMX Group”) has entered an agreement to acquire the transfer agent business of Canadian Stock Transfer Holdings, LLC operated through AST Trust and AST Investor Services. As discussed further below, when the acquisition has been completed the final result under Canadian corporate law will be a change in control of AST Trust and AST Investor Services such that they are ultimately owned by TMX Group and operated by the Amalcos, each of which will be a wholly-owned subsidiary of TMX Group. Amalco Trust and Amalco Parent will be registered with the Commission as transfer agents and propose to operate the AST Stock Plan business in the same manner and pursuant to the same conditions set forth in the Broker-Dealer Order and March 2015 No-Action letter. This letter requests no-action relief on the same terms as those set forth in the Broker-Dealer Order and the March 2015 No-Action Letter.

### **The Broker-Dealer Order and No-Action Letters**

In the Broker-Dealer Order, the Commission granted CIBC Mellon Trust a limited conditional exemption from the:

- (i) broker-dealer registration requirement of Section 15(a)(1) of the Exchange Act to the extent that CIBC Mellon Trust acted as a broker as defined in Section 3(a)(4) of the Exchange Act in connection with its administration of Stock Plans with U.S. resident investors (pursuant to the Commission’s authority under Section 15(a)(2) of the Exchange Act); and
- (ii) reporting and other requirements specifically imposed by the Exchange Act, and the rules and regulations thereunder, on a broker or dealer that is not registered with the Commission to the extent CIBC Mellon acted as a broker under Section 3(a)(4) of the Exchange Act in connection with its administration of Stock Plans with U.S. resident

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<sup>3</sup> Canadian Stock Transfer Company, Inc. succeeded to the business that was the subject of the Broker-Dealer Order through an asset purchase of the CIBC Mellon Trust employee stock plan administration business. In 2013, the purchaser, CST, requested no-action relief with respect to broker dealer registration under Section 15(a)(1) of the Exchange Act with respect to its operation of the business on the same terms as the business was operated by CIBC. No-action relief was granted to CST by the Staff in March 2013. Canadian Stock Transfer Company Inc. (Publicly Available March 4, 2013). The no-action relief has been renewed two times, the last renewal of the staff no-action letter was in March 2015 and for an indefinite period (i.e., until the earlier of when the SEC either granted or denied CST’s request for an exemption from Section 15(a) or any staff modification or revocation of the no-action letter). Canadian Stock Transfer Company, Inc. (Publicly Available March 4, 2015)(“March 2015 No-Action Letter”). The conditions of the March 2015 No-Action Letter are the same as under the Broker-Dealer Order and have been incorporated by reference in each of the subsequent no-action letters.

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investors (pursuant to the Commission's authority under Section 36(a)(1) of the Exchange Act).

As described above, upon the sale of the CIBC stock plan administration business, the staff granted the purchaser no-action relief subject to the same conditions as the conditional exemption. That no-action relief has been renewed two-times, the latest renewal for an indefinite period.<sup>4</sup>

### **Proposed Acquisition of Stock Plan Business**

As proposed, the purchase of the AST transfer agent business by TMX Group will be implemented through several steps, including two "amalgamations" – a Canadian corporate transaction that essentially brings two entities together to form a new, amalgamated entity – that will occur within two months after the closing of the acquisition. Subsequent to the closing of the transaction and prior to the amalgamations, AST Trust and AST Investor Services will continue to operate the Stock Plan business pursuant to the terms of the March 2015 No-Action Letter. Similarly, after the amalgamations, the Stock Plan business will continue to be operated by the Amalcos pursuant to the March 2015 No-Action Letter.

First, TMX Group has established a new, wholly-owned Canadian entity – 12338602 Canada Inc. – that will acquire all the equity of AST Investor Services from its parent, Canadian Stock Transfer Holdings, LLC. AST Investor Services will then become a direct subsidiary of 12338602 Canada Inc. AST Trust will initially remain a direct wholly owned subsidiary of AST Investor Services and become an indirect wholly owned subsidiary of 12338602 Canada Inc.

12338602 Canada Inc. and AST Investor Services will undergo an amalgamation under Canadian law to form Amalco Parent, an amalgamated corporation. Amalco Parent will be issued a new certificate of amalgamation. Pursuant to the amalgamation, the property of each of 12338602 Canada Inc. and AST Investor Services continues to be the property of Amalco Parent, Amalco parent continues to be liable for the obligations of each of 12338602 Canada Inc. and AST Investor Services and the bylaws of AST Investor Services will be the Amalco Parent's bylaws.

Subsequently, Amalco Parent will distribute the shares of AST Trust to TMX Group. Also, AST Trust will amalgamate with TSX Trust Company, a wholly owned subsidiary of TMX Group and SEC registered transfer agent, to form Amalco Trust, an amalgamated entity. The amalgamation of the two trust companies will result in the issuance of Letters of Patent of amalgamation to Amalco Trust and the bylaws of AST Trust will continue to be the bylaws of

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<sup>4</sup> See Canadian Stock Transfer Company Inc. (Publicly Available March 4, 2014) and March 2015 No-Action Letter.

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Amalco Trust. After the second amalgamation, Amalco Parent and Amalco Trust will be sister corporations, directly owned by TMX Group.

Amalco Trust and Amalco Parent will register as transfer agents with the Commission under Section 17A(c) of the Exchange Act.

### **Effect of the Corporate Transaction**

Following the corporate transaction and amalgamations, the Amalcos will continue to conduct AST's Stock Plan business essentially as it was operated before the combination, including in compliance with all provisions of the Broker-Dealer Order and the March 2015 No-Action Letter. The expectation is that immediately after the transaction, the Stock Plan business will continue to operate from AST Trust's current address, with the same employees, and other aspects of AST Investor Services' and AST Trust's operations will continue as they are conducted now. The respective contractual obligations of AST Investor Services and AST Trust will continue to be performed by the Amalcos. Thus, there will be no substantive change in the operation of the Stock Plan business following the transaction and amalgamations. The requested relief will simply continue in a straight line from CIBC (the original recipient of the Broker-Dealer Order) to CST/AST to the Amalcos, with no change in the contours or conditions of doing business under the relief.

### **Request for Relief and Discussion**

In the Broker-Dealer Order, the Commission concluded that conducting the Stock Plan business involved the conduct of limited broker-dealer activities as well as transfer agent activities and granted a conditional exemption from registration as a broker-dealer regarding those activities. The staff issued no-action letters based on the Broker-Dealer Order. We respectfully request that the staff similarly grant no-action relief to the Amalcos in conducting that same Stock Plan business in the manner set forth in the Broker-Dealer Order and the March 2015 No-Action Letter.

In connection with its request, the Amalcos represent that they will comply with all of the terms and conditions imposed on CIBC Mellon in the Broker-Dealer Order and on CST and CST Trust in the March 2015 No-Action Letter (the Broker-Dealer Order and the March 2015 NAL are attached as Exhibit A to this letter), and will adhere to the same representations made in the Broker-Dealer Order and March 2015 No-Action Letter. Among these conditions are that the Amalcos will be retained directly by the issuer or its affiliate to provide Stock Plan services to that issuer's employees or shareholders and that they will only administer dividend reinvestment and stock purchase plans, employee stock option plans and odd-lot programs with U.S. resident investors for issuers for which they act as transfer agent. In addition, like CIBC Mellon Trust and the recipients of the March 2015 No-Action Letter, the Amalcos will be registered with the



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Commission as transfer agents, and their broker services will be provided only directly on behalf of issuers' Stock Plans (Amalco Trust will be in direct privity of contract with each issuer or its affiliate).

Granting the requested no-action relief is warranted for several reasons. First, Amalco Trust will be providing the same services previously provided by CIBC Mellon Trust and, subsequently, CST Trust (now AST Trust), to their Stock Plan clients and the participants in those Stock Plans. Second, as the Commission previously found in granting the exemptive relief, the Broker-Dealer Order imposes appropriate protections designed to safeguard investors' funds and securities. Third, as the Commission previously concluded in the Broker-Dealer Order, the limited nature of the broker-dealer activities to be performed by the Amalcos in connection with administering Stock Plans with U.S. resident investors under the terms of the Broker-Dealer Order will limit any risk that U.S. investors will be subject to abusive sales practices. Finally, in the absence of no-action relief, Amalco Trust will be required to restructure the methods already employed in the administration of Stock Plans, which not only would require a significant expenditure of resources but also would be likely to cause unnecessary confusion on the part of both issuers and Stock Plan participants. For example, absent no-action relief, Amalco Trust would need to enter an agreement with a registered U.S. broker-dealer effectively outsourcing that portion of its business involving U.S. issuers and investors. Issuers and investors that have long established relationships with a single transfer agent would now also receive communications from a third party inserted into the process. Issuers may raise issues about a vendor that they did not select, and investors may have questions about new entities that have access to their data. Granting the requested no-action relief will allow investors that have established relationships with issuers through Stock Plans currently administered by AST Trust to continue those relationships without interruption.

### **Conclusion**

Based on the foregoing, Amalco Trust and Amalco Parent respectfully request that the staff grant them no-action relief from the registration and related reporting and other requirements applicable to broker-dealers under the Exchange Act with respect to their administration of Stock Plans, provided that they comply with the terms and conditions and representations in the attached Broker-Dealer Order and March 2015 No-Action Letter.

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If you have any questions or require further information regarding this request, please me at the telephone number noted above.

Very truly yours,

Andre E. Owens

Enclosure

cc: Amer Chaudhry, Vice President – Legal, TMX Group  
Pierre Tellis, Senior Legal Counsel and CCO – TMX Trust  
Paul Architzel, WilmerHale

# **EXHIBIT A**

## SECURITIES AND EXCHANGE COMMISSION

Securities Exchange Act of 1934  
Release No. 60136 / June 18, 2009

### ORDER EXEMPTING CIBC MELLON TRUST COMPANY FROM BROKER-DEALER REGISTRATION

#### I. Introduction

Pursuant to Section 15(a)(2) of the Securities Exchange Act of 1934 (“Exchange Act”), the Securities and Exchange Commission (“Commission”) is granting CIBC Mellon Trust Company (“CIBC Mellon Trust”) a conditional exemption from the broker-dealer registration requirement of Section 15(a)(1) of the Exchange Act to the extent CIBC Mellon Trust acts, subsequent to the entry of this order, as a broker as defined in Section 3(a)(4) of the Exchange Act in connection with its administration of dividend reinvestment and stock purchase plans (collectively, “DRSPPs”), employee stock purchase plans, employee stock option plans, and odd-lot programs with U.S. resident investors. For purposes of this order, DRSPPs, employee stock purchase plans, employee stock option plans, and odd-lot programs shall be referred to collectively as “Stock Plans.” Pursuant to Section 36 of the Exchange Act, the Commission also is granting CIBC Mellon Trust a conditional exemption from the reporting and other requirements specifically imposed by the Exchange Act, and the rules and regulations thereunder, on a broker or dealer that is not registered with the Commission to the extent CIBC Mellon Trust acts, subsequent to the entry of this order, as a broker under Section 3(a)(4) of the Exchange Act in connection with its administration of Stock Plans with U.S. resident investors.

#### II. Background

CIBC Mellon Trust has agreed to consent to the entry of an order, without admitting or denying the findings, in which the Commission finds that it violated Sections 15(a)(1) and 17A(c)(1) of the Exchange Act. With respect to Section 15(a)(1), the Commission finds that, from 1998 to the present, CIBC Mellon Trust acted as a broker and dealer as defined in Sections 3(a)(4) and 3(a)(5) of the Exchange Act in connection with its administration of Stock Plans by engaging in the business of effecting securities transactions in these Stock Plans with U.S. resident investors.<sup>1</sup> With respect to Section 17A(c)(1), the Commission finds that, from 1998 to 2004, CIBC Mellon Trust acted as a transfer agent, as defined by Section 3(a)(25) of the Exchange Act, for 113 companies that have securities registered under Section 12 of the Exchange Act. At the time of this activity, CIBC Mellon Trust was not registered as a broker-dealer or as a transfer agent as required by Sections 15(a)(1) and 17A(c)(1) of the Exchange Act,

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<sup>1</sup> For purposes of this order, a U.S. resident investor is any participant in a Stock Plan who permanently resides in the United States. CIBC Mellon Trust shall treat all Stock Plan participants with U.S. mailing addresses as U.S. resident investors unless CIBC Mellon has been informed that a participant with a U.S. address is not a permanent U.S. resident.

respectively. Effective February 6, 2004, CIBC Mellon Trust registered with the Commission as a transfer agent.

In addition, CIBC Mellon Trust agreed to consent to the entry of a permanent injunction in a civil action in the United States District Court for the District of Columbia, permanently enjoining CIBC Mellon Trust from, among other things, future violations of Sections 15(a) and 17A(c) of the Exchange Act.

### **III. Discussion**

Section 15(a)(1) of the Exchange Act generally requires any broker or dealer that makes use of the mails or any instrumentality of interstate commerce to effect transactions in, or to induce the purchase or sale of, any security to register with the Commission. Section 3(a)(4) of the Exchange Act generally defines a broker as any person engaged in the business of effecting transactions in securities for the account of others, and Section 3(a)(5) of the Exchange Act generally defines a dealer as any person engaged in the business of buying and selling securities for its own account, whether through a broker or otherwise. In its complaint, the Commission alleged that, over the time period at issue, CIBC Mellon Trust violated Section 15(a)(1) by, in connection with its administration of Stock Plans, engaging in the business of effecting securities transactions for U.S. resident investors without being a registered broker-dealer.<sup>2</sup> Absent an exception or exemption, CIBC Mellon Trust would be required to register as a broker-dealer with the Commission to continue this activity.<sup>3</sup>

Section 15(a)(2) of the Exchange Act authorizes the Commission to exempt, either conditionally or unconditionally, from the broker-dealer registration requirements of Section 15(a)(1) of the Exchange Act any broker or dealer or class of broker or dealer, by rule or order, as it considers consistent with the public interest and the protection of investors. Similarly, but more broadly, Section 36 of the Exchange Act authorizes the Commission to exempt, either conditionally or unconditionally, any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, by rule, regulation, or order, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

Banks registered as transfer agents are conditionally excepted from broker-dealer registration under Section 3(a)(4)(B)(iv) of the Exchange Act for their activities in administering

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<sup>2</sup> CIBC Mellon Trust has consented to the entry of an injunction enjoining it from violating Section 15(a) of the Exchange Act based upon the allegations in the Commission's complaint. As the Commission recognized in addressing the Direct Registration System, some activities in connection with dividend reinvestment and stock purchase plans may require broker-dealer registration under Section 15(a) of the Exchange Act. See Exchange Act Release No. 35038 (Dec. 1, 1994), 59 FR 63652 (Dec. 8, 1994).

<sup>3</sup> Absent an exception or exemption, CIBC Mellon Trust also would be in violation of the injunction pertaining to Section 15(a) of the Exchange Act by engaging in these activities without being registered as a broker-dealer pursuant to Section 15(b) of the Exchange Act.

Stock Plans. CIBC Mellon Trust, however, is not a bank as defined in Section 3(a)(6) of the Exchange Act. Absent an exemption, CIBC Mellon Trust would be required to register with the Commission as a broker-dealer to continue to administer Stock Plans with U.S. resident investors.

The Commission has determined to grant CIBC Mellon Trust a limited conditional exemption from broker-dealer registration. The Commission finds that a limited exemption from broker-dealer registration, subject to the conditions set forth below, is consistent with the public interest and the protection of investors. CIBC Mellon Trust's Stock Plan administration activities require CIBC Mellon Trust to engage in limited broker-dealer activities, as well as transfer agent activities. CIBC Mellon Trust represents that in each case it is retained directly by the issuer or its affiliate to provide Stock Plan services to that issuer's employees or shareholders. CIBC Mellon Trust will only administer DRSPPs and odd-lot programs with U.S. resident investors for issuers for which it acts as transfer agent.<sup>4</sup> The Commission believes that granting a limited conditional exemption is warranted because (1) CIBC Mellon Trust is registered with the Commission as a transfer agent; (2) CIBC Mellon Trust's broker services will be provided only directly on behalf of the issuer's Stock Plan;<sup>5</sup> (3) the conditions of the exemption impose appropriate protections designed to safeguard investors' funds and securities; and (4) CIBC Mellon Trust's broker-dealer activities performed in connection with administering Stock Plans with U.S. resident investors will be limited, which will limit the risk that U.S. investors will be subject to abusive sales practices.<sup>6</sup> Moreover, the exemption will allow investors that have established relationships with issuers through Stock Plans administered by CIBC Mellon Trust to continue those relationships without interruption. Under these circumstances, the Commission believes that it is not necessary to require CIBC Mellon Trust to register both as a transfer agent and a broker-dealer.

The Commission therefore finds that it is consistent with the public interest and the protection of investors to exempt, subject to the conditions set forth below, CIBC Mellon Trust from the broker-dealer registration requirement of Section 15(a)(1) of the Exchange Act to the extent that CIBC Mellon Trust acts as a broker in connection with administering Stock Plans

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<sup>4</sup> The allegations in the Commission's complaint were limited to CIBC Mellon Trust's administration of Stock Plans with one or more U.S. resident investors. CIBC Mellon Trust's administration of Stock Plans with no U.S. resident investors was not the subject of Commission action. Neither this order nor the conditions set forth herein apply to Stock Plans with no U.S. resident investors.

<sup>5</sup> CIBC Mellon Trust represents that in each case it will be in direct privity of contract with the issuer or its affiliate.

<sup>6</sup> CIBC Mellon Trust will be prohibited from engaging in certain activities that it engaged in prior to the issuance of this order, such as netting customer orders to buy and sell issuer plan securities.



with U.S. resident investors for issuers.<sup>7</sup> This order is granted subject to the following conditions:

1. CIBC Mellon Trust will maintain its registration as a transfer agent under Section 17A of the Exchange Act as long as it continues to administer Stock Plans with U.S. resident investors.
2. In connection with administering Stock Plans with U.S. resident investors, CIBC Mellon Trust will not solicit transactions or provide investment advice to U.S. resident investors with respect to the purchase or sale of securities in connection with the Stock Plan, other than by delivering written or electronic Stock Plan materials to U.S. resident employees of the issuer, U.S. resident shareholders of the issuer, or U.S. resident members of affinity groups of the issuer so long as such materials are comparable in scope or nature to those permitted by the Commission as of the date of enactment of the Gramm-Leach-Bliley Act.<sup>8</sup>
3. In connection with administering Stock Plans with U.S. resident investors, CIBC Mellon Trust will not net customers' buy and sell orders. To the extent that CIBC Mellon Trust's administration of Stock Plans with U.S.

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<sup>7</sup> The Commission notes, however, that this order only addresses broker-dealer registration issues with regard to CIBC Mellon Trust as a Stock Plan administrator, and that nothing in this order affects prior positions with respect to plans or programs. See, e.g., Exchange Act Release No. 38067 (Dec. 20, 1996), 62 FR 520, 532 at n. 98 (Jan. 3, 1997)(adopting Regulation M governing the activities of underwriters, issuers, selling security holders and others in connection with offerings of securities). The Commission also recognizes that the administrative costs of such plans may be borne by either the issuers or the plan participants themselves. See, e.g., The Securities Transfer Association, Inc., SEC No-Action Letter (Dec. 1, 1994) (acknowledging that issuers may offer DRSPPs in which plan participants pay administrative fees).

<sup>8</sup> See Section 3(a)(4)(B)(iv) of the Exchange Act. For example, each brochure for Stock Plans with U.S. resident investors sponsored and administered by CIBC Mellon Trust will include a prominent statement on the cover that: "The Program is sponsored and administered by CIBC Mellon Trust, not by [the appointing issuer]." Each brochure will indicate that the securities held in program accounts are not subject to protection under the Securities Investor Protection Act of 1970. Each brochure will be plain and factual in tone and approach, and will be descriptive of all material Stock Plan features, contractual terms, and fee and processing arrangements, but not of the issuer's securities. The brochure will not encourage individuals to engage in any particular transactions, whether purchases or sales, and no advice or recommendations will be included in the brochure (or otherwise be given during the administration of Stock Plans).

Administration of Stock Plans involving shares required to be registered pursuant to the Securities Act of 1933 continues to be subject to the provisions set forth in the exemption issued to The Securities Transfer Association, Inc. See Exchange Act Release No. 35041 (Dec. 1, 1994).

resident investors results in a trade in the United States, CIBC Mellon Trust will direct such trade to a U.S.-registered broker or dealer for execution.

4. In connection with administering Stock Plans with U.S. resident investors, CIBC Mellon Trust will maintain with a bank (or banks) at all times a bank account (or accounts) for the exclusive benefit of customers that shall be separate from any other CIBC Mellon Trust bank account. Solely for purposes of this condition, a bank shall have the same meaning as in Exchange Act Rule 15c3-3(a)(7).<sup>9</sup> The account (or accounts) shall be designated as a “Special Bank Account for the Exclusive Benefit of Customers.” All customers’ funds in CIBC Mellon Trust’s custody and possession that are related to Stock Plans with U.S. resident investors will be maintained in such account (or accounts) until paid to the customer or the issuer, or used to settle a transaction with or through a broker or dealer.
  
5. In connection with administering Stock Plans with U.S. resident investors that make periodic purchases, if the specified time intervals for such periodic purchases are quarterly or more frequent, CIBC Mellon Trust will send each U.S. resident investor, at least quarterly, a written account statement containing at a minimum the information in items (a) through (h), below. In connection with administering all other Stock Plans with U.S. resident investors, CIBC Mellon Trust will send each U.S. resident investor, not later than four trading days after the date of the last transaction effected in the aggregated batch, a written transaction notification containing, at a minimum, the following information:
  - (a) The name of CIBC Mellon Trust;
  - (b) The name of the customer;
  - (c) The capacity in which CIBC Mellon Trust is acting;
  - (d) The date of each transaction for the account of the customer;
  - (e) The identity, price, and number of shares or units purchased or sold for the customer in each such transaction; and, in a periodic statement, the total number of shares or units of such securities held by the customer at the end of the account period;
  - (f) The aggregate amount of fees that the customer has paid or will pay in connection with the transaction;

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<sup>9</sup> 17 CFR 240.15c3-3(a)(7). Under this rule, with respect to a broker or dealer that maintains its principal place of business in the Dominion of Canada, the term “bank” also means a Canadian bank subject to supervision by an authority of the Dominion of Canada.



- (g) The source and amount of remuneration CIBC Mellon Trust has or will receive from a party other than the customer, unless the written statement or notification discloses whether CIBC Mellon Trust has received or will receive remuneration from a party other than the customer, and that CIBC Mellon Trust will furnish within a reasonable time the source and amount of this remuneration upon written request of the U.S. resident customer. This election is not available however, if, with respect to a purchase, CIBC Mellon Trust was participating in a distribution of that security or, with respect to a sale, CIBC Mellon Trust was participating in a tender offer for that security;<sup>10</sup> and
  - (h) The name of the registered broker-dealer utilized; or where there is no registered broker-dealer, the name of the person from whom the security was purchased or to whom the security was sold, or a statement that CIBC Mellon Trust will furnish this information within a reasonable time upon written request of the U.S. resident customer.
6. In connection with administering Stock Plans with U.S. resident investors, personnel at any call center operated by or on behalf of CIBC Mellon Trust will be limited to responding to inquiries received from a U.S. resident customer about a Stock Plan, but may not: (a) identify to a U.S. resident investor a particular security except as requested by the investor and then only as necessary to be responsive to the specific inquiry; (b) respond to inquiries from U.S. resident investors concerning the advisability of investing in the particular security or participating in the Stock Plan rather than using the services of a registered broker-dealer; or (c) take verbal orders to buy or sell securities for U.S. resident investors. Call center personnel may provide U.S. resident customers general information about Stock Plan services as described in the Stock Plan brochure and the status of the customer's account, as well as accommodate telephone requests for brochures, account statements, certificated shares and replacement dividend checks. CIBC Mellon Trust will be responsible for ensuring that call center personnel are strictly instructed not to provide recommendations or advice to U.S. resident customers and that they will be monitored and supervised closely in this respect.<sup>11</sup>
7. In connection with administering Stock Plans with U.S. resident investors, CIBC Mellon Trust will effect purchases and sales at least once a day

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<sup>10</sup> CIBC Mellon Trust would not be required to disclose any payments it receives from issuers for acting in a transfer agent capacity.

<sup>11</sup> This condition would not affect, for example, CIBC Mellon Trust's ability to operate a call center outside of the U.S. that takes orders from non-U.S. residents.

unless orders received produce such a low share volume as to dictate less frequent transaction intervals. In all cases, purchases and sales will occur at least once a week (assuming an order is received during the week), except in the case of Odd-Lot Plans, where purchases and sales will occur when sufficient shares have been tendered to constitute a standard unit of trading on the marketplace.

8. In connection with administering Stock Plans with U.S. resident investors, CIBC Mellon Trust will not receive payment for order flow, as defined in Exchange Act Rule 10b-10.<sup>12</sup>
9. In connection with administering Stock Plans with U.S. resident investors, CIBC Mellon Trust will make and keep current all material books and records relating to customers' funds, securities, and orders to purchase or sell securities, including the following:
  - (a) Records reflecting customer ownership in the Stock Plan;
  - (b) Any statement, checkbook, or cancelled check regarding any bank account established pursuant to condition 4 above; and records reflecting funds submitted by Stock Plan customers, funds held on behalf of customers pursuant to condition 4 above, and reconciliation of the funds submitted and the funds held;
  - (c) An original of any communication received by CIBC Mellon Trust from a Stock Plan customer or a copy of any materials sent to Stock Plan customers by CIBC Mellon Trust;
  - (d) A record of any order by a Stock Plan customer to purchase or sell securities;
  - (e) A copy of any transaction notification or statement sent pursuant to condition 5 above;
  - (f) A copy of any supervisory procedures relating to condition 6 above;
  - (g) A copy of any transaction notification received pursuant to condition 7 above; and
  - (h) A copy of any agreement relating to Stock Plans entered into with an affiliated or unaffiliated third party, including agreements with banks, broker-dealers, and entities providing services related to processing and call centers.

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<sup>12</sup> 17 CFR 240.10b-10.

10. Any record maintained pursuant to condition 9 will be retained for a period of not less than six years, the first year in a readily accessible place for purposes of examination and inspection by the Commission.

In sum, in finding that this exemption is appropriate in the public interest, we stress that (1) CIBC Mellon Trust will provide Stock Plan services to issuers' employees or shareholders only when it is retained directly by the issuer or its affiliate; (2) CIBC Mellon Trust will only administer DRSPPs and odd-lot programs with U.S. resident investors for issuers for which it acts as transfer agent; and (3) its activities as a registered transfer agent are subject to Commission regulation and inspection.<sup>13</sup> This exemption is subject to modification or revocation at any time the Commission determines that such modification or revocation is consistent with the public interest or the protection of investors.

IT IS THEREFORE ORDERED, pursuant to Section 15(a)(2) of the Exchange Act, that a conditional exemption for CIBC Mellon Trust from the registration requirements of Section 15(a)(1) of the Exchange Act to the extent CIBC Mellon Trust is acting as a broker under Section 3(a)(4) of the Exchange Act be, and hereby is, granted. This exemption is limited to administering Stock Plans with U.S. resident investors and subject to the conditions listed above.

IT IS FURTHER ORDERED, pursuant to Section 36 of the Exchange Act, that CIBC Mellon Trust shall be exempt, in connection with engaging in Stock Plan administration activities consistent with the conditions set forth above, from the reporting and other requirements specifically imposed by the Exchange Act, and the rules and regulations thereunder, on a broker or dealer that is not registered with the Commission to the extent CIBC Mellon Trust is acting as a broker under Section 3(a)(4) of the Exchange Act.<sup>14</sup>

IT IS FURTHER ORDERED, that the exemptions granted herein to CIBC Mellon Trust pursuant to Section 15(a)(2) and Section 36 of the Exchange Act shall become effective upon the date the United States District Court for the District of Columbia enters a final order permanently enjoining CIBC Mellon Trust from, among other things, future violations of Sections 15(a) and 17A(c) of the Exchange Act.

By the Commission.

Elizabeth M. Murphy  
Secretary

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<sup>13</sup> In contrast, the Stock Plan activities that are the subject of the Commission's enforcement order were conducted more broadly and outside any Commission oversight.

<sup>14</sup> CIBC Mellon Trust remains subject to all other applicable provisions of the federal securities laws, including, without limitation, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. 17 CFR 240.10b-5.





DIVISION OF  
TRADING AND MARKETS

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

March 4, 2015

Laura S. Pruitt  
Alston & Bird LLP  
950 F Street, NW  
Washington, DC 20004-1404

**Re: Request for No-Action Relief for Canadian Stock Transfer Company Inc.**

Dear Ms. Pruitt:

In your letter dated March 3, 2015, you request that the staff of the Division of Trading and Markets (“Staff”) grant no-action relief from Section 15(a)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) to Canadian Stock Transfer Company Inc. (“CST”) and its affiliate, CST Trust Company (“CST Trust”).<sup>1</sup> You request that the no-action relief be subject to the same representations and on the same terms and conditions as set forth in the an exemptive order granted to CIBC Mellon Trust Company (the “CIBC Mellon Order”).<sup>2</sup> Your requested relief is intended to allow CST to continue to operate CIBC Mellon Trust Company’s former transfer agency business, and you represent that no-action relief would help CST, Stock Plan investors and issuers to avert the negative consequences described in your letter.

Specifically, you seek an extension of the Staff’s assurance that it would not recommend enforcement action to the Commission against CST or CST Trust: (1) under Section 15(a)(1) of the Exchange Act if CST Trust acts as a broker as defined in Section 3(a)(4) of the Exchange Act in connection with its administration of certain dividend reinvestment and stock purchase plans, employee stock purchase plans, employee stock option plans, and odd-lot programs (collectively, “Stock Plans”) with U.S. resident investors, and (2) with respect to the reporting and other requirements specifically imposed by the Exchange Act, and the rules and regulations thereunder, on a broker or dealer that is not registered with the Commission to the extent permitted in the CIBC Mellon Order.<sup>3</sup> Your letter notes that the Commission is still considering CST’s request

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<sup>1</sup> You note that CST Trust was formerly known as Canadian Stock Transfer & Trust Company.

<sup>2</sup> See Order Exempting CIBC Mellon Trust Company from Broker-Dealer Registration, Exchange Act Release No. 60136 (June 18, 2009).

<sup>3</sup> See Letter to Laura S. Pruitt, Alston & Bird LLP from David W. Blass, Chief Counsel, Division of Trading and Markets, dated March 4, 2013.

Ms. Laura Pruitt

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for an exemption under Section 15(a)(1) pertaining to these activities.<sup>4</sup> The Staff's earlier no-action position was limited to the earliest of: (1) March 4, 2014; (2) the date of any denial by the Commission of the CST Exemption Request; (3) the effective date of any grant of the CST Exemption Request or a modification thereof; or (4) the date of any modification or revocation of the Staff's no-action position. In 2014, the staff extended this no-action position for one additional year.<sup>5</sup>

*Response:*

To provide the Commission with additional time to consider the application for permanent relief, your request for staff no action relief is granted. On the basis of the facts and representations contained in your letter, the Staff will not recommend enforcement action to the Commission under Section 15(a)(1) and the reporting and other requirements specifically imposed by the Exchange Act, and the rules and regulations thereunder, on CST Trust if it engages in a limited business as a securities broker on the same conditions, and subject to the same representations made by CIBC Mellon Trust Company, as those contained in the CIBC Mellon Order. Any different facts or representations may require a different conclusion.<sup>6</sup> CST and CST Trust may engage in no activities that would require registration as a broker except those permitted in the CIBC Mellon Order.

This no-action position will expire at the earliest of: (1) the date of any denial by the Commission of the CST Exemption Request; (2) the effective date of any grant of the CST Exemption Request or a modification thereof; or (3) the date of any modification or revocation of this no-action position by the Staff.

Sincerely,



Heather Seidel  
Chief Counsel

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<sup>4</sup> Letter from David H. Brill, General Counsel & Corporate Secretary, Canadian Stock Transfer Company Inc. to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated January 24, 2012 ("CST Exemption Request").

<sup>5</sup> Letter from David W. Blass, Chief Counsel, Trading and Markets to Laura S. Pruitt, Alston & Bird LLP dated March 4, 2014.

<sup>6</sup> In light of the very fact-specific nature of CST's request, the position expressed in this letter applies only to CST and CST Trust. No other entity may rely on this position.



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March 3, 2015

Via Email and First Class Mail

Heather A. Seidel  
Chief Counsel  
Division of Trading & Markets  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**Re: Request for Extension of No-Action Relief from Broker-Dealer Registration for CST Trust Company**

Dear Ms. Seidel:

On behalf of Canadian Stock Transfer Company Inc. ("CST") and its affiliate CST Trust Company ("CST Trust"),<sup>1</sup> we are writing to request that the Securities and Exchange Commission ("Commission" or "SEC") staff (the "Staff") confirm that it would not recommend enforcement action against CST Trust for violation of Section 15(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") in connection with its administration of certain dividend reinvestment and stock purchase plans, employee stock purchase plans, employee stock option plans and odd-lot programs with U.S. resident investors in reliance on the exemption issued by the Commission on June 18, 2009 (the "Broker-Dealer Order") to CIBC Mellon Trust Company ("CIBC Mellon Trust").<sup>2</sup> In the Broker-Dealer Order, the Commission granted CIBC Mellon Trust a limited conditional exemption from:

- (i) the broker-dealer registration requirement of Section 15(a)(1) of the Exchange Act to the extent that CIBC Mellon Trust acted as a broker as defined in Section 3(a)(4) of the Exchange Act in connection with its administration of dividend reinvestment and

<sup>1</sup> On May 2, 2013, with the approval of the Canadian Office of the Superintendent of Financial Institutions, Canadian Stock Transfer & Trust Company ("CST&T") changed its name to CST Trust Company. The Staff's previous no-action relief was granted to CST and CST&T.

<sup>2</sup> See Exchange Act Release No. 60136, "Order Exempting CIBC Mellon Trust Company from Broker-Dealer Registration," issued June 18, 2009, and attached as Exhibit A.

stock purchase plans, employee stock purchase plans, employee stock option plans, and odd-lot programs (collectively, "Stock Plans") with U.S. resident investors (pursuant to the Commission's authority under Section 15(a)(2)); and

- (ii) the reporting and other requirements specifically imposed by the Exchange Act, and the rules and regulations thereunder, on a broker or dealer that is not registered with the Commission to the extent CIBC Mellon Trust acted as a broker under Section 3(a)(4) of the Exchange Act in connection with its administration of Stock Plans with U.S. resident investors (pursuant to the Commission's authority under Section 36(a)(1)).

As explained further below, CST Trust seeks an extension of the no-action relief previously granted to it from the same registration, reporting and other requirements imposed on broker-dealers under the Exchange Act subject to the same representations made by CIBC Mellon Trust and on the same terms and conditions as set forth in the Broker-Dealer Order to enable it to continue to conduct of the Stock Plan administration activities covered by the Broker-Dealer Order.

### **Background**

CST was formed on July 22, 2010 and registered as a transfer agent with the Commission on October 7, 2010. On November 1, 2010, CIBC Mellon Trust transferred the assets of its transfer agency and employee stock plan administration business (the "Business") to CST pursuant to the terms of an asset purchase agreement. As provided in that agreement, CIBC Mellon Trust was to operate the Business pursuant to the terms of an administered mandates agreement between CIBC Mellon Trust and CST (the "AMA") until such time as CST obtained a trust license in order to fully conduct the Business itself under applicable Canadian laws and regulations.

CST's subsidiary, CST Trust, was incorporated on December 18, 2012 as a trust company under the Canadian Trust and Loan Companies Act with the approval of the Canadian Office of the Superintendent of Financial Institutions ("OSFI"). CST Trust received final approval from OSFI of its trust license on August 30, 2013, and registered as a transfer agent with the Commission on September 24, 2013. Consequently, the AMA has ceased to operate and CST Trust has been operating the Business (i.e., the transfer agency business of CIBC Mellon Trust, including the administration of Stock Plans) pursuant to the terms of the Staff's grants of no-action to CST Trust dated March 4, 2013 and March 4, 2014.<sup>3</sup> That relief is set to expire on March 4, 2015.<sup>4</sup>

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<sup>3</sup> See Letter re: Request for No-Action Relief for Canadian Stock Transfer Company Inc. (March 4, 2013), and Letter re: Request for No-Action Relief for Canadian Stock Transfer Company Inc. (March 4, 2014) (hereafter, the "March 4, 2014 No-Action Letter").

<sup>4</sup> By letter dated January 24, 2012, CST, on behalf of CST Trust, requested that the exemptive relief previously granted to CIBC Mellon Trust under the Broker-Dealer Order be transferred to CST Trust on the same terms and



### **Request for Relief and Discussion**

In the Broker-Dealer Order, the Commission concluded that conducting the Business involved the conduct of limited broker-dealer activities as well as transfer agent activities, but nevertheless granted a conditional exemption from registration as a broker-dealer regarding those activities. We respectfully request that the Staff extend the prior grant of no-action relief to CST Trust so that it can continue to rely on the Broker-Dealer Order in conducting that same Business as set forth in March 4, 2014 No-Action Letter.

In connection with its request, CST Trust represents that it will comply with all of the terms and conditions imposed on CIBC Mellon Trust in the Broker-Dealer Order (attached as Exhibit A hereto), and will adhere to the same representations made by CIBC Mellon Trust and described in that order. Among these conditions are that CST Trust will be retained directly by the issuer or its affiliate to provide Stock Plan services to that issuer's employees or shareholders and that it will only administer dividend reinvestment and stock purchase plans and odd-lot programs with U.S. resident investors for issuers for which it acts as transfer agent.<sup>5</sup> In addition, like CIBC Mellon Trust, CST Trust is and will be registered with the Commission as a transfer agent, and CST Trust's broker services will be provided only directly on behalf of issuers' Stock Plans (*i.e.*, CST Trust will be in direct privity of contract with each issuer or its affiliate).

Granting the requested no-action relief is warranted for several reasons. First, CST Trust is providing the same services previously provided by CIBC Mellon Trust to its Stock Plan clients and the participants in those Stock Plans to those same entities and persons. Second, as the Commission previously found in granting the exemptive relief, the Broker-Dealer Order imposes appropriate protections designed to safeguard investors' funds and securities. Third, as the Commission previously concluded in the Broker-Dealer Order, the limited nature of the broker-dealer activities to be performed by CST Trust in connection with administering Stock Plans with U.S. resident investors under the terms of the Broker-Dealer Order will limit any risk that U.S. investors will be subject to abusive sales practices. Finally, in the absence of no-action relief, CST Trust will be required to restructure the methods already employed in the administration of Stock Plans, which not only would require a significant expenditure of resources but also would be likely to cause unnecessary confusion on the part of both issuers and Stock Plan participants. Granting the requested no-action relief will allow investors that have established relationships with issuers through Stock Plans currently administered by CST Trust to continue those relationships without interruption.

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conditions as applied to CIBC Mellon Trust. The Commission has not yet acted on that exemptive request, thereby necessitating this request for additional no-action relief. In fact, the relief provided to the Firm in the March 4, 2014 No-Action Letter is set to expire at the earliest of (1) March 4, 2015; (2) the date of any denial by the Commission of the CST Exemption Request; (3) the effective date of any grant of the CST Exemption Request or a modification thereof; or (4) the date of any modification or revocation of the Staff's no-action position.

<sup>5</sup> As was the case with CIBC Mellon Trust under the Broker-Dealer Order, the terms of any no-action relief granted to CST Trust pursuant to this request would not apply to Stock Plans with no U.S. resident investors.

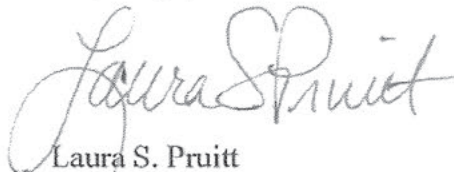


**Conclusion**

Based on the foregoing, CST Trust respectfully requests that the Staff grant it an extension of its current no-action relief from the registration and related reporting and other requirements applicable to broker-dealers under the Exchange Act with respect to its administration of Stock Plans, provided that it complies with the terms, conditions and representations in the Broker-Dealer Order.

If you have any questions or require further information regarding this request, please do not hesitate to contact me.

Very truly yours,



Laura S. Pruitt

**Enclosure**

cc: Pierre Tellis,  
Vice President, Senior Canadian Counsel & CCO, CST

## SECURITIES AND EXCHANGE COMMISSION

Securities Exchange Act of 1934  
Release No. 60136 / June 18, 2009

### ORDER EXEMPTING CIBC MELLON TRUST COMPANY FROM BROKER-DEALER REGISTRATION

#### I. Introduction

Pursuant to Section 15(a)(2) of the Securities Exchange Act of 1934 ("Exchange Act"), the Securities and Exchange Commission ("Commission") is granting CIBC Mellon Trust Company ("CIBC Mellon Trust") a conditional exemption from the broker-dealer registration requirement of Section 15(a)(1) of the Exchange Act to the extent CIBC Mellon Trust acts, subsequent to the entry of this order, as a broker as defined in Section 3(a)(4) of the Exchange Act in connection with its administration of dividend reinvestment and stock purchase plans (collectively, "DRSPPs"), employee stock purchase plans, employee stock option plans, and odd-lot programs with U.S. resident investors. For purposes of this order, DRSPPs, employee stock purchase plans, employee stock option plans, and odd-lot programs shall be referred to collectively as "Stock Plans." Pursuant to Section 36 of the Exchange Act, the Commission also is granting CIBC Mellon Trust a conditional exemption from the reporting and other requirements specifically imposed by the Exchange Act, and the rules and regulations thereunder, on a broker or dealer that is not registered with the Commission to the extent CIBC Mellon Trust acts, subsequent to the entry of this order, as a broker under Section 3(a)(4) of the Exchange Act in connection with its administration of Stock Plans with U.S. resident investors.

#### II. Background

CIBC Mellon Trust has agreed to consent to the entry of an order, without admitting or denying the findings, in which the Commission finds that it violated Sections 15(a)(1) and 17A(c)(1) of the Exchange Act. With respect to Section 15(a)(1), the Commission finds that, from 1998 to the present, CIBC Mellon Trust acted as a broker and dealer as defined in Sections 3(a)(4) and 3(a)(5) of the Exchange Act in connection with its administration of Stock Plans by engaging in the business of effecting securities transactions in these Stock Plans with U.S. resident investors.<sup>1</sup> With respect to Section 17A(c)(1), the Commission finds that, from 1998 to 2004, CIBC Mellon Trust acted as a transfer agent, as defined by Section 3(a)(25) of the Exchange Act, for 113 companies that have securities registered under Section 12 of the Exchange Act. At the time of this activity, CIBC Mellon Trust was not registered as a broker-dealer or as a transfer agent as required by Sections 15(a)(1) and 17A(c)(1) of the Exchange Act,

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<sup>1</sup> For purposes of this order, a U.S. resident investor is any participant in a Stock Plan who permanently resides in the United States. CIBC Mellon Trust shall treat all Stock Plan participants with U.S. mailing addresses as U.S. resident investors unless CIBC Mellon has been informed that a participant with a U.S. address is not a permanent U.S. resident.



respectively. Effective February 6, 2004, CIBC Mellon Trust registered with the Commission as a transfer agent.

In addition, CIBC Mellon Trust agreed to consent to the entry of a permanent injunction in a civil action in the United States District Court for the District of Columbia, permanently enjoining CIBC Mellon Trust from, among other things, future violations of Sections 15(a) and 17A(c) of the Exchange Act.

### III. Discussion

Section 15(a)(1) of the Exchange Act generally requires any broker or dealer that makes use of the mails or any instrumentality of interstate commerce to effect transactions in, or to induce the purchase or sale of, any security to register with the Commission. Section 3(a)(4) of the Exchange Act generally defines a broker as any person engaged in the business of effecting transactions in securities for the account of others, and Section 3(a)(5) of the Exchange Act generally defines a dealer as any person engaged in the business of buying and selling securities for its own account, whether through a broker or otherwise. In its complaint, the Commission alleged that, over the time period at issue, CIBC Mellon Trust violated Section 15(a)(1) by, in connection with its administration of Stock Plans, engaging in the business of effecting securities transactions for U.S. resident investors without being a registered broker-dealer.<sup>2</sup> Absent an exception or exemption, CIBC Mellon Trust would be required to register as a broker-dealer with the Commission to continue this activity.<sup>3</sup>

Section 15(a)(2) of the Exchange Act authorizes the Commission to exempt, either conditionally or unconditionally, from the broker-dealer registration requirements of Section 15(a)(1) of the Exchange Act any broker or dealer or class of broker or dealer, by rule or order, as it considers consistent with the public interest and the protection of investors. Similarly, but more broadly, Section 36 of the Exchange Act authorizes the Commission to exempt, either conditionally or unconditionally, any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, by rule, regulation, or order, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

Banks registered as transfer agents are conditionally excepted from broker-dealer registration under Section 3(a)(4)(B)(iv) of the Exchange Act for their activities in administering

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<sup>2</sup> CIBC Mellon Trust has consented to the entry of an injunction enjoining it from violating Section 15(a) of the Exchange Act based upon the allegations in the Commission's complaint. As the Commission recognized in addressing the Direct Registration System, some activities in connection with dividend reinvestment and stock purchase plans may require broker-dealer registration under Section 15(a) of the Exchange Act. See Exchange Act Release No. 35038 (Dec. 1, 1994), 59 FR 63652 (Dec. 8, 1994).

<sup>3</sup> Absent an exception or exemption, CIBC Mellon Trust also would be in violation of the injunction pertaining to Section 15(a) of the Exchange Act by engaging in these activities without being registered as a broker-dealer pursuant to Section 15(b) of the Exchange Act.



Stock Plans. CIBC Mellon Trust, however, is not a bank as defined in Section 3(a)(6) of the Exchange Act. Absent an exemption, CIBC Mellon Trust would be required to register with the Commission as a broker-dealer to continue to administer Stock Plans with U.S. resident investors.

The Commission has determined to grant CIBC Mellon Trust a limited conditional exemption from broker-dealer registration. The Commission finds that a limited exemption from broker-dealer registration, subject to the conditions set forth below, is consistent with the public interest and the protection of investors. CIBC Mellon Trust's Stock Plan administration activities require CIBC Mellon Trust to engage in limited broker-dealer activities, as well as transfer agent activities. CIBC Mellon Trust represents that in each case it is retained directly by the issuer or its affiliate to provide Stock Plan services to that issuer's employees or shareholders. CIBC Mellon Trust will only administer DRSPPs and odd-lot programs with U.S. resident investors for issuers for which it acts as transfer agent.<sup>4</sup> The Commission believes that granting a limited conditional exemption is warranted because (1) CIBC Mellon Trust is registered with the Commission as a transfer agent; (2) CIBC Mellon Trust's broker services will be provided only directly on behalf of the issuer's Stock Plan;<sup>5</sup> (3) the conditions of the exemption impose appropriate protections designed to safeguard investors' funds and securities; and (4) CIBC Mellon Trust's broker-dealer activities performed in connection with administering Stock Plans with U.S. resident investors will be limited, which will limit the risk that U.S. investors will be subject to abusive sales practices.<sup>6</sup> Moreover, the exemption will allow investors that have established relationships with issuers through Stock Plans administered by CIBC Mellon Trust to continue those relationships without interruption. Under these circumstances, the Commission believes that it is not necessary to require CIBC Mellon Trust to register both as a transfer agent and a broker-dealer.

The Commission therefore finds that it is consistent with the public interest and the protection of investors to exempt, subject to the conditions set forth below, CIBC Mellon Trust from the broker-dealer registration requirement of Section 15(a)(1) of the Exchange Act to the extent that CIBC Mellon Trust acts as a broker in connection with administering Stock Plans

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<sup>4</sup> The allegations in the Commission's complaint were limited to CIBC Mellon Trust's administration of Stock Plans with one or more U.S. resident investors. CIBC Mellon Trust's administration of Stock Plans with no U.S. resident investors was not the subject of Commission action. Neither this order nor the conditions set forth herein apply to Stock Plans with no U.S. resident investors.

<sup>5</sup> CIBC Mellon Trust represents that in each case it will be in direct privity of contract with the issuer or its affiliate.

<sup>6</sup> CIBC Mellon Trust will be prohibited from engaging in certain activities that it engaged in prior to the issuance of this order, such as netting customer orders to buy and sell issuer plan securities.



with U.S. resident investors for issuers.<sup>7</sup> This order is granted subject to the following conditions:

1. CIBC Mellon Trust will maintain its registration as a transfer agent under Section 17A of the Exchange Act as long as it continues to administer Stock Plans with U.S. resident investors.
2. In connection with administering Stock Plans with U.S. resident investors, CIBC Mellon Trust will not solicit transactions or provide investment advice to U.S. resident investors with respect to the purchase or sale of securities in connection with the Stock Plan, other than by delivering written or electronic Stock Plan materials to U.S. resident employees of the issuer, U.S. resident shareholders of the issuer, or U.S. resident members of affinity groups of the issuer so long as such materials are comparable in scope or nature to those permitted by the Commission as of the date of enactment of the Gramm-Leach-Bliley Act.<sup>8</sup>
3. In connection with administering Stock Plans with U.S. resident investors, CIBC Mellon Trust will not net customers' buy and sell orders. To the extent that CIBC Mellon Trust's administration of Stock Plans with U.S.

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<sup>7</sup> The Commission notes, however, that this order only addresses broker-dealer registration issues with regard to CIBC Mellon Trust as a Stock Plan administrator, and that nothing in this order affects prior positions with respect to plans or programs. See, e.g., Exchange Act Release No. 38067 (Dec. 20, 1996), 62 FR 520, 532 at n. 98 (Jan. 3, 1997)(adopting Regulation M governing the activities of underwriters, issuers, selling security holders and others in connection with offerings of securities). The Commission also recognizes that the administrative costs of such plans may be borne by either the issuers or the plan participants themselves. See, e.g., The Securities Transfer Association, Inc., SEC No-Action Letter (Dec. 1, 1994) (acknowledging that issuers may offer DRSPPs in which plan participants pay administrative fees).

<sup>8</sup> See Section 3(a)(4)(B)(iv) of the Exchange Act. For example, each brochure for Stock Plans with U.S. resident investors sponsored and administered by CIBC Mellon Trust will include a prominent statement on the cover that: "The Program is sponsored and administered by CIBC Mellon Trust, not by [the appointing issuer]." Each brochure will indicate that the securities held in program accounts are not subject to protection under the Securities Investor Protection Act of 1970. Each brochure will be plain and factual in tone and approach, and will be descriptive of all material Stock Plan features, contractual terms, and fee and processing arrangements, but not of the issuer's securities. The brochure will not encourage individuals to engage in any particular transactions, whether purchases or sales, and no advice or recommendations will be included in the brochure (or otherwise be given during the administration of Stock Plans).

Administration of Stock Plans involving shares required to be registered pursuant to the Securities Act of 1933 continues to be subject to the provisions set forth in the exemption issued to The Securities Transfer Association, Inc. See Exchange Act Release No. 35041 (Dec. 1, 1994).

resident investors results in a trade in the United States, CIBC Mellon Trust will direct such trade to a U.S.-registered broker or dealer for execution.

4. In connection with administering Stock Plans with U.S. resident investors, CIBC Mellon Trust will maintain with a bank (or banks) at all times a bank account (or accounts) for the exclusive benefit of customers that shall be separate from any other CIBC Mellon Trust bank account. Solely for purposes of this condition, a bank shall have the same meaning as in Exchange Act Rule 15c3-3(a)(7).<sup>9</sup> The account (or accounts) shall be designated as a "Special Bank Account for the Exclusive Benefit of Customers." All customers' funds in CIBC Mellon Trust's custody and possession that are related to Stock Plans with U.S. resident investors will be maintained in such account (or accounts) until paid to the customer or the issuer, or used to settle a transaction with or through a broker or dealer.
5. In connection with administering Stock Plans with U.S. resident investors that make periodic purchases, if the specified time intervals for such periodic purchases are quarterly or more frequent, CIBC Mellon Trust will send each U.S. resident investor, at least quarterly, a written account statement containing at a minimum the information in items (a) through (h), below. In connection with administering all other Stock Plans with U.S. resident investors, CIBC Mellon Trust will send each U.S. resident investor, not later than four trading days after the date of the last transaction effected in the aggregated batch, a written transaction notification containing, at a minimum, the following information:
  - (a) The name of CIBC Mellon Trust;
  - (b) The name of the customer;
  - (c) The capacity in which CIBC Mellon Trust is acting;
  - (d) The date of each transaction for the account of the customer;
  - (e) The identity, price, and number of shares or units purchased or sold for the customer in each such transaction; and, in a periodic statement, the total number of shares or units of such securities held by the customer at the end of the account period;
  - (f) The aggregate amount of fees that the customer has paid or will pay in connection with the transaction;

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<sup>9</sup> 17 CFR 240.15c3-3(a)(7). Under this rule, with respect to a broker or dealer that maintains its principal place of business in the Dominion of Canada, the term "bank" also means a Canadian bank subject to supervision by an authority of the Dominion of Canada.



- (g) The source and amount of remuneration CIBC Mellon Trust has or will receive from a party other than the customer, unless the written statement or notification discloses whether CIBC Mellon Trust has received or will receive remuneration from a party other than the customer, and that CIBC Mellon Trust will furnish within a reasonable time the source and amount of this remuneration upon written request of the U.S. resident customer. This election is not available however, if, with respect to a purchase, CIBC Mellon Trust was participating in a distribution of that security or, with respect to a sale, CIBC Mellon Trust was participating in a tender offer for that security;<sup>10</sup> and
  - (h) The name of the registered broker-dealer utilized; or where there is no registered broker-dealer, the name of the person from whom the security was purchased or to whom the security was sold, or a statement that CIBC Mellon Trust will furnish this information within a reasonable time upon written request of the U.S. resident customer.
6. In connection with administering Stock Plans with U.S. resident investors, personnel at any call center operated by or on behalf of CIBC Mellon Trust will be limited to responding to inquiries received from a U.S. resident customer about a Stock Plan, but may not: (a) identify to a U.S. resident investor a particular security except as requested by the investor and then only as necessary to be responsive to the specific inquiry; (b) respond to inquiries from U.S. resident investors concerning the advisability of investing in the particular security or participating in the Stock Plan rather than using the services of a registered broker-dealer; or (c) take verbal orders to buy or sell securities for U.S. resident investors. Call center personnel may provide U.S. resident customers general information about Stock Plan services as described in the Stock Plan brochure and the status of the customer's account, as well as accommodate telephone requests for brochures, account statements, certificated shares and replacement dividend checks. CIBC Mellon Trust will be responsible for ensuring that call center personnel are strictly instructed not to provide recommendations or advice to U.S. resident customers and that they will be monitored and supervised closely in this respect.<sup>11</sup>
7. In connection with administering Stock Plans with U.S. resident investors, CIBC Mellon Trust will effect purchases and sales at least once a day

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<sup>10</sup> CIBC Mellon Trust would not be required to disclose any payments it receives from issuers for acting in a transfer agent capacity.

<sup>11</sup> This condition would not affect, for example, CIBC Mellon Trust's ability to operate a call center outside of the U.S. that takes orders from non-U.S. residents.

unless orders received produce such a low share volume as to dictate less frequent transaction intervals. In all cases, purchases and sales will occur at least once a week (assuming an order is received during the week), except in the case of Odd-Lot Plans, where purchases and sales will occur when sufficient shares have been tendered to constitute a standard unit of trading on the marketplace.

8. In connection with administering Stock Plans with U.S. resident investors, CIBC Mellon Trust will not receive payment for order flow, as defined in Exchange Act Rule 10b-10.<sup>12</sup>
9. In connection with administering Stock Plans with U.S. resident investors, CIBC Mellon Trust will make and keep current all material books and records relating to customers' funds, securities, and orders to purchase or sell securities, including the following:
  - (a) Records reflecting customer ownership in the Stock Plan;
  - (b) Any statement, checkbook, or cancelled check regarding any bank account established pursuant to condition 4 above; and records reflecting funds submitted by Stock Plan customers, funds held on behalf of customers pursuant to condition 4 above, and reconciliation of the funds submitted and the funds held;
  - (c) An original of any communication received by CIBC Mellon Trust from a Stock Plan customer or a copy of any materials sent to Stock Plan customers by CIBC Mellon Trust;
  - (d) A record of any order by a Stock Plan customer to purchase or sell securities;
  - (e) A copy of any transaction notification or statement sent pursuant to condition 5 above;
  - (f) A copy of any supervisory procedures relating to condition 6 above;
  - (g) A copy of any transaction notification received pursuant to condition 7 above; and
  - (h) A copy of any agreement relating to Stock Plans entered into with an affiliated or unaffiliated third party, including agreements with banks, broker-dealers, and entities providing services related to processing and call centers.

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<sup>12</sup> 17 CFR 240.10b-10.



10. Any record maintained pursuant to condition 9 will be retained for a period of not less than six years, the first year in a readily accessible place for purposes of examination and inspection by the Commission.

In sum, in finding that this exemption is appropriate in the public interest, we stress that (1) CIBC Mellon Trust will provide Stock Plan services to issuers' employees or shareholders only when it is retained directly by the issuer or its affiliate; (2) CIBC Mellon Trust will only administer DRSPPs and odd-lot programs with U.S. resident investors for issuers for which it acts as transfer agent; and (3) its activities as a registered transfer agent are subject to Commission regulation and inspection.<sup>13</sup> This exemption is subject to modification or revocation at any time the Commission determines that such modification or revocation is consistent with the public interest or the protection of investors.

IT IS THEREFORE ORDERED, pursuant to Section 15(a)(2) of the Exchange Act, that a conditional exemption for CIBC Mellon Trust from the registration requirements of Section 15(a)(1) of the Exchange Act to the extent CIBC Mellon Trust is acting as a broker under Section 3(a)(4) of the Exchange Act be, and hereby is, granted. This exemption is limited to administering Stock Plans with U.S. resident investors and subject to the conditions listed above.

IT IS FURTHER ORDERED, pursuant to Section 36 of the Exchange Act, that CIBC Mellon Trust shall be exempt, in connection with engaging in Stock Plan administration activities consistent with the conditions set forth above, from the reporting and other requirements specifically imposed by the Exchange Act, and the rules and regulations thereunder, on a broker or dealer that is not registered with the Commission to the extent CIBC Mellon Trust is acting as a broker under Section 3(a)(4) of the Exchange Act.<sup>14</sup>

IT IS FURTHER ORDERED, that the exemptions granted herein to CIBC Mellon Trust pursuant to Section 15(a)(2) and Section 36 of the Exchange Act shall become effective upon the date the United States District Court for the District of Columbia enters a final order permanently enjoining CIBC Mellon Trust from, among other things, future violations of Sections 15(a) and 17A(c) of the Exchange Act.

By the Commission.

Elizabeth M. Murphy  
Secretary

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<sup>13</sup> In contrast, the Stock Plan activities that are the subject of the Commission's enforcement order were conducted more broadly and outside any Commission oversight.

<sup>14</sup> CIBC Mellon Trust remains subject to all other applicable provisions of the federal securities laws, including, without limitation, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. 17 CFR 240.10b-5.