



DIVISION OF  
CORPORATION FINANCE

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

March 2, 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 an order entered today by the Securities and Exchange Commission censuring CMTC pursuant to Sections 15(a) and 17A of the Exchange Act and requiring that CMTC comply with the undertakings set forth in the order (the "Order").

For purposes of this letter, we have assumed as facts the representations set forth in your letter and the findings supporting entry of the Order. We have also assumed that CMTC will comply with the Order, including the undertakings relating to CMTC's registration of the transfer of restricted securities and placement of appropriate legends on certificates representing restricted securities.

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 Order. Accordingly, pursuant to delegated authority, and without necessarily agreeing that the requested relief is necessary as a result of entry of the Order, 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 Order.

Very truly yours,

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

Gerald J. Laporte  
Chief, Office of Small Business Policy

WILMER CUTLER PICKERING  
HALE AND DORR LLP

March 2, 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 respondent in administrative proceedings 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 the issuers described below as a result of 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"), which is described below. CMTC requests that these waivers be granted effective upon the entry of the Order.<sup>1</sup> It is our understanding that the Division of Enforcement does not object to the grant of the requested waivers.

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<sup>1</sup> As a result of the settlement discussions, CMTC also submitted a Consent to Entry of Judgment that was presented by the staff of the Commission to the U. S. District Court for the District of Columbia on February 16, 2005, when the Commission filed its complaint against CMTC in an action captioned SEC 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 jurisdiction of the district court). Under the terms of the Final Judgment, which was entered on February 24, 2005, the Court enjoined CMTC from violating 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 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, that it had acted as a broker-dealer in connection with its administration of employee stock plans without registering, that it had issued "legend free" stock certificates of a company whose shares were not registered, 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.

## BACKGROUND

The staff of the Commission engaged in settlement discussions with CMTC in connection with administrative proceedings arising out of the above-captioned investigation pursuant to Sections 15(b) and 17A(c) of the Securities Exchange Act of 1934 (the "Exchange Act"). As a result of these discussions, CMTC submitted an executed Offer of Settlement of CIBC Mellon Trust Company (the "Offer") that was presented by the staff 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 consented to the entry of the Order, without admitting or denying the findings contained therein (other than those relating to the jurisdiction of the Commission which are admitted). In the Order, which was entered today, the Commission made findings, without admission or denial by CMTC, that CMTC acted as a transfer agent and as a broker-dealer from 1998 through 2003 without registering with the Commission and that the Court entered the Final Judgment against CMTC described in footnote 1 above. Based on these findings, the Order censured CMTC and required it to comply with its undertakings.

## DISCUSSION

CMTC understands that the entry of the Order may disqualify it, affiliated entities, and other issuers from certain exemptions under Regulation A and Rule 505 of Regulation D promulgated under the Securities Act, insofar as the Order causes CMTC to be subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. CMTC is concerned that, should it be deemed to be a general partner, promoter, or underwriter of the securities, of an "issuer" for the purposes of Securities Act Rule 262(b)(3), CMTC, those of its issuer affiliates, and other issuers with which it is associated in one of those listed capacities and which 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 Regulations 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 Order may have under Regulation A and Rule 505 of Regulation D with respect to CMTC, its issuer affiliates, or third-party issuers on the following grounds:

1. CMTC's conduct addressed in the Order 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 also has undertaken to engage an independent consultant to review its procedures. Finally, CMTC received an order from the Commission exempting it from registration under Exchange Act Section 15(a) subject to specified conditions.

3. The disqualification of CMTC, any of its issuer affiliates, or third-party issuers with which it is associated in one of the capacities listed above from the exemptions under Regulations A and Rule 505 of Regulation D would be unduly and disproportionately severe given the nature of the violations addressed in the Order and the extent to which disqualification may affect the business operations of CMTC, its issuer affiliates, or such third-party issuers by impairing their ability to issue securities pursuant to these exemptions to raise new capital or for other purposes. In addition, the disqualification of CMTC, its issuer affiliates, or third-party issuers from the regulatory exemptions may place CMTC or those issuers 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, any of its issuer affiliates, or third-party issuers from the exemptions under Regulation A and Rule 505 of Regulation D also would be unduly and disproportionately severe, given that: (a) the Order relates to activity that will be addressed pursuant to CMTC's undertakings in the administrative proceedings 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 Order, the disqualification provisions in Regulation A and Rule 505 of Regulation D to the extent they may be applicable to CMTC, any affiliated issuers, and certain third-party issuers described above, as a result of the entry of the Order.<sup>2</sup>

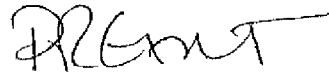
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<sup>2</sup> We note in support of this request that the Commission has granted relief under Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D for similar reasons. *See, e.g.*, Sybaris Clubs Int'l, Inc., S.E.C. No-Action Letter (pub. 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  
March 2, 2005  
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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