

# 2002 BCSECCOM 42

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief from the registration, prospectus and take over bid requirements in connection with a reorganization of a company for tax reasons

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61, 76, 105-108, 110 and 114(2)(c)

IN THE MATTER OF THE SECURITIES LEGISLATION OF THE PROVINCES OF ALBERTA,  
BRITISH COLUMBIA, ONTARIO, QUÉBEC AND SASKATCHEWAN

AND

IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF  
APPLICATIONS

AND

IN THE MATTER OF SCOTIABANK (IRELAND) LIMITED AND GAM DIVERSITY INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, British Columbia, Ontario, Québec and Saskatchewan (the "Jurisdictions") has received an application from Scotiabank (Ireland) Limited ("SIL") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirements contained in the Legislation with respect to take-over bids (the "Take-Over Bids Requirements") and the requirements contained in the Legislation to be registered to trade in a security and to file and obtain a receipt for a preliminary prospectus and a prospectus (the "Registration and Prospectus Requirements") shall not apply to SIL, and such third parties with whom SIL may syndicate the transaction described herein (collectively, the "Put Providers") in connection with the issuance of put options (the "Put Options") to the shareholders of Gam Diversity Inc. ("GD") from time to time whereby common shares of GD would be transferred to the Put Providers upon the exercise of the Put Options;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Commission des valeurs mobilières du Québec is the principal regulator for this application;

AND WHEREAS SIL has represented to the Decision Makers that:

1. SIL is a corporation incorporated under the laws of the Republic of Ireland on December 17, 1969 as amended December 24, 1990. Identification number 30350. SIL's registered office is located at IFSC House, Custom House Quay, Dublin, Ireland. SIL is a wholly-owned subsidiary of The Bank of Nova Scotia (the "BNS"). SIL is not a reporting issuer or the equivalent in any jurisdiction in Canada.
2. GD is a corporation incorporated under the laws of the British Virgin Islands and is registered as a "Public Fund" pursuant to the provisions of the *British Virgin Islands Mutual Funds Act, 1996* (as amended). GD's registered office is located at Craigmuir Chambers, P.O. Box 71, Road Town, Tortola, British Virgin Islands. The common shares of GD are listed and posted for trading

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on the London Stock Exchange. GD is not a reporting issuer or the equivalent in any other jurisdiction in Canada.

3. GD operates as an investment company and, as of this date, owns approximately US\$2.0 billion of assets comprised of approximately 40 separate investments in 40 hedge funds or mutual funds ("Investee Funds") administered by independent parties. SIL has been advised by GD that the authorized share capital of GD consists of an unlimited number of US\$ common shares. As of October 15, 2001 GD had 4,311,630.29 common shares issued and outstanding. SIL has been advised by GD that GD currently has 1,553 shareholders of whom 101 are resident Canadians and 1,452 are non-resident Canadians and that Canadian shareholders of GD currently hold approximately 49% of the common shares.

4. Currently, GD shareholders have the right to require GD to redeem all or a portion of their common shares on a monthly basis in consideration of a payment equal to the proportionate amount of GD's net asset value (the "Redemption Right").

5. The Put Options are being granted pursuant to an arrangement (the "Arrangement"), whereby pursuant to an overall plan of action, a separate fund ("GD II") will be created for the non-Canadian shareholders of GD and their interests reorganized so that they are no longer shareholders of GD and instead carry on their investments through GD II. GD II will succeed to a pro rata portion of the Investee Funds of GD as of the effective date of the Arrangement, which is anticipated to be on or about November 30, 2001. Pursuant to an asset transfer agreement (the "Asset Transfer Agreement"), the remaining Investee Funds (the "Remaining Investee Funds") will be sold and transferred to the Put Providers and one or more third parties to be designated by the Put Providers.

6. GD will use the consideration it receives for the Remaining Investee Funds sold pursuant to the Asset Transfer Agreement to purchase a note pursuant to a note purchase agreement (the "Note Purchase Agreement") from Bank of Nova Scotia International Limited (Bahamas) ("BNIL"), a Bahamian company and wholly-owned subsidiary of BNS (the "Note"). The principal features of the Note are as follows: (i) the Note is due at the end of 15 years from the issue date or an earlier date in the event of an early termination (the "Maturity Date"); (ii) until the Maturity Date, no amount shall be paid on, or in respect of, the Note; (iii) following maturity, BNIL will satisfy its obligations under the Note by paying an amount equal to the net asset value of the Remaining Investee Funds or the amount realized by the Put Providers upon liquidation of the Remaining Investee Funds; and (iv) BNS will guarantee BNIL's obligations under the Note. The Note Purchase Agreement will contain certain covenants of GD requiring GD to maintain the nature of its business, comply with securities laws and not undertake any fundamental corporate changes (the "Covenants").

7. The Arrangement requires the affirmative vote of the majority of GD shares represented at a special meeting of shareholders to be held on or about November 28, 2001. Shareholders of GD who do not wish to take part in the Arrangement have the right to exercise their Redemption Rights prior to the Effective Date. GD shareholders will be mailed an information circular in form satisfactory to the London Stock Exchange that will set forth a description of the Arrangement and related transactions. BNIL and BNS may syndicate the rights and obligations described above relating to the Note with a financial institution having a Standard and Poor's rating not inferior to that of BNS. Such syndication will be on substantially the same terms and conditions as those described above. The syndication may take the form of the other financial institution replacing BNIL as issuer of part of the Note.

8. Upon completion of the Arrangement, GD will withdraw the listing of its common shares from the London Stock Exchange which will take effect on or about December 3, 2001.

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9. The Put Options will arise as a result of incorporating into one or more contracts (the "Put Option Agreements") between Global Asset Management Limited ("GAM"), the global manager of the Investee Funds, or any successor thereof, and the Put Providers or affiliates thereof, "third party benefits" to GD shareholders in accordance with applicable laws of the United Kingdom. The Put Options are not transferable and are granted only for the benefit of persons who are GD shareholders while such persons are GD shareholders. The Put Options will provide continued liquidity for the shareholders of GD from time to time after the Arrangement, but in an altered form. As already noted, the Note due to GD would not pay anything until the Maturity Date and, therefore, GD would not have funds available to redeem its common shares pursuant to the Redemption Rights as presently constituted. In order to maintain the same liquidity for GD shareholders had the Arrangement not taken place, the Put Options will be granted and pursuant to the Put Options GD shareholders will have the right to sell their common shares of GD to the Put Providers for a price based upon the net asset value of GD on a per share basis, which will depend mainly on the value of the Note, which, in turn, will depend on the net asset value of the Remaining Investee Funds which price shall be calculated as follows:

Total Assets of GD – Total Liabilities of GD  
Number of Shares of GD Issued and Outstanding

10. The Put Providers will, pursuant to a voting agreement with GD, until the Maturity Date, abstain from voting on any matter that comes before the shareholders of GD with the sole exception of matters which if passed would result in a breach of the Covenants.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

The Decision of the Decision Makers under the Legislation is that:

1. The Take-Over Bid Requirements shall not apply to the grant or exercise of Put Options by the Put Providers to the shareholders of GD, from time to time, provided that at the time of the grant GD is not a reporting issuer in any Province of Canada and, after the delisting of the GD common shares from the London Stock Exchange on or about December 3, 2001, there is no published market for its shares.

2. The Registration and Prospectus Requirements shall not apply to the grant or distribution of Put Options made by the Put Providers to GAM for the benefit of shareholders of GD, from time to time.

DATED as of this 30th day of November, 2001.

Guy Lemoine  
Commissaire

Viateur Gagnon  
Commissaire