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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Relief granted from certain mutual fund self-dealing restrictions and reporting requirements to permit top funds to invest in certain underlying funds, subject to certain conditions

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 121, 123, 126, 127 and 130

**IN THE MATTER OF THE CANADIAN SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, ONTARIO,
QUEBEC, NOVA SCOTIA AND NEWFOUNDLAND AND LABRADOR**

AND

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

**AND IN THE MATTER OF SCOTIA PARTNERS INCOME & MODEST
GROWTH PORTFOLIO, SCOTIA PARTNERS BALANCED INCOME &
GROWTH PORTFOLIO, SCOTIA PARTNERS CONSERVATIVE
GROWTH PORTFOLIO, SCOTIA PARTNERS AGGRESSIVE GROWTH
PORTFOLIO**

MRRS DECISION DOCUMENT

WHEREAS the Canadian securities regulatory authority or regulator (the “Decision Maker”) in each of the provinces of British Columbia, Alberta, Saskatchewan, Ontario, Quebec, Nova Scotia and Newfoundland and Labrador, (the “Jurisdictions”) has received an application from Scotia Securities Inc. (the “Manager”), Scotia Partners Income & Modest Growth Portfolio, Scotia Partners Balanced Income & Growth Portfolio, Scotia Partners Conservative Growth Portfolio, Scotia Partners Aggressive Growth Portfolio (the “Initial Portfolios”) and any other mutual fund established and managed by the Manager after the date hereof which has as its investment objective the investment of its assets in more than one underlying fund (the “Future Portfolios”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) concerning the

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following restrictions and requirements contained in the Legislation (the “Requirements”):

1. the restrictions contained in the Legislation prohibiting a mutual fund from knowingly making or holding an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder;
2. the restrictions contained in the Legislation prohibiting a portfolio manager from knowingly causing a mutual fund managed by it to invest in any issuer in which a responsible person or an associate of a responsible person is an officer or director unless the specific fact is disclosed to the client and, if applicable, the written consent of the client to the investment is obtained before the purchase; and
3. the requirements contained in the Legislation requiring a management company or, in British Columbia, a mutual fund manager, to file a report relating to a purchase or sale of securities between a mutual fund and any related person or company, or any transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, the mutual fund is a joint participant with one or more of its related persons or companies;

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or in Québec Commission Notice 14-101;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS the Manager has represented to the Decision Makers that:

1. Each Initial Portfolio will be an open-ended mutual fund trust established under the laws of the Province of Ontario. Each Initial Portfolio will be a reporting issuer in each of the Jurisdictions and units of the Initial Portfolios will be qualified for distribution under a simplified prospectus and annual information form (the “Prospectus”) filed in each of the Jurisdictions.
2. The Manager may, in the future, create Future Portfolios which, together with the Initial Portfolios, are each referred to herein as a “Portfolio”.

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3. The Manager will be the trustee and manager of the Portfolios. The Manager is a corporation established under the laws of the Province of Ontario and registered as a dealer in the category of mutual fund dealer (or the equivalent) in the Jurisdictions as well as all other provinces and territories of Canada.
4. Scotia Capital Inc. ("Scotia Capital") will be the portfolio advisor of each of the Initial Portfolios. The portfolio advisor is a member of the Investment Dealers Association of Canada.
5. It is expected that Scotia Capital will be the portfolio advisor of Future Portfolios. Scotia Capital is an affiliate of the Manager and both Scotia Capital and the Manager are wholly owned subsidiaries of The Bank of Nova Scotia.
6. Each Portfolio will invest its assets, other than cash or cash equivalents, in other prospectus-qualified mutual funds (the "Underlying Funds") managed by the Manager or by third party fund managers (the "Underlying Managers") not affiliated with the Manager considered to excel in particular investment niches. Currently, the Scotia Canadian Income Fund is an Underlying Fund and a related mutual fund of the Portfolios. The Underlying Funds are those funds whose investment objectives align with the investment objectives of the Portfolios.
7. In order to achieve its investment objective, each Portfolio will invest fixed percentages (the "Fixed Percentages") of its assets, excluding cash and cash equivalents, directly in securities of the Underlying Funds, subject to variation of 2.5 percent above or below the Fixed Percentages (the "Permitted Ranges") resulting from market fluctuations.
8. The Prospectus of each Portfolio will disclose the names and investment objectives of the Underlying Funds, the manager of the Underlying Funds along with the Fixed Percentages and the Permitted Ranges.
9. Where an Underlying Fund or a Fixed Percentage is changed, the Manager will provide 60 days' prior written notice to unitholders of the Portfolios and will amend the Prospectus of the Portfolios to reflect any such change.
10. The investments by a Portfolio in securities of an Underlying Fund represent the business judgment of "responsible persons" (as defined in the Legislation) uninfluenced by considerations other than the best interests of the Portfolio.
11. Except to the extent evidenced by this decision and specific approvals granted by the regulator or the securities regulatory authority in each of the provinces

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of Canada pursuant to National Instrument 81-102 Mutual Funds (“NI 81-102”), the investments by a Portfolio in the Underlying Funds have been structured to comply with the investment restrictions of the Legislation and NI 81-102.

12. Upon the filing of the final Prospectus and the issuance of a final receipt by each Jurisdiction in respect thereof, each of the Initial Portfolios will be a reporting issuer in each Jurisdiction.

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 the Requirements shall not apply so as to prevent the Portfolios from making and holding investments in the Underlying Funds or so as to require the Manager to file a report relating to each purchase or sale of such investments and disclose such purchase to unitholders of the Portfolios and, if applicable, obtain their consent to the investment prior to the purchase,

PROVIDED IN EACH CASE THAT:

1. this Decision, as it relates to the jurisdiction of a Decision Maker, will terminate one year after the publication in final form of any legislation or rule of that Decision Maker dealing with matters in section 2.5 of NI 81-102; and
2. this Decision shall only apply if, at the time a Portfolio makes or holds an investment in its Underlying Funds, the following conditions are satisfied:
 - (a) the Portfolios and the Underlying Funds are being offered for sale in the jurisdiction of the Decision Maker pursuant to a simplified prospectus and annual information form which has been filed with and accepted by the Decision Maker;
 - (b) the investment by a Portfolio in the Underlying Funds is compatible with the fundamental investment objectives of the Portfolio;
 - (c) the Prospectus discloses the intent of the Portfolio to invest in the Underlying Funds, the names of the Underlying Funds, the investment

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objectives and manager of the Underlying Funds, the Fixed Percentages and the Permitted Ranges within which such Fixed Percentages may vary;

- (d) the investment objective of a Portfolio discloses that the Portfolio invests in securities of other mutual funds;
- (e) the Underlying Funds are not mutual funds whose investment objective includes investing directly or indirectly in other mutual funds;
- (f) the Portfolio invests its assets (exclusive of cash and cash equivalents) in securities of the applicable Underlying Funds in accordance with the Fixed Percentages disclosed in the Prospectus;
- (g) the Portfolio's holding of securities in the Underlying Funds does not deviate from the Permitted Ranges;
- (h) any deviation from the Fixed Percentages is caused by market fluctuations only;
- (i) subject to condition (j), where an investment by a Portfolio in any of the Underlying Funds has deviated from the Permitted Ranges as a result of market fluctuations, the Portfolio's investment is re-balanced to comply with the Fixed Percentages on the next day on which the net asset value is calculated following the deviation;
- (j) if, due to the foreign property investment limitations under the Income Tax Act (Canada), a Portfolio is precluded from purchasing additional securities of the Underlying Funds in order to comply with condition (i), the Portfolio complies with condition (i) as soon as it is possible to do so in compliance with those foreign property investment limitations;
- (k) if the Fixed Percentages and the Underlying Funds which are disclosed in the Prospectus are changed, either the Prospectus will be amended or a new Prospectus will be filed to reflect the change, and in any case the unitholders of each Portfolio will be given at least 60 days' notice of the change;
- (l) there are compatible dates for the calculation of the net asset values of the Portfolios and the Underlying Funds for the purpose of the issue and redemption of the securities of such mutual funds;
- (m) no sales charges will be payable by a Portfolio in relation to its purchase of the securities of an Underlying Fund;

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- (n) no redemption fees or other charges will be charged by an Underlying Fund in respect of the redemption by a Portfolio of the securities of the Underlying Fund owned by the Portfolio;
- (o) no fees or charges of any sort are paid by the Portfolio and the Underlying Funds, by their respective managers or principal distributors, or by any affiliate or associate of any of the foregoing entities, to anyone in respect of the Portfolio's purchase, holding or redemption of the securities of the Underlying Funds, except for a payment by the Manager of a Portfolio to the Manager of the Underlying Fund as compensation for investment management services provided as a result of the investment in the Underlying Fund;
- (p) the Portfolios do not pay any management fees to the Underlying Funds, except for those Underlying Funds for which a management fee must be paid (and subsequently rebated) because the Underlying Funds do not have a class of securities without a management fee;
- (q) any notice provided to security holders of an Underlying Fund as required by applicable laws or the constating documents of that Underlying Fund has been delivered by the Portfolio to its unitholders;
- (r) all of the disclosure and notice material prepared in connection with a meeting of the security holders of the Underlying Funds and received by the Portfolio has been provided to its unitholders, the unitholders have been permitted to direct a representative of the Portfolio to vote its holdings in the Underlying Fund in accordance with their direction, and the representative of the Portfolio has not voted its holdings in the Underlying Fund except to the extent the unitholders of the Portfolio have directed;
- (s) in addition to receiving the annual, and upon request, the semi-annual financial statements, of the Portfolio, unitholders of the Portfolio have received appropriate summary disclosure in respect of the Portfolio's holdings of securities of the Underlying Funds in the financial statements of the Portfolio; and
- (t) to the extent that the Portfolio and the Underlying Funds do not use a combined simplified prospectus and annual information form containing disclosure about the Portfolio and the Underlying Funds, copies of the simplified prospectus and annual information form of the Underlying Funds will be provided upon request to unitholders of the Portfolio and the

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right to receive these documents is disclosed in the Prospectus of the Portfolio.

DATED at Toronto this 28th day of November, 2002.

Robert L. Shirriff

Robert W. Korthals