

# 2007 BCSECCOM 140

March 16, 2007

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - *Securities Act* s. 130 - Relief from certain self-dealing restrictions in Part 15 of the Act - A mutual fund wants relief from s. 121(2)(a) of the Act so that it can make or hold an investment in a person who is a substantial security holder of the mutual fund, its mutual fund manager or its mutual fund distributor - A mutual fund wants relief from the principal trading prohibitions in s. 128 of the Act to enable persons having access to information concerning the investment program of the fund to purchase or sell securities comprising the portfolio of the mutual fund - The portfolio of the mutual fund is fixed; the portfolio is passively managed; the mutual fund will purchase the securities at a predetermined time and at no more than the ask price of the securities on the exchange where the securities are listed; independent directors of the mutual fund will approve all principal purchases and sales

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 121(2)(a), 128, 130

In the Matter of  
the Securities Legislation of  
Ontario, British Columbia, Alberta, Saskatchewan,  
Newfoundland and Labrador, Nova Scotia And New Brunswick  
(the “Jurisdictions”)

and

In the Matter of  
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of  
R Split III Corp.

and

In the Matter of  
Scotia Capital Inc.

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## MRRS Decision Document

### **Background**

The local securities regulatory authority or regulator (the “Decision Maker”) in each of the Jurisdictions has received an application from R Split III Corp. (the “Filer”) and Scotia Capital Inc. (“Scotia Capital”) for a decision under the securities legislation (the “Legislation”) of the Jurisdictions that:

- (a) The prohibitions contained in the Legislation prohibiting trading in portfolio shares by persons or companies having information concerning the trading programs of mutual funds (the “Principal Trading Prohibitions”) shall not apply to Scotia Capital in connection with the Principal Sales and Principal Purchases (both as hereinafter defined); and
- (b) The restrictions contained in the Legislation prohibiting the Filer from making investments in the common shares of Royal Bank of Canada (“Royal Bank”), which bank is a substantial security holder of RBC Dominion Securities Inc. (the “Related Agent”), which is a distribution company of the Filer (the “Investment Restrictions”), shall not apply to the Filer in connection with the initial public offerings (the “Offerings”) of class A capital shares (the “Capital Shares”) and class A preferred shares (the “Preferred Shares”) of the Filer;

(collectively, the “Requested Relief”).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Ontario Securities Commission is the principal regulator for this application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

Defined terms contained in National Instrument 14-101 Definitions have the same meaning in this decision unless they are defined in this decision.

### **Representations**

This decision is based on the following facts represented by the Filer:

The Filer

1. The Filer was incorporated on January 30, 2007 under the *Business Corporations Act* (Ontario). Its head office is located in Toronto, Ontario.

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2. The Filer has filed a preliminary prospectus dated February 2, 2007 in each of the Jurisdictions in respect of the Offerings (the "Preliminary Prospectus").
3. The Filer is a passive investment company whose principal undertaking will be to invest the net proceeds of the Offerings in a portfolio (the "Portfolio") of common shares of Royal Bank (the "Royal Bank Shares") in order to generate fixed cumulative preferential distributions for the holders of the Preferred Shares and to enable the holders of Capital Shares to participate in any capital appreciation in the Royal Bank Shares after payment of administrative and operating expenses of the Filer. It will be the policy of the Board of Directors of the Filer to pay dividends on the Capital Shares in an amount equal to the dividends received by the Filer on the Royal Bank Shares minus the distributions payable on the Preferred Shares and all administrative and operating expenses of the Filer.
4. The Filer is considered to be a mutual fund, as defined in the Legislation. Since the Filer does not operate as a conventional mutual fund, it has also filed a separate application for an exemption from certain requirements of National Instrument 81-102 Mutual Funds.
5. The Capital Shares and Preferred Shares may be surrendered for retraction at any time in the manner described in the Preliminary Prospectus.
6. It will be the policy of the Filer to hold the Royal Bank Shares and to not engage in any trading of the Royal Bank Shares, except:
  - (i) to fund retractions or redemptions of Capital Shares and Preferred Shares or a portion of the distribution on the Preferred Shares;
  - (ii) following receipt of stock dividends on the Royal Bank Shares;
  - (iii) in the event of a take-over bid for any of the Royal Bank Shares;
  - (iv) to meet obligations of the Filer in respect of liabilities including extraordinary liabilities; or
  - (v) certain other limited circumstances as described in the Preliminary Prospectus.
7. The Filer intends to become a reporting issuer, or equivalent, under the Legislation by filing a final prospectus (the "Final Prospectus") relating to the Offerings. The authorized capital of the Filer will consist of an unlimited

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number of Capital Shares, an unlimited number of Preferred Shares, an unlimited number of Class B, Class C, Class D and Class E capital shares, issuable in series, an unlimited number of Class B, Class C, Class D and Class E preferred shares, issuable in series, an unlimited number of Class J Shares and an unlimited number of Class S Shares, each having the attributes set forth under the headings "Description of Share Capital" and "Details of the Offerings" commencing on page 16 of the Preliminary Prospectus.

8. The Class J Shares are currently the only voting shares in the capital of the Filer. At the time of filing the Final Prospectus, there will be 150 Class J Shares and 100 Class S non-voting shares issued and outstanding. Scotia Capital will not own any Class J Shares and will own all of the Class S shares. All of the Class J Shares will be owned by R Split III Holdings Corp. ("Holdings") and all of the common shares of Holdings will be owned equally by each of the three independent directors of the Filer.
9. The Filer has a Board of Directors which currently consists of four directors. All of the directors are employees of Scotia Capital. Also, the offices of President/Chief Executive Officer and Chief Financial Officer/Secretary of the Filer are held by employees of Scotia Capital. At least two additional independent directors will be appointed to the Board of Directors of the Filer prior to the filing of the Final Prospectus. The Filer's investment in the Royal Bank Shares will represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Filer.
10. The Royal Bank Shares are listed and traded on the Toronto Stock Exchange (the "TSX").
11. The Filer is not and will not, upon the completion of the Offerings, be an insider of Royal Bank within the meaning of the Legislation.

### The Offerings

12. The net proceeds from the Offerings, after payment of commissions to the Agents (as defined in Section 18 below), expenses of issue and carrying costs relating to the acquisition of the Royal Bank Shares, will be used by the Filer to: (i) pay the acquisition cost (including any related costs or expenses) of the Royal Bank Shares; and (ii) pay the initial fee payable to Scotia Capital for its services under the Administration Agreement (as defined in Section 19 below).
13. The Final Prospectus will disclose selected financial information and dividend and trading history of the Royal Bank Shares.

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14. Application will be made to list the Capital Shares and Preferred Shares on the TSX.
15. All Capital Shares and Preferred Shares outstanding on a date approximately five years from the closing of the Offerings will be redeemed by the Filer on such date.

### Scotia Capital

16. Scotia Capital was incorporated under the laws of the Province of Ontario and is a direct, wholly-owned subsidiary of The Bank of Nova Scotia. Scotia Capital is registered under the Legislation as a dealer in the categories of “broker” and “investment dealer” and is a member of the Investment Dealers Association of Canada and a participant in the TSX.
17. Scotia Capital is the promoter of the Filer and will be establishing a credit facility in favour of the Filer in order to facilitate the acquisition of the Royal Bank Shares by the Filer.
18. Pursuant to an agreement (the “Agency Agreement”) to be made between the Filer and Scotia Capital, RBC Dominion Securities Inc., CIBC World Markets Inc., BMO Nesbitt Burns Inc., TD Securities Inc., HSBC Securities (Canada) Inc., Canaccord Capital Corporation, Desjardins Securities Inc., Raymond James Ltd., Wellington West Capital Inc., Dundee Securities Corporation and GMP Securities L.P. (collectively, the “Agents” and individually, an “Agent”), the Filer will appoint the Agents to offer the Capital Shares and Preferred Shares of the Filer on a best efforts basis. The Final Prospectus qualifying the Offerings will contain a certificate signed by each of the Agents in accordance with the Legislation. Royal Bank is a substantial security holder of the Related Agent, which is a distribution company of the Filer.
19. Pursuant to an administration agreement (the “Administration Agreement”) to be entered into between Scotia Capital and the Filer, the Filer will retain Scotia Capital to administer the ongoing operations of the Filer and will pay Scotia Capital a quarterly fee of approximately 0.0625% of the market value of the Royal Bank Shares held by the Filer.
20. Scotia Capital’s economic interest in the Filer and in the material transactions involving the Filer are disclosed in the Preliminary Prospectus and will be disclosed in the Final Prospectus under the heading “Interest of Management and Others in Material Transactions” and include the following:

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- (a) agency fees with respect to the Offering;
- (b) an administration fee under the Administration Agreement;
- (c) commissions in respect of the acquisition of Royal Bank Shares, the disposition of Royal Bank Shares to fund a redemption, retraction or purchase for cancellation of the Capital Shares and Preferred Shares;
- (d) interest and reimbursement of expenses, in connection with the acquisition of Royal Bank Shares; and
- (e) amounts in connection with Principal Sales and Principal Purchases (as described in Sections 21 and 26 below).

### The Principal Trades

- 21. Subject to regulatory approval, Scotia Capital may, as principal sell Royal Bank Shares to the Filer (the “Principal Sales”).
- 22. In respect of any Principal Sales made to the Filer by Scotia Capital as principal, Scotia Capital may realize a financial benefit to the extent that the proceeds received from the Filer exceed the aggregate cost to Scotia Capital of such Royal Bank Shares. Similarly, the proceeds received from the Filer may be less than the aggregate cost to Scotia Capital of the Royal Bank Shares and Scotia Capital may realize a financial loss, all of which is disclosed in the Preliminary Prospectus and will be disclosed in the Final Prospectus.
- 23. The Preliminary Prospectus discloses and the Final Prospectus will disclose that any Principal Sales will be made in accordance with the rules of the applicable stock exchange and the price paid to Scotia Capital (inclusive of all transaction costs, if any) will not be greater than the price which would have been paid (inclusive of all transaction costs, if any) if the acquisition had been made through the facilities of the principal stock exchange on which the Royal Bank Shares are listed and posted for trading at the time of the purchase from Scotia Capital.
- 24. Scotia Capital will not receive any commissions from the Filer in connection with the Principal Sales and all Principal Sales will be approved by the independent directors of the Filer. In carrying out the Principal Sales, Scotia Capital will deal fairly, honestly and in good faith with the Filer.
- 25. The Principal Sales may benefit the Filer by insulating the Filer from price increases in respect of the Royal Bank Shares.

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26. Scotia Capital may also sell Royal Bank Shares to fund retractions of Capital Shares and Preferred Shares and upon liquidation of the Royal Bank Shares in connection with the final redemption of Capital Shares and Preferred Shares. These sales will be made by Scotia Capital as agent on behalf of the Filer, but in certain circumstances, such as where a small number of Capital Shares and Preferred Shares have been surrendered for retraction, Scotia Capital may purchase Royal Bank Shares as principal (the “Principal Purchases”) subject to receipt of all regulatory approvals.
27. In connection with any Principal Purchases, Scotia Capital will comply with the rules, procedures and policies of the applicable stock exchange of which they are members and in accordance with orders obtained from all applicable securities regulatory authorities. The Preliminary Prospectus discloses and the Final Prospectus will disclose that Scotia Capital may realize a gain or loss on the resale of such securities.
28. Scotia Capital must take reasonable steps, such as soliciting bids from other market participants or such other steps as Scotia Capital, in its discretion, considers appropriate after taking into account prevailing market conditions and other relevant factors, to enable the Filer to obtain the best price reasonably available for the Royal Bank Shares so long as the price obtained (net of all transaction costs, if any) by the Filer from Scotia Capital is at least as advantageous to the Filer as the price which is available (net of all transaction costs, if any) through the facilities of the applicable stock exchange at the time of the trade.
29. All Principal Purchases will be approved by the independent directors of the Filer.
30. Scotia Capital will not receive any commissions from the Filer in connection with Principal Purchases and, in carrying out the Principal Purchases, Scotia Capital shall deal fairly, honestly and in good faith with the Filer.
31. Scotia Capital will not have any knowledge of a material fact or material change with respect to Royal Bank that has not been generally disclosed at the time it makes Principal Sales or Principal Purchases.

### **Decision**

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the authority to make the decision has been met.

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The decision of the Decision Makers is that the Requested Relief is granted.

Carol S. Perry  
Ontario Securities Commission

Paul K. Bates  
Ontario Securities Commission