

2002 BCSECCOM 418

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Relief from the registration and prospectus requirements for securities underlying trust units being qualified by prospectus – underlying securities to be issued by other companies – relief granted for first trade of underlying securities provided prospectus qualifying trust units is filed and receipted

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61 and 76

**IN THE MATTER OF THE SECURITIES LEGISLATION OF NOVA
SCOTIA, BRITISH COLUMBIA, MANITOBA, NEWFOUNDLAND AND
LABRADOR, PRINCE EDWARD ISLAND, NEW BRUNSWICK, YUKON,
NORTHWEST TERRITORIES AND NUNAVUT**

AND

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

AND

IN THE MATTER OF THE BANK OF NOVA SCOTIA

AND

SCOTIABANK CAPITAL TRUST

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Nova Scotia, British Columbia, Manitoba, Newfoundland and Labrador, Prince Edward Island, New Brunswick, Yukon, Northwest Territories and Nunavut (collectively, the “Jurisdictions”) has received an application (the “Application”) on behalf of The Bank of Nova Scotia (the “Bank”) and Scotiabank Capital Trust (the “Trust”) for a decision pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that certain trades in securities of the Bank are exempt from the requirements under the Legislation to be registered to trade in a security (the “Registration Requirement”) and to file and obtain a receipt for a preliminary prospectus and a prospectus (the “Prospectus Requirement”), subject to certain conditions;

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

AND WHEREAS the Bank and the Trust have represented to the Decision Makers that:

1. The Trust is an open-end trust established under the laws of the Province of Ontario by Computershare Trust Company of Canada (“Trustee”), as trustee, pursuant to a declaration of trust made as of March 28, 2002 (the “Declaration of Trust”).
2. Following completion of the Offering described below, the authorized capital of the Trust will consist of an unlimited number of (i) Special Trust Securities (the “Special Trust Securities”); and (ii) Scotiabank Trust Securities - Series 2002-1 (the “Scotia BaTS II”). The Special Trust Securities and the Scotia BaTS II are collectively referred to herein as the “Trust Securities”.
3. The Trust was established solely for the purpose of effecting a public offering of Scotia BaTS II (the “Offering”) and possible future offerings of securities in order to provide the Bank with a cost effective means of raising capital for Canadian financial institutions regulatory purposes by means of: (i) creating and selling the Trust Securities; and (ii) acquiring and holding assets, which, on completion of the Offering, will consist primarily of a senior deposit note issued by the Bank (the “Bank Deposit Note”). The Bank Deposit Note will generate income for distribution to holders of the Trust Securities. The Trust does not and will not carry on any operating activity other than in connection with the Offering and any future offerings.
4. Subject to regulatory approval, the Scotia BaTS II will qualify as Tier 1 Capital of the Bank. The Trust will also issue and sell Special Trust Securities, which are voting securities of the Trust, to the Bank in connection with the Offering.
5. The Bank is a bank under the *Bank Act* (Canada) and the *Bank Act* (Canada) is its charter.
6. The Bank is a reporting issuer or the equivalent in each of the provinces and territories of Canada that provides for a reporting issuer regime and is not, to its knowledge, in default of any reporting requirement under the Legislation.

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7. The authorized share capital of the Bank consists of an unlimited number of (i) common shares (the “Bank Common Shares”); and (ii) preferred shares (the “Bank Preferred Shares”), issuable in series.
8. Pursuant to the terms of the Scotia BaTS II and a Share Exchange Agreement (the “Share Exchange Agreement”) to be entered into among the Bank, the Trust and a party acting as exchange trustee, the Scotia BaTS II may be exchanged, at the option of the holders of Scotia BaTS II (the “Holder Exchange Right”), for Bank Preferred Shares Series W. The Scotia BaTS II will be automatically exchanged, without the consent of the holder, for Bank Preferred Shares Series X upon the occurrence of certain stated events relating to the solvency of the Bank or actions taken by the Superintendent of Financial Institutions (the “Superintendent”) in respect of the Bank (the “Automatic Exchange”). The Bank Preferred Shares Series W and X are collectively referred to herein as the “Bank Exchange Preferred Shares”.
9. The Bank Deposit Note will be convertible (i) at any time at the option of the holder into Bank Preferred Shares Series W, exercisable by the Trust in circumstances in which holders of Scotia BaTS II exercise the Holder Exchange Right, and (ii) automatically into Bank Preferred Shares Series X in circumstances giving rise to an Automatic Exchange (such rights of conversion referred to in items (i) and (ii) above being referred to herein as the “Conversion Rights), in each case to enable the Trust to satisfy its obligation to deliver Bank Exchange Preferred Shares of the appropriate series to holders of Scotia BaTS II in connection with the Holder Exchange Right or Automatic Exchange, as applicable.
10. Pursuant to the Share Exchange Agreement, the Bank will grant to the Trust the right to subscribe, if necessary following the maturity of the Bank Deposit Note, for Bank Exchange Preferred Shares of the appropriate series to enable the Trust to give effect to the Holder Exchange Right and the Automatic Exchange following such maturity (the “Subscription Right”).
11. The Holder Exchange Right will be effected through the conversion by the Trust of the corresponding principal amount of the Bank Deposit Note into Bank Preferred Shares Series W, or the acquisition by the Trust of such shares through the exercise of the Subscription Right. Holders of Scotia BaTS II exercising the Holder Exchange Right will, upon surrendering the Scotia BaTS II to be exchanged, receive from the Trust 40 Bank Preferred Shares Series W in respect of each Scotia BaTS II so exchanged and the Scotia BaTS II surrendered for exchange will be cancelled.

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12. The Automatic Exchange will be effected through the automatic conversion of each \$1,000 principal amount of the Bank Deposit Note into 40 Bank Preferred Shares Series X, or the acquisition by the Trust of such shares through the exercise of the Subscription Right. Each holder of Scotia BaTS II will be deemed to have surrendered each Scotia BaTS II to the Trust in exchange for 40 Bank Preferred Shares Series X and the Scotia BaTS II deemed to have been surrendered for exchange will be cancelled.
13. The terms of the Bank Exchange Preferred Shares provide that the Bank Exchange Preferred Shares are exchangeable at the option of the holder into Bank Common Shares at certain times and in certain circumstances, except where an event giving rise to the Automatic Exchange in respect of the Scotia BaTS II has occurred and is continuing (the "Bank Common Share Exchange Right").
14. The Bank Exchange Preferred Shares are not exchangeable into Bank Common Shares until December 31, 2012. In addition, the Bank may redeem the Bank Exchange Preferred Shares and pay the redemption price thereof by delivering cash or Bank Common Shares to holders of redeemed Bank Exchange Preferred Shares (the entitlement of the Bank to issue Bank Common Shares for such purpose being the "Bank Preferred Share Redemption Right").
15. In addition to qualifying the Scotia BaTS II for distribution, the (final) prospectus in respect of the Offering (the "Prospectus") will also qualify the Holder Exchange Right, the Automatic Exchange, the Conversion Rights, the Subscription Right, the Bank Preferred Share Redemption Right and the Bank Common Share Exchange Right (collectively, the "Conversion and Exchange Rights"). Information concerning the Trust and the Bank will be included, or incorporated by reference, in the Prospectus.
16. There may be no registration or prospectus exemptions available under the Legislation for certain of the trades contemplated by the Conversion and Exchange Rights (the "Trades").

AND WHEREAS pursuant to the System, this MRRS Decision Document evidences the decision of each of the Decision Makers (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;

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THE DECISION of the Decision Makers under the Legislation is that the Registration Requirement and the Prospectus Requirement shall not apply to the Trades provided that the first trade in Bank Exchange Preferred Shares and Bank Common Shares acquired pursuant to the Decision, other than a trade by the Trust or the Bank pursuant to the Conversion and Exchange Rights, shall be deemed to be a distribution or a primary distribution to the public under the Legislation of the Jurisdiction in which the trade takes place (the “Applicable Legislation”) unless:

- (a) the Bank has filed and obtained a receipt for the Prospectus under the Applicable Legislation;
- (b) the Bank is a reporting issuer or the equivalent under the Applicable Legislation at the time of the trade, to the extent that the Applicable Legislation provides a reporting issuer regime; and
- (c) the trade is not a control distribution as defined in Multilateral Instrument 45-102 Resale of Securities.

DATED this 25th day of April, 2002.

H. Leslie O’Brien