

2006 BCSECCOM 337

April 27, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act ss. 48, 76 Other - Exemption from registration and prospectus requirements for situations other than a corporate acquisition or reorganization; trades to business associates; debt settlements; or trades involving employee investment plans and consultants - Trades in short-term debt securities that have more than one rating with only one rating being an approved rating - The issuer issues short term debt that has at least one rating at an approved rating, as defined in NI 81-102; the issuer has another rating below an approved rating; the issuer will only issue short-term debt that is not convertible or exchangeable other than into short-term debt; the issuer will have at least one approved rating; the decision will terminate on the earlier of three years after the date of the decision or 90 days after NI 45-106 is amended

Applicable British Columbia Provisions

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

In the Matter of
the Securities Legislation of
Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and
Labrador, Nova Scotia, Nunavut, Northwest Territories, Ontario, Prince Edward
Island, Quebec, Saskatchewan and Yukon
(the Jurisdictions)

and

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

and

In the Matter of
Nova Scotia Power Incorporated
(the Filer)

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for :

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1. an exemption from the dealer registration requirement in respect of a trade in a negotiable promissory note or commercial paper maturing not more than one year from the date of issue (the Commercial Paper) ; and
2. an exemption from the prospectus requirement in respect of the distribution of the Commercial Paper,

(collectively, the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications (MRRS):

- (a) the Nova Scotia 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:

1. The Filer was incorporated in 1984 under the laws of Nova Scotia, and is a regulated utility with its head office in Halifax, Nova Scotia. The Filer generates, transmits and distributes electricity in Nova Scotia. The Filer is a reporting issuer or its equivalent in each of the Jurisdictions and is not on the list of defaulting reporting issuers maintained under applicable Legislation.
2. The Filer has established a Cdn.\$400 million Commercial Paper program. The Commercial Paper is not qualified by a prospectus filed in any Jurisdiction and is sold exclusively on a private placement basis in accordance with available exemptions from the prospectus and registration requirements of the Legislation.
3. Subsection 2.35(1)(b) of National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) provides that exemptions from the dealer registration and prospectus requirements of the Legislation for short-term debt (the Commercial Paper Exemption) are available only where such short-term debt “has an approved credit rating from an approved credit rating

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organization” both terms as defined in National Instrument 81-102 *Mutual Funds* (NI 81-102).

4. The definition of an “approved credit rating” in NI 81-102 requires, among other things, that (a) the rating assigned to such debt must be “at or above” certain prescribed short-term ratings, and (b) such debt must not have been assigned a rating by any “approved credit rating organization” that is not an “approved credit rating.”
5. The rating of the Filer’s Commercial Paper by Dominion Bond Rating Service Limited, “R-1(low)”, meets the prescribed threshold stated in the definition of “approved credit rating” in NI 81-102.
6. The Filer’s Commercial Paper does not meet the definition of “approved credit rating” in NI 81-102 because Moody’s Investors Service and Standard & Poor’s have attributed a rating of “Prime -2” and “A-2”, respectively, to the Filer’s Commercial Paper, which are ratings lower than that required by the Commercial Paper Exemption.

Decision

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 Requested Relief is granted provided that the Commercial Paper:

- (a) matures not more than one year from the date of issue;
- (b) is not convertible or exchangeable into or accompanied by a right to purchase another security other than Commercial Paper;
- (c) has a rating issued by one of the following rating organizations, or any of their successors, at or above one of the following rating categories or a rating category that replaces a category listed below:

Rating Organization	Rating
Dominion Bond Rating Service Limited	R-1 (low)
Fitch Ratings Ltd.	F2
Moody's Investors Service	P-2
Standard & Poor's	A-2

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For each Jurisdiction, this decision will terminate on the earlier of:

- (a) 90 days after the coming into force of any rule, other regulation or blanket order or ruling under the Legislation of the Jurisdiction that amends section 2.35 of NI 45-106 or provides an alternate exemption; and
- (b) three years from the date of this decision.

H. Leslie O'Brien, Q.C., Chair
Nova Scotia Securities Commission

R. Daren Baxter, Vice-Chair
Nova Scotia Securities Commission