

2005 BCSECCOM 723

September 19, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 44-101, s. 15.1 - An issuer wants relief from the qualification criteria in Part 2 of NI 44-101 so it can file a short form prospectus - The issuer is a trust, all of whose voting securities are owned by a bank; the bank is qualified to file a short form prospectus under NI 44-101; the short form prospectus will qualify debt securities that entitle the holders to receive fixed distributions; the distributions are based on dividends paid on securities of the bank, which provides an undertaking relating to its dividend payments; the continuous disclosure materials of the bank will be incorporated by reference into the short form prospectus

Securities Act, s. 169 - Confidentiality - An applicant wants to keep an application and order confidential for a limited amount of time after the order is granted - The record provides intimate financial, personal or other information; the disclosure of the information would be detrimental to the person affected by having it disclosed before a specific transaction; the information will be made available after a specific date

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 169

National Instrument 44-101, part 2 and s. 15.1

Form 44-101F3, items 7 and 12

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

and

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

and

In the Matter of Royal Bank of Canada
and
RBC Capital Trust II

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MRRS Decision Document

Background

The local securities regulatory authority or regulator (the “Decision Maker” and, collectively, the “Decision Makers”) in each of the Jurisdictions has received an application (the “Application”) from Royal Bank of Canada (the “Bank”) and RBC Capital Trust II (the “Trust”) (collectively, the “Filers”) for a decision (the “Requested Relief”), pursuant to the securities legislation of the Jurisdictions (the “Legislation”), that:

- A. the Trust be exempted from the following requirements of the Legislation in connection with offerings of non-convertible Trust Capital Securities (as defined herein):
 - (i) the requirements of Part 2 of National Instrument 44-101 (“NI 44-101”), which set forth the eligibility requirements to enable an issuer to file a prospectus in the form of a short form prospectus; and
 - (ii) the disclosure requirements in Item 7 (Earnings Coverage Ratios) and Item 12 (Documents Incorporated by Reference), with the exception of Item 12.1(1)2, of Form 44-101 F3 in respect of the Trust;
- B. the Trust is qualified to file a prospectus in the form of a short form prospectus in accordance with NI 44-101; and
- C. the Application and this MRRS decision document be held in confidence by the Decision Makers, subject to certain conditions.

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Autorité des marchés financiers du Québec 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 Filers:

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The Bank

1. The Bank is a Schedule I Bank under the *Bank Act* (Canada) and such act is its charter and governs its operations. The head office of the Bank is located in Montreal, Quebec.
2. The authorized share capital of the Bank consists of an unlimited number of: (i) common shares ("Bank Common Shares"); (ii) an unlimited number of First Preferred Shares without nominal or par value that may be issued for a maximum aggregate consideration of \$10 billion; and (iii) an unlimited number of Second Preferred Shares without nominal or par value that may be issued for a maximum aggregate consideration of \$5 billion (collectively, the "Bank Preferred Shares").
3. The Bank Common Shares are listed on the Toronto Stock Exchange, the New York Stock Exchange and the Swiss Exchange.
4. The Bank is a reporting issuer in each province and territory of Canada that provides for a reporting issuer regime and is not, to its knowledge, in default of any requirement thereof. The Bank is qualified to use the short form prospectus system provided under NI 44-101.

The Trust

5. The Trust is an open-end trust established under the laws of the Province of Ontario pursuant to a declaration of trust made as of June 23, 2003 of the Royal Trust Company (the "Trustee"), as amended and restated and supplemented from time to time (the "Declaration of Trust"). In July, 2003, the Trust completed a public offering of \$900 million of Trust Capital Securities – Series 2013 (the "RBC TruCS – Series 2013"). The Trust is proposing to offer a second series of trust capital securities ("Trust Capital Securities") to the public pursuant to a prospectus (the "Offering"). Upon completion of the Offering, the authorized capital of the Trust will consist of: (i) an unlimited number of RBC TruCS – Series 2013; (ii) an unlimited number of Trust Capital Securities – Series 2015 (the "RBC TruCS – Series 2015"); and (iii) an unlimited number of special trust securities (the "Special Trust Securities").
6. The Trust is a reporting issuer in each province of Canada that provides for a reporting issuer regime and is not, to its knowledge, in default of any requirement thereof. The head office of the Trust is located in Toronto, Ontario.

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7. All of the Special Trust Securities of the Trust are held by the Bank (the Special Trust Securities and the Trust Capital Securities being collectively referred to herein as the “Trust Securities”). The Trust may, from time to time, issue further series of Trust Capital Securities having terms substantially similar to the RBC TruCS – Series 2013 and the RBC TruCS – Series 2015.
8. The RBC TruCS – Series 2015 will be non-voting securities of the Trust (except in limited circumstances where holders can vote if changes to the terms of the RBC TruCS – Series 2015 are made), which have the attributes described below under “RBC TruCS – Series 2015”). The Special Trust Securities are voting securities of the Trust.
9. The Trust was established for the purpose of effecting offerings of Trust 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 senior deposit notes issued by the Bank (the “Bank Deposit Notes”) acquired by the Trust with the proceeds of the offerings of the Trust Capital Securities. The Bank Deposit Notes 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 of the RBC TruCS – Series 2015 and any future offerings.

RBC TruCS – Series 2015

10. Holders of RBC TruCS – Series 2015 will be entitled to receive fixed, semi-annual non-cumulative distributions (each, an “Indicated Yield”) on the basis described below (the “Distributions”). Each semi-annual payment date for the Indicated Yield in respect of the RBC TruCS – Series 2015 (a “Distribution Date”) will be either a “Regular Distribution Date” or a “Distribution Diversion Date”. A Distribution Date will be a “Distribution Diversion Date”, with the result that the Indicated Yield will not be paid in respect of the RBC TruCS – Series 2015 but, instead, the Trust will pay the net distributable funds of the Trust to the Bank as holder of the Special Trust Securities if: (i) the Bank has failed in the period to be described in the prospectus for the Offering (the “Prospectus”) to declare regular dividends on the Bank preferred shares of any series (“Bank Preferred Shares”); or (ii) no Bank Preferred Shares are then outstanding and the Bank has failed in the period described in the Prospectus to declare regular dividends on the Bank common shares (the “Bank Common Shares”). In all other cases, a Distribution Date will be a Regular Distribution Date, in

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which case holders of RBC TruCS – Series 2015 will be entitled to receive the Indicated Yield and the Bank, as holder of the Special Trust Securities, will be entitled to receive the net distributable income, if any, of the Trust remaining after payment of the Indicated Yield. The Bank Preferred Shares and the Bank Common Shares are hereinafter collectively referred to as the “Bank Dividend Restricted Shares”.

11. Under a Share Exchange Agreement to be entered into among the Bank, the Trust and a party acting as Exchange Trustee (the “Series 2015 Share Exchange Agreement”), the Bank will agree, for the benefit of holders of RBC TruCS – Series 2015, that in the event that the Trust fails on any Regular Distribution Date to pay the Indicated Yield on the RBC TruCS – Series 2015 in full, the Bank will not pay dividends on the Bank Dividend Restricted Shares until a specified period of time has elapsed, unless the Trust first pays such Indicated Yield (or the unpaid portion thereof) to holders of RBC TruCS – Series 2015. Accordingly, it is in the interest of the Bank to ensure, to the extent within its control, that the Trust complies with its obligation to pay the Indicated Yield on each Regular Distribution Date.
12. Pursuant to the terms of the RBC TruCS – Series 2015 and the Series 2015 Share Exchange Agreement, the RBC TruCS – Series 2015 may be exchanged, at the option of the holder, for newly issued First Preferred Shares Series Y of the Bank (“Bank Preferred Shares Series Y”). The RBC TruCS – Series 2015 will be automatically exchanged, without the consent of the holder, for newly issued First Preferred Shares Series X of the Bank (“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 in respect of the Bank.
13. Neither the Bank Preferred Shares Series Y nor the Bank Preferred Shares Series X are convertible into Bank Common Shares.
14. The Trust may, subject to regulatory approval, on December 31, 2010 and on any Distribution Date thereafter, redeem the RBC TruCS – Series 2015. The price payable in respect of any such redemption will include an early redemption compensation component (such price being the “Early Redemption Price”) in the event of a redemption of RBC TruCS – Series 2015 prior to December 31, 2015 (the “Early Redemption Date”). The price payable in all other cases will be \$1,000 per RBC TruCS – Series 2015 together with any unpaid Indicated Yield thereon (the “Redemption Price”).

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15. The Bank has covenanted under the Series 2015 Share Exchange Agreement, that the Bank will maintain direct ownership of 100% of the outstanding Special Trust Securities. Subject to regulatory approval, the RBC TruCS – Series 2015 will constitute Tier I Capital of the Bank.
16. As long as any RBC TruCS – Series 2015 are outstanding and are held by any person other than the Bank, the Trust may only be terminated with the approval of the Bank as holder of the Special Trust Securities and with the approval of the Superintendent: (i) upon the occurrence of a Special Event (as defined in the Prospectus) prior to December 31, 2010; or (ii) for any reason on December 31, 2010 or any other Distribution Date thereafter. Holders of each series of outstanding Trust Securities will rank *pari passu* in the distribution of the property of the Trust in the event of a termination of the Trust after the discharge of any creditor claims. As long as any RBC TruCS – Series 2015 are outstanding and held by any person other than the Bank, the Bank will not approve the termination of the Trust unless the Trust has sufficient funds to pay the Early Redemption Price in the case of a termination prior to the Early Redemption Date, or the Redemption Price in the case of a termination at any other time.
17. As set forth in the Declaration of Trust, the RBC TruCS – Series 2015 are non-voting except in limited circumstances and Special Trust Securities entitle the holder thereof to vote.
18. Except to the extent that Distributions are payable to holders of RBC TruCS – Series 2015, and other than in the event of a termination of the Trust (as set forth in the Declaration of Trust), holders of RBC TruCS – Series 2015 have no claim or entitlement to the income of the Trust or its assets.
19. Pursuant to an administration agreement entered into between the Trustee and the Bank, as amended and restated, the Trustee has delegated to the Bank certain of its obligations in relation to the administration of the Trust. The Bank, as administrative agent, provides advice and counsel with respect to the administration of the day-to-day operations of the Trust and other matters as may be requested by the Trustee from time to time.
20. The Trust may from time to time, issue further series of Trust Capital Securities, the proceeds of which would be used to acquire additional Bank Deposit Notes.
21. On August 18, 2003, the Decision Makers granted an MRRS Decision Document to the Bank and the Trust (the “Continuous Disclosure Relief”) exempting the Trust from most of the continuous disclosure requirements

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under the Legislation upon certain conditions, including that the Bank provide its financial statements to holders of Trust Capital Securities and file its financial statements and Annual Information Form (“AIF”) on the Trust’s SEDAR profile.

22. It is expected that the RBC TruCS – Series 2015 will receive an approved rating from an approved rating organization, as defined in NI 44-101.
23. At the time of the filing of any prospectus in connection with offerings of Trust Capital Securities (including the Offering):
 - (i) the Trust Capital Securities will be non-convertible within the meaning of NI 44-101;
 - (ii) the prospectus will be prepared in accordance with the short form prospectus requirements of NI 44-101, except as varied by this Decision or as permitted by the Legislation;
 - (iii) the Trust will comply with all of the filing requirements and procedures set out in NI 44-101 except as varied by this Decision or as permitted by the Legislation;
 - (iv) the prospectus will incorporate by reference the documents that would be required to be incorporated by reference under Item 12 of Form 44-101F3 if the Bank were the issuer of such securities;
 - (v) the Bank will satisfy the basic eligibility requirements of NI 44-101;
 - (vi) the prospectus disclosure required by Item 12 (other than Item 12.1(1)2) of Form 44-101F3 of NI 44-101 (“Form 44-101F3”) in respect of the Trust will be addressed by incorporating by reference the Bank’s public disclosure documents referred to in paragraph 23(iv) above; and
 - (vii) the Continuous Disclosure Relief, as amended, supplemented or replaced from time to time, is in effect.

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.

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The decision of the Decision Makers under the Legislation is that the Requested Relief is granted, provided that:

- (i) the Trust and the Bank, as applicable, comply with paragraph 23 above;
- (ii) the Bank remains the direct or indirect beneficial owner of all of the outstanding Special Trust Securities;
- (iii) the Bank, as holder of the Special Trust Securities, will not propose changes to the terms and conditions of any outstanding Trust Capital Securities offered and sold pursuant to a short form prospectus of the Trust filed under this decision that would result in such Trust Capital Securities being exchangeable for securities other than preferred shares of the Bank;
- (iv) the Trust is not required to, and does not, file its own AIF and annual financial statements in a Jurisdiction;
- (v) the Trust has minimal operations independent of the Bank;
- (vi) the Trust issues a news release and files a material change report in accordance with Part 7 of the NI 51-102, as amended, supplemented or replaced from time to time, in respect of any material change in the affairs of the Trust that is not also a material change in the affairs of the Bank; and
- (vii) if the Trust files a preliminary short form prospectus more than 90 days after the end of the most recently completed financial year end of the Bank, the Bank has filed audited financial statements for that year.

The further decision of the Decision Makers under the Legislation is that the Application and this decision shall be held in confidence by the Decision Makers until the earlier of the date that a preliminary short form prospectus is filed in respect of the offering of RBC TruCS -Series 2015 and October 15, 2005.

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