

2005 BCSECCOM 692

November 16, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 48,76 Other - Exemption from s. 34(1)(a) requirement to be registered as a dealer for a trade and s. 61 requirement to file a prospectus - Trades by a non-mutual fund in connection with its distribution reinvestment plan - Issuer is a reporting issuer with common shares listed on a Canadian stock exchange; under the issuer's reinvestment plan, dividends on preferred shares and interest on debentures can be invested in common shares of the issuer; all trades are made through a plan agent; the plan is made available to all Canadian holders of the relevant class of securities

Securities Act s. 48 Dealer - Exemption from s. 34(1)(a) requirement to be registered as a dealer to trade securities - A person not registered as a dealer in BC wants to do a trade that requires a BC registered dealer - The person will receive sell orders from participants in a distribution reinvestment plan of a reporting issuer; the person will not solicit orders; the person will pass sell orders to registered dealers to be executed; the person will not provide any investment advice to plan participants; the person is appropriately licensed to carry on business as a trust company

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 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 Applications

and

In the Matter of the Bank of Nova Scotia (the Issuer)
the Dividend and Share Purchase Plan of the Issuer (the Plan),
and Computershare Trust Company (the Plan Agent)

MRRS Decision Document

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Background

The local securities regulatory authority or regulator (the Decision Makers) in each of the Jurisdictions has received an application from the Issuer, under the securities legislation of the Jurisdictions (the Legislation), for the following decisions in respect of certain trades that may be made by the Issuer or the Plan Agent, pursuant to the Plan, that are related to the acquisition or sale of common shares including fractions (Common Shares) of the Issuer by persons or companies (Plan Participants) that participate in the Plan:

Acquisition of Common Shares by Plan Participants

A decision (the Registration Acquisition Relief) that the dealer registration requirement does not apply to:

- (a) trades in Common Shares made by the Issuer, or by the Plan Agent, to a Plan Participant, in connection with the purchase of the Common Shares by the Plan Participant under the Plan, using dividends or distributions out of earning, surplus, capital or other sources, payable in respect of preferred shares (Preferred Shares) of the Issuer or debentures (Debentures) of the Issuer that are held by the Plan Participant under the Plan, to purchase the Common Shares; or
- (b) trades in Common Shares made by the Issuer or Plan Agent to a Plan Participant, in connection with the purchase of the Common Shares by the Plan Participant under the Plan, using an optional cash payment under the Plan, to purchase the Common Shares, where the Plan Participant holds Preferred Shares, but not Common Shares, under the Plan.

A decision (the Prospectus Acquisition Relief) that the prospectus requirement does not apply to a distribution of Common Shares in the circumstance referred to in paragraphs (a) or (b), above.

Disposition of Common Shares on Behalf of Plan Participants

- (ii) A decision (the Registration Disposition Relief) that, where, in connection with the termination of a Plan Participant's participation in the Plan, the Plan Agent accepts a direction (a Sale Order) from the Plan Participant to sell Common Shares, that are held by the Plan Agent for the Plan Participant under the Plan, through an appropriately registered dealer, the dealer registration requirement shall not apply to the trade that is made by the Plan Agent with the Plan Participant when the Plan Agent accepts the Sale Order.

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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 the decisions unless they are defined in this decision or the context otherwise requires.

Representations

These decisions are based on the following facts represented by the Issuer:

The Issuer

- 1. The Issuer is a bank named in Schedule 1 of the *Bank Act* (Canada). The Issuer is not an investment fund. The executive office of the Issuer is located in Ontario.
- 2. The authorized share capital of the Issuer consists of an unlimited number of Common Shares and an unlimited number of Preferred Shares, issuable in series.
- 3. The Common Shares are listed on the Toronto Stock Exchange (the “TSX”) and the New York Stock Exchange.
- 4. The Issuer is a reporting issuer (or the equivalent) in each of the Jurisdictions and is not, to its knowledge, in default of any requirement under the Legislation of any Jurisdiction.
- 5. In addition to the Common Shares and Preferred Shares, the Issuer has outstanding certain Debentures.

The Plan Agent

- 6. The Plan Agent is a trust company organized under the laws of Canada and authorized to carry on business as a trust company in each Jurisdiction.

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The Plan

7. The Plan includes the following features:
 - (i) holders of Common Shares (other than U.S. residents) may elect to have dividends paid thereon automatically reinvested in Common Shares;
 - (ii) holders of Preferred Shares (other than U.S. residents) may elect to have dividends paid thereon automatically reinvested in Common Shares;
 - (iii) holders (each, a Shareholder) of either Common Shares or Preferred Share who are also holders of subordinated debentures of the Issuer ("Debentures") (other than U.S. residents) may elect to have interest on Debentures reinvested in Common Shares; and
 - (iv) Shareholders (other than U.S. residents) may make optional cash payments (Optional Cash Payment) of up to \$20,000 per annum for the purchase of additional Common Shares of the Issuer under the Plan, without paying brokerage commissions or other expenses, subject to a minimum payment of \$100.
8. The Plan Agent was appointed to act as the administrator for the Plan by the Issuer and, where the Plan Agent carries on trading activities in respect of the acquisition or disposition of securities for a Plan Participant under the Plan, the Plan Agent is stated in the Plan to be acting as agent for the Plan Participant. The Plan Agent does not provide investment advice to any Plan Participant concerning decisions by the Plan Participant to purchase, sell or hold securities under the Plan.
9. Under the Plan, the Issuer pays the Plan Agent all cash dividends and interest on the Common Shares, Preferred Shares or Debentures held by Plan Participants through the Plan which are to be reinvested, and the Plan Agent uses those funds, together with any Optional Cash Payments, to purchase additional Common Shares for the Plan Participants. At the election of the Issuer, the Common Shares are either purchased from the Issuer from treasury or purchased in the secondary market. All Common Shares acquired under the Plan are registered in the name of the Plan Agent or its nominee.

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10. All registered Shareholders are eligible to participate in the Plan by signing and submitting an authorization form to the Plan Agent. Non-registered holders must arrange to have their Shares transferred into their name or into a specific segregated registered account in order to become Plan Participants. Once an authorization form has been lodged with the Plan Agent, participation in the Plan is automatic, until terminated.
11. The price at which the Plan Agent purchases treasury Common Shares under the Plan is based on the “Average Market Price”. The Average Market Price is the weighted average market price for all trades of Common Shares on the TSX based on the daily trading volume and prices published by the TSX for the five trading days on which at least a board lot of Common Shares was traded ending on the business day immediately preceding the Common Share dividend date (in the case of holders of Common Shares or Debentures) and the Preferred Share dividend date (in the case of holders of Preferred Shares). In cases where Common Shares are purchased under the Plan in the open market, the Average Market Price is the average price paid by the Plan Agent for all Common Shares purchased to satisfy dividend payments, interest payments, reinvestments or Optional Cash Payments under the Plan, as applicable.
12. The Plan Agent maintains an account for each Plan Participant. Statements of account are mailed to each Plan Participant as promptly as practicable after each Common Share dividend payment date. Common Shares issued or purchased under the Plan for each Plan Participant are credited in an account established for that Plan Participant and shown on that Plan Participant’s statement of account. On request, the Plan Agent will issue share certificates registered in a Plan Participant’s name for any number of whole Common Shares held for such Plan Participant’s account under the Plan. Common Shares held by the Plan Agent under the Plan may not be pledged, sold or otherwise disposed by a Plan Participant. Instead, a Plan Participant that wishes to do so, must request that certificates for such shares be issued to it. Certificates are not issued for fractional shares.
13. Participation in the Plan may be terminated at any time by the Plan Participant giving written notice to the Plan Agent. When participation is terminated, the terminating Plan Participant will receive a certificate for the number of whole Common Shares held for such Participant’s account and a cash payment will be made for any

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fraction of a Common Share credited to the account. The Plan provides that a terminating Plan Participant may direct the Plan Agent to sell all of the whole and fractional Common Shares credited to such Plan Participant's account under the Plan. In such event, the Plan Agent will sell such Common Shares through a registered dealer designated by the Plan Agent, as soon as reasonably practicable following receipt by the Agent of notice of termination. The proceeds of sale, less any applicable commissions and taxes, will be paid to the terminating Plan Participant by the Plan Agent, together with a cash payment for any fractional Common Share. For the purpose of providing cash payments in respect of fractional Common Shares, the Plan Agent will purchase from the Plan Participant for cash any such fraction based on the last price paid by the Plan Agent for new Common Shares purchased out of Optional Cash Payments.

14. There are currently no exemptions from the dealer registration requirement for the trades in respect of which the Issuer has requested the Registration Acquisition Relief or the Registration Disposition Relief contained in section 2.2 of National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) because section 2.2 currently only contemplates the purchase of a security that is of the same class or series as the securities to which the dividends or distributions is attributable.
15. There are currently no exemptions from the prospectus requirement for the trades in respect of which the Issuer has requested the Prospectus Acquisition Relief or the Registration Acquisition Relief contained in section 2.2 of National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106).
16. There is currently no registration exemption that is available to the Plan Agent for trades made by the Plan Agent with a terminating Plan Participant when the Plan Agent accepts a Sale Order from the Plan Participant.

Decisions

Each of the Decision Makers is satisfied that the tests contained in the Legislation that provides the Decision Maker with the jurisdiction to make these decisions has been met.

The decision of the Decision Makers under the Legislation is that the Registration Acquisition Relief and Prospectus Acquisition Relief are granted, provided that:

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- (A) in the case of the Registration Acquisition Relief,
 - (a) at the time of the trade, the Plan is made available to every security holder in Canada to which the corresponding dividend or distribution is available;
 - (b) at the time of the trade, the Issuer is not an investment fund; and
 - (c) for each Jurisdiction, this decision shall terminate on the earlier of:
 - (i) 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 2.2 of NI 45-106 or provides an alternative exemption;
 - (ii) December 31, 2008; and
 - (d) for any trade that relates to the purchase of Common Shares pursuant to an optional cash payment,
 - (i) at the time of the trade, the Common Shares trade on a marketplace; and
 - (ii) the aggregate number of securities issued under any Optional Cash Payment under the Plan (whether or not under these Decisions) must not exceed, in any financial year of the Issuer during which the trade takes place, 2% of the issued and outstanding securities of the class to which the Plan relates as at the beginning of the financial year; and
- (B) in the case of the Prospectus Acquisition Relief,
 - (a) at the time of the trade, the Plan is made available to every security holder in Canada to which the corresponding dividend or distribution is available;
 - (b) at the time of the trade, the Issuer is not an investment fund;
 - (c) the first trade in any Common Shares issued by the Issuer under the Plan to holders of Preferred Shares or Debentures pursuant to this decision will be a distribution or primary distribution to

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the public unless the conditions set out in subsection 2.6(3) of National Instrument 45-102 *Resale of Securities* are satisfied;

- (d) for any trade that relates to the purchase of Common Shares pursuant to an optional cash payment,
 - (i) at the time of the trade, the Common Shares trade on a marketplace; and
 - (ii) the aggregate number of securities issued under any Optional Cash Payment under the Plan (whether or not under these Decisions) must not exceed, in any financial year of the Issuer during which the trade takes place, 2% of the issued and outstanding securities of the class to which the Plan relates as at the beginning of the financial year; and
- (e) for each Jurisdiction, this decision shall terminate on the earlier of:
 - (i) 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 2.2 of NI 45-106 or provides an alternate exemption; and
 - (ii) December 31, 2008.

The decision of the Decision Makers under the Legislation for each Jurisdiction is that the Registration Disposition Relief is granted, provided that:

- (A) The Plan Agent is, at the relevant time, appropriately licensed or otherwise permitted to carry on the business of a trust company in the Jurisdiction;
- (B) the Sale Order is not solicited, but for this purpose a Sale Order shall not be considered “solicited” by reason of the Issuer, or the Plan Agent on behalf of the Issuer, distributing from time to time to Plan Participants disclosure documents, notices, brochures, statements of account, or similar documents advising of the ability under the Plan of the Plan Agent to facilitate sales of Common Shares or by reason of the Issuer and/or the Plan Agent advising Plan Participants of that ability, and informing Plan Participants of the details of the operation

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of the Plan in response to enquiries from time to time from Plan Participants by telephone or otherwise; and

(C) for each Jurisdiction, this decision shall terminate on the earlier of:

(a) 90 days after the coming into force of:

- (i) any rule or other regulation under the Legislation of the Jurisdiction that amends NI 45-106 and relates to the sale of securities by an administrator on behalf of participants in a dividend reinvestment plan, or
- (ii) a blanket order or ruling under the Legislation of the Jurisdiction that provides an alternative exemption; and

(b) December 31, 2008.

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