

2004 BCSECCOM 552

September 16, 2004

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act ss. 48 and 76 - Relief from registration and prospectus requirements - An issuer's securities are converted into or redeemed for securities of another issuer - investors could have acquired the underlying securities directly from the other issuer in compliance with the registration and prospectus requirements of the Act at the time they acquired the convertible securities of the issuer - relief granted for first trades of underlying securities, subject to certain conditions

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, New Brunswick, Prince Edward
Island and Newfoundland and Labrador (the "Jurisdictions")

and

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

and

In the Matter of Bank of Montreal (the "Bank")
and BMO Capital Trust (the "Trust") (collectively, the "Filers")

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 Filers for a decision under the securities legislation of the Jurisdictions (the "Legislation") that trades in Bank Exchange Preferred Shares, as defined below, contemplated by the Exchange Rights, as defined below, are exempt from the dealer registration requirement and the prospectus requirement of the Legislation (the "Requested Relief");

Under the Mutual Reliance Review System for Exemptive Relief Applications:

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- (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 Filers:

1. The Trust is a closed-end trust originally established under the laws of Ontario pursuant to a declaration of trust, as amended (the “Declaration of Trust”). The Trust was established solely for the purpose of offering securities to the public in order to provide the Bank with a cost effective means of raising capital for Canadian bank regulatory purposes. The Trust does not and will not carry on any operating activity other than in connection with the offering of its securities to the public. The Trust 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 in default of any reporting requirement under the Legislation.
2. The beneficial interests of the Trust are divided into units issued in one or more classes of units and one or more series of each class, as determined by the trustee of the Trust from time to time, including classes of units designated as Trust Capital Securities (the “BMO BOaTS”) and units designated as Special Trust Securities.
3. The Trust has previously issued three series of BMO BOaTS (being Series A, Series B and Series C) and proposes to offer for sale and issue to the public pursuant to a final prospectus (the “Prospectus”) a fourth series of BMO BOaTS, the “BMO BOaTS – Series D” (the “Offering”).
4. The Bank is a Schedule I bank under the *Bank Act* (Canada), which constitutes its charter. 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 in default of any reporting requirement under the Legislation.
5. The principal executive offices of the Bank and the head office of the Trust are located at Bank of Montreal, 100 King Street West, 1 First Canadian Place, Toronto, Ontario, Canada M5X 1A1. The Bank’s head office is located at 129 Rue St. Jacques, Montréal, Québec, Canada H2Y 1L6.

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6. Subject to regulatory approval, the BMO BOaTS - Series D will qualify as Tier 1 Capital of the Bank. The BMO BOaTS - Series D have no fixed final maturity date.
7. Pursuant to the terms of the BMO BOaTS - Series D and a Bank Share Exchange Agreement (the "Bank Share Exchange Agreement") to be entered into between the Trust, the Bank and BNY Trust Company of Canada, as exchange trustee, the BMO BOaTS - Series D will be automatically exchanged, without the consent of the holder, for Class B Preferred Shares, Series 11 of the Bank (the "Bank Exchange Preferred Shares") through the Trust 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 (the "Automatic Exchange").
8. Pursuant to the Bank Share Exchange Agreement, the Bank will grant to the Trust the right to subscribe (the "Subscription Right") for Bank Exchange Preferred Shares in order to enable the Trust to redeem the BMO BOaTS - Series D (if any remain outstanding) in circumstances where the Automatic Exchange is triggered and, for any reason, does not result in the exchange of all of the BMO BOaTS - Series D for Bank Exchange Preferred Shares.
9. The Automatic Exchange will be effected through the terms of the Bank Share Exchange Agreement and the Declaration of Trust. As of the time of the exchange, each holder of BMO BOaTS - Series D shall be deemed to have exchanged and transferred to the Bank all of such holder's right, title and interest in and to its BMO BOaTS - Series D in exchange for 40 Bank Exchange Preferred Shares and: (i) such holder shall cease to be a holder of any BMO BOaTS - Series D; (ii) all rights of such holder as a securityholder of the Trust will cease; and (iii) such person shall therefrom be deemed to be and shall be for all purposes a holder of Bank Exchange Preferred Shares. If, for any reason, the Automatic Exchange does not result in the exchange of all outstanding BMO BOaTS - Series D for Bank Exchange Preferred Shares, the Automatic Exchange will be effected through the exercise by the Trust of the Subscription Right pursuant to which the Trust will acquire Bank Exchange Preferred Shares and the Trust will subsequently redeem each BMO BOaTS - Series D not so exchanged for 40 Bank Exchange Preferred Shares.
10. In addition to qualifying the BMO BOaTS - Series D for distribution, the Prospectus will also qualify the Automatic Exchange and the Subscription Right (collectively, the "Exchange Rights"). Information concerning each of the Trust and the Bank will be included, or incorporated by reference, in the Prospectus.

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11. There may be no registration or prospectus exemptions available under the Legislation for the Requested Relief.

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 first trade in Bank Exchange Preferred Shares acquired pursuant to the decision, other than a trade by the Trust or the Bank pursuant to the 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.

H. Leslie O’Brien
Chairman
Nova Scotia Securities Commission