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October 25, 2007

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 130 - Relief from certain self-dealing restrictions in Part 15 of the Act - A mutual fund and its registered portfolio manager want relief from section 121(2)(c) of the Act so that the fund can invest in and hold securities of an issuer in which a substantial security holder of the mutual fund or its manager has a significant interest - A mutual fund and its registered portfolio manager want relief from section 121(3) of the Act so that the mutual fund manager can knowingly hold an investment in an issuer in which a substantial security holder of the mutual fund or its manager has a significant interest - An independent review committee will review the mutual fund's purchases, sales, and continued holdings of securities of the issuers, and will determine whether the investments are in the best interests of the investors of the mutual funds

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 121(2)(c), 121(3) and 130

In the Matter of
the Securities Legislation of
Ontario, British Columbia, Alberta,
Saskatchewan, Quebec, Nova Scotia, New Brunswick
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
Scotia Securities Inc. ("Scotia Securities")
and Scotia Capital Inc. ("Scotia Capital")
(collectively, the "Filers")

MRRS Decision Document

Background

The securities regulatory authority or regulator (the "Decision Maker") in each of the Jurisdictions has received an application from the Filers in respect of the

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mutual funds for which one or more of the Filers acts as trustee, manager or portfolio advisor (individually a “Fund” and collectively, the “Funds”) for a decision (the “Decision”) under the securities legislation of the Jurisdictions (the “Legislation”) that the provision prohibiting a mutual fund from knowingly making or holding an investment in an issuer in which any person or company who is a substantial security holder of the mutual fund, its management company or its distribution company, has a significant interest (the “Investment Restrictions”) shall not apply to investments by the Funds in securities of DundeeWealth Inc. (“Dundee”) (the “Requested Relief”).

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 this Decision unless they are otherwise defined in this Decision.

Representations

This Decision is based on the following facts represented by the Filers:

1. Each Fund is an open-end mutual fund trust established or continued under the laws of the Province of Ontario. Units of each Fund are qualified for distribution to the public under a simplified prospectus and annual information form filed in each of the Jurisdictions.
2. Scotia Securities is a corporation established under the laws of the Province of Ontario and is the trustee and manager of certain of the Funds (the “Scotia Mutual Funds”). Scotia Securities also acts as principal distributor of the Scotia Mutual Funds and, accordingly, is a “distribution company” within the meaning of the Legislation.
3. Scotia Securities is registered as a dealer in the category of mutual fund dealer (or the equivalent) in all the Jurisdictions. Scotia Securities is a member of the Mutual Fund Dealers Association of Canada.
4. Scotia Capital is a corporation established under the laws of the Province of Ontario and is the trustee and manager of certain of the Funds (the “Pinnacle Funds”). Scotia Capital also acts as portfolio manager of certain of the Funds

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and so it is a “management company”, within the meaning of the Legislation, of those Funds in respect of which it provides portfolio advisory services.

5. Scotia Capital is registered as a dealer in Ontario in the category of investment dealer and is registered under the equivalent category in the other Jurisdictions. Scotia Capital is a member of the Investment Dealers Association of Canada.
6. Each of Scotia Securities and Scotia Capital is a subsidiary of Scotiabank and accordingly each is an affiliate of the other. Scotiabank is a substantial security holder of each of Scotia Securities and Scotia Capital within the meaning of the Legislation.
7. Dundee is a TSX listed corporation existing under the laws of Ontario.
8. Several of the Funds currently hold securities of Dundee, including each Fund that has an investment objective of tracking the S&P/TSX Composite Index (an “Index Fund”).
9. On September 28, 2007, Scotiabank purchased an interest in Dundee, which has resulted in Scotiabank holding over 10 percent of the outstanding equity securities of Dundee. Accordingly, Scotiabank will have a significant interest in Dundee within the meaning of the Legislation.
10. Pursuant to the Legislation, the Funds are prohibited from making or holding an investment in any issuer in which any person or company who is a substantial security holder of the Fund, its management company or its distribution company, has a significant interest. As a result of the relationship described above, the Funds are therefore prohibited from making or holding an investment in securities of Dundee.
11. Absent the prohibitions described above, an investment in securities of Dundee would be consistent with the investment objectives of certain of the Funds, and, in the case of an Index Fund, would be required by the investment objectives of the Index Fund as Dundee is currently a constituent security within the S&P/TSX Composite Index.
12. Each of Scotia Securities and Scotia Capital has appointed an independent board of advisors (the “Board of Advisors”) that currently oversees all transactions in, and holdings of, securities of Scotiabank pursuant to exemptive relief previously granted by the Decision Makers.

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13. The role and duties of the Board of Advisors is disclosed in the current simplified prospectus of the Funds.
14. Effective November 1, 2007, each of the Funds will have a functioning independent review committee as required pursuant to National Instrument 81-107 ("NI 81-107"), which will approve all transactions in, and holdings of, Dundee securities.
15. In the interim period between the closing of the Purchase and the implementation of the NI 81-107 regime, it is proposed that the Board of Advisors will review and approve all transactions in, and holdings of, Dundee securities by the Funds.

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 this Decision has been met.

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

1. any purchase of Dundee securities by the Funds is made on an exchange on which the securities of Dundee are listed and traded;
2. no later than the time a Fund files its annual financial statements, the manager of any Fund which has traded in Dundee securities since September 28, 2007, will file on SEDAR the particulars of the investment;
3. the manager of the Fund has appointed a Board of Advisors to review the Funds' purchases, sales and continued holdings of Dundee securities;
4. the Board of Advisors has at least three members, each of whom is independent from and none of whom has a material relationship with the manager of any of the Funds, the Funds themselves, or an entity related to any manager, as those terms are defined in NI 81-107; more particularly, each member of the Board of Advisors shall be independent of:
 - (a) Scotiabank,
 - (b) Dundee,
 - (c) Scotia Securities,

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- (d) Scotia Capital,
 - (e) any portfolio advisor of the Funds, or
 - (f) any associate or affiliate of Scotiabank, Dundee, Scotia Securities, Scotia Capital or any portfolio advisor of the Funds;
5. the Board of Advisors has a written charter describing its mandate, responsibilities and function, and the standard of care which, at a minimum, sets out the applicable conditions of this Decision;
 6. the members of the Board of Advisors exercise their powers and discharge their duties honestly, in good faith and in the best interests of investors in the Funds and, in doing so, exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;
 7. none of the Funds nor any manager of any of the Funds indemnifies a member of the Board of Advisors against costs, charges or expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the person in respect of any civil, criminal, administrative, investigative or other proceeding in which the member is involved because of being or having been a member unless,
 - (a) the member acted honestly and in good faith, with a view to the best interests of the investment fund; and
 - (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the member had reasonable grounds for believing that the individual's conduct was lawful;
 8. none of the Funds incurs the costs of any portion of liability insurance that insures a member of the Board of Advisors for a liability for loss unless the conditions in clauses (a) and (b) of the previous paragraph are satisfied;
 9. the Board of Advisors reviews the Funds' purchases, sales and continued holdings of Dundee securities regularly;
 10. the Board of Advisors forms the opinion after reasonable inquiry that the decisions made on behalf of each Fund by the Fund's portfolio advisor to purchase, sell or continue to hold Dundee securities, as the case may be, are or continue to be, in the best interests of the Fund and:

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- (a) represent the business judgment of the Fund's portfolio advisor, uninfluenced by considerations other than the best interests of the Fund,
 - (b) have been made free from any influence by Scotiabank or Dundee and without taking into account any consideration relevant to Scotiabank or Dundee or any associate or affiliate of Scotiabank or Dundee, and
 - (c) do not exceed the limitations of applicable legislation;
- 11. the determination made by the Board of Advisors pursuant to paragraph 10 above is included in detailed written minutes provided to the manager of the relevant Fund;
- 12. in the event that the securities of Dundee become the subject of a takeover bid:
 - (a) prior to a Fund's portfolio advisor making a final determination in respect of any offer for the securities of Dundee held by a Fund, it will seek the recommendation of the Board of Advisors as to whether, in the Board of Advisor's opinion after reasonable inquiry, the proposed action achieves a fair and reasonable result for the Fund;
 - (b) the portfolio advisor must consider the recommendation of the Board of Advisors;
 - (c) if the Fund's portfolio advisor decides to proceed in a manner that is inconsistent with the recommendation of the Board of Advisors:
 - (i) the portfolio advisor must notify the Board of Advisors in writing before proceeding with its decision; and
 - (ii) the Filer will file on SEDAR a report describing the proposed course of action, the recommendation of the Board of Advisors and the portfolio advisor's reasons for proceeding against the Board of Advisor's recommendation;
- 13. the recommendation made by the Board of Advisors pursuant to paragraph 12 above is included in detailed written minutes provided to the manager of the relevant Fund;
- 14. in respect of any Fund, within 30 days after the end of each month in which the Fund's portfolio advisor purchases or sells securities of Dundee on behalf of the Fund, a Filer will file on SEDAR:

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- (a) reports disclosing:
 - (i) the name of each Fund that purchased or sold during the month,
 - (ii) the date of each purchase and sale,
 - (iii) the volume weighted average price paid or received for the securities of Dundee by each Fund on a given date, and
 - (iv) whether the purchase, sale or holding was determined by the Board of Advisors to not comply with paragraph 10 above and, if so, why the purchase, sale or holding was either completed, continued or not liquidated notwithstanding the Board of Advisors' determination;
- (b) a certificate of the relevant Fund's portfolio advisor certifying that:
 - (i) at the time of each trade, the trade represented the business judgment of the portfolio advisor of the Fund uninfluenced by considerations other than the best interest of the Fund and was, in fact, in the best interests of the Fund,
 - (ii) the trades were made free from any influence by Scotiabank or Dundee or any affiliate or associate thereof and without taking any consideration relevant to Scotiabank or Dundee or any associate or affiliate thereof, and
 - (iii) the trades were not part of a series of transactions aiming to support or otherwise influence the price of the securities of Dundee; and
- (c) a certificate by each member of the Board of Advisors certifying that after reasonable inquiry the member formed the opinion that the policies and procedures referred to in paragraph 5 above are adequate and effective to ensure compliance with the conditions of this Decision and that the decision made on behalf of each Fund by the Fund's portfolio advisor to purchase or sell securities of Dundee for the Fund and the purchase or sale by the Fund:
 - (i) was made in compliance with the conditions of this Decision;
 - (ii) represented the business judgment of the portfolio advisor uninfluenced by considerations other than the best interests of the Fund; and

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(iii) was, in fact, in the best interests of the Fund;

15. the Board of Advisors advises the Decision Makers in writing of:

- (a) any determination by it that the condition in paragraph 10 has not been satisfied with respect to any purchase, sale or holding of securities of Dundee,
- (b) any determination by it that any other condition of the relief requested hereunder has not been satisfied,
- (c) any action it has taken or proposes to take following the determinations referred to above, and
- (d) any action taken, or proposed to be taken, by Scotia Securities, Scotia Capital or any portfolio advisor of the Funds in response to the determinations referred to above;

16. the nature of this relief is disclosed in a press release; and

17. this Decision will terminate on November 1, 2007.

Wendell S. Wigle
Commissioner

David L. Knight
Commissioner

Ontario Securities Commission