

2003 BCSECCOM 204

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Relief from registration and prospectus requirements for securities underlying trust units being qualified by prospectus – underlying securities to be issued by other companies – relief granted for first trades of underlying securities provided prospectus qualifying trust units is filed and receipted

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, NEWFOUNDLAND AND
LABRADOR, PRINCE EDWARD ISLAND, NEW BRUNSWICK, YUKON,
NORTHWEST TERRITORIES AND NUNAVUT**

AND

**IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM
FOR EXEMPTIVE RELIEF APPLICATIONS**

AND

IN THE MATTER OF THE BANK OF NOVA SCOTIA

AND

SCOTIABANK CAPITAL TRUST

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Nova Scotia, British Columbia, Manitoba, Newfoundland and Labrador, Prince Edward Island, New Brunswick, Yukon, Northwest Territories and Nunavut (collectively, the “Jurisdictions”) has received an application (the “Application”) on behalf of The Bank of Nova Scotia (the “Bank”) and Scotiabank Capital Trust (the “Trust”) for a decision pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that certain trades in securities of the Bank are exempt from the requirements under the Legislation to be registered to trade in a security (the “Registration Requirement”) and to file and obtain a receipt for a preliminary prospectus and a prospectus (the “Prospectus Requirement”), subject to certain conditions;

2003 BCSECCOM 204

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Nova Scotia Securities Commission is the principal regulator for the Application;

AND WHEREAS unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions;

AND WHEREAS the Bank and the Trust have represented to the Decision Makers that:

1. The Trust is an open-end trust established under the laws of the Province of Ontario by Computershare Trust Company of Canada (the “Trustee”), as trustee, pursuant to an amended and restated declaration of trust made as of April 23, 2002 (the “Declaration of Trust”).
2. 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. The Trust has received from the securities regulatory authorities in those provinces and territories exemptions dated July 26, 2002 from certain continuous disclosure requirements prescribed under the Legislation. The Trust remains subject to the requirement to file material change reports in the event of any material change in the affairs of the Trust. The Trust is not in default of any of the conditions of the exemptions.
3. Following completion of the Offering described below, the authorized capital of the Trust will consist of an unlimited number of (i) Special Trust Securities (the “Special Trust Securities”); (ii) Scotiabank Trust Securities - Series 2002-1 (the “Scotia BaTS II Series 2002-1”); and (iii) Scotiabank Trust Securities – Series 2003-1 (the “Scotia BaTS II Series 2003-1” and, collectively, with the Scotia BaTS II Series 2002-1 the “Scotia BaTS II”). The Special Trust Securities and the Scotia BaTS II are collectively referred to herein as the “Trust Securities”. As at October 31, 2002, there were 2,000 Special Trust Securities issued and outstanding, all held by the Bank, and 750,000 Scotia BaTS II Series 2002-1 issued and outstanding.
4. The Trust was established solely for the purpose of effecting public offerings of Scotia BaTS II and possible future offerings of 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 two senior deposit notes issued by the Bank, namely the Bank Series 2002-1 Deposit Note (acquired by the Trust in connection with the issue of the Scotia BaTS II Series 2002-1) and the Bank

2003 BCSECCOM 204

Series 2003-1 Deposit Note (to be acquired by the Trust with the proceeds of the Offering) (together with other senior deposit notes of the Bank held by the Trust from time to time, the “Bank Deposit Notes”). 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 Scotia BaTS II and any future offerings.

5. Subject to regulatory approval, the Scotia BaTS II Series 2003-1 will qualify as Tier 1 Capital of the Bank.
6. The Bank is a bank under the *Bank Act* (Canada) and the *Bank Act* (Canada) is its charter.
7. 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.
8. The authorized share capital of the Bank consists of an unlimited number of (i) common shares (the “Bank Common Shares”); and (ii) preferred shares (the “Bank Preferred Shares”), issuable in series.
9. Pursuant to the Prospectus described below, the Trust proposes to issue and sell to investors transferable trust units, being the Scotia BaTS II Series 2003-1 (the “Offering”), to be issued at a price of \$1,000 per Scotia BaTS II Series 2003-1. Each Scotia BaTS II Series 2003-1 will represent an undivided beneficial ownership interest in the assets of the Trust.
10. Pursuant to the terms of the Scotia BaTS II Series 2003-1 and a Share Exchange Agreement (the “Series 2003-1 Share Exchange Agreement”) to be entered into among the Bank, the Trust and a party acting as exchange trustee, the Scotia BaTS II Series 2003-1 may be exchanged, at the option of the holders of Scotia BaTS II Series 2003-1 (the “Series 2003-1 Holder Exchange Right”), for Bank Preferred Shares Series U. The Scotia BaTS II Series 2003-1 will be automatically exchanged, without the consent of the holder, for Bank Preferred Shares Series V upon the occurrence of certain stated events relating to the solvency of the Bank or actions taken by the Superintendent of Financial Institutions (the “Superintendent”) in respect of the Bank (the “Series 2003-1 Automatic Exchange”). The Bank Preferred Shares Series U and V are collectively referred to herein as the “Series 2003-1 Bank Exchange Preferred Shares”.
11. The Bank Series 2003-1 Deposit Note will be convertible (i) at any time at the option of the holder into Bank Preferred Shares Series U, exercisable by the

2003 BCSECCOM 204

Trust in circumstances in which holders of Scotia BaTS II Series 2003-1 exercise the Series 2003-1 Holder Exchange Right, and (ii) automatically into Bank Preferred Shares Series V in circumstances giving rise to a Series 2003-1 Automatic Exchange (such rights of conversion referred to in items (i) and (ii) above being referred to herein as the “Series 2003-1 Conversion Rights”), in each case to enable the Trust to satisfy its obligation to deliver Series 2003-1 Bank Exchange Preferred Shares of the appropriate series to holders of Scotia BaTS II Series 2003-1 in connection with the Series 2003-1 Holder Exchange Right or Series 2003-1 Automatic Exchange, as applicable.

12. Pursuant to the Series 2003-1 Share Exchange Agreement, the Bank will grant to the Trust the right to subscribe, if necessary following the maturity of the Bank Series 2003-1 Deposit Note, for Series 2003-1 Bank Exchange Preferred Shares of the appropriate series to enable the Trust to give effect to the Series 2003-1 Holder Exchange Right and the Series 2003-1 Automatic Exchange following such maturity (the “Series 2003-1 Subscription Right”).
13. The Series 2003-1 Holder Exchange Right will be effected through the conversion by the Trust of the corresponding principal amount of the Bank Series 2003-1 Deposit Note into Bank Preferred Shares Series U, or the acquisition by the Trust of such shares through the exercise of the Series 2003-1 Subscription Right. Holders of Scotia BaTS II Series 2003-1 exercising the Series 2003-1 Holder Exchange Right will, upon surrendering the Scotia BaTS II Series 2003-1 to be exchanged, receive from the Trust 40 Bank Preferred Shares Series U in respect of each Scotia BaTS II Series 2003-1 so exchanged and the Scotia BaTS II Series 2003-1 surrendered for exchange will be cancelled.
14. The Series 2003-1 Automatic Exchange will be effected through the automatic conversion of each \$1,000 principal amount of the Bank Series 2003-1 Deposit Note into 40 Bank Preferred Shares Series V, or the acquisition by the Trust of such shares through the exercise of the Series 2003-1 Subscription Right. Each holder of Scotia BaTS II Series 2003-1 will be deemed to have surrendered each Scotia BaTS II Series 2003-1 to the Trust in exchange for 40 Bank Preferred Shares Series V and the Scotia BaTS II Series 2003-1 deemed to have been surrendered for exchange will be cancelled.
15. The terms of the Series 2003-1 Bank Exchange Preferred Shares provide that the Series 2003-1 Bank Exchange Preferred Shares are convertible at the option of the holder into Bank Common Shares at certain times and in certain circumstances, except where an event giving rise to the Series 2003-1 Automatic Exchange in respect of the Scotia BaTS II Series 2003-1 has occurred and is continuing (the “Series 2003-1 Bank Common Share

2003 BCSECCOM 204

Conversion Right”). The Series 2003-1 Bank Exchange Preferred Shares are not convertible into Bank Common Shares until December 31, 2013.

16. In addition, the Bank may redeem the Series 2003-1 Bank Exchange Preferred Shares and pay the redemption price thereof by delivering cash or Bank Common Shares to holders of redeemed Series 2003-1 Bank Exchange Preferred Shares (the entitlement of the Bank to issue Bank Common Shares for such purpose being the “Series 2003-1 Bank Preferred Share Redemption Right”).
17. In addition to qualifying the Scotia BaTS II Series 2003-1 for distribution, the (final) prospectus in respect of the Offering (the “Prospectus”) will also qualify the Series 2003-1 Holder Exchange Right, the Series 2003-1 Automatic Exchange, the Series 2003-1 Conversion Rights, the Series 2003-1 Subscription Right, the Series 2003-1 Bank Preferred Share Redemption Right and the Series 2003-1 Bank Common Share Conversion Right (collectively, the “Series 2003-1 Conversion and Exchange Rights”). Information concerning the Trust and the Bank will be included, or incorporated by reference, in the Prospectus.
18. There may be no registration or prospectus exemptions available under the Legislation for certain of the trades contemplated by the Series 2003-1 Conversion and Exchange Rights (the “Trades”).

AND WHEREAS pursuant to the System, this MRRS Decision Document evidences the decision of each of the Decision Makers (collectively, the “Decision”);

AND WHEREAS 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 Registration Requirement and the Prospectus Requirement shall not apply to the Trades provided that the first trade in Series 2003-1 Bank Exchange Preferred Shares and Bank Common Shares acquired pursuant to the Decision, other than a trade by the Trust or the Bank pursuant to the Series 2003-1 Conversion and 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;

2003 BCSECCOM 204

- (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.

DATED this 11th day of February, 2003.

H. Leslie O'Brien