

2007 BCSECCOM 685

November 1, 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 manager wants relief from section 127(1)(b) of the Act so that it can sell the securities of an issuer to the account of responsible person - The purchase or sale is consistent with, or is necessary to meet, the investment objectives of the fund; the IRC of the fund has approved the transaction which involves a perceived or actual conflict of interest for the fund manager; the fund manager and the IRC follow any standing instructions that the IRC provides in connection with the transactions; the fund's continuous disclosure materials provide disclosure to fund investors about the transactions with related parties; and the fund keeps the written records required by NI 81-107

Securities Act s. 130 – Relief from certain self-dealing restrictions in Part 15 - A registered mutual fund manager wants relief from the reporting requirements contained in sections 126(a) and (c) of the Act - The fund is a reporting issuer and operates as a conventional mutual fund; the portfolio advisers of the mutual funds have discretion to allocate brokerage business in any manner consistent with the fund's best interests; the allocation of brokerage business represents the business judgement of responsible persons uninfluenced by considerations other than the best interests of the mutual funds; the management report of fund performance for the funds will disclose the names of and fees paid to related persons; the fund's records of portfolio transactions will include information about purchases or sales effected through a related person on a per transaction basis

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 126(a) and (c), 127(1)(b), and 130

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Ontario, Quebec, New Brunswick, Nova Scotia,
Saskatchewan and Newfoundland and Labrador
(the "Jurisdictions")

and

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

and

2007 BCSECCOM 685

In the Matter of
Scotia Cassels Investment Counsel Limited
(the “Filer”)

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 Filer for a decision under the securities legislation of the Jurisdictions (the “Legislation”):

- (a) that the Filer, as portfolio manager of Scotia Mortgage Income Fund (the “Fund”), be exempt from the requirement which prohibits a portfolio manager from causing an investment portfolio managed by it to buy or sell securities of any issuer from or to the account of a responsible person, any associate of the responsible person or the portfolio manager (the “Related Party Relief”); and
 - (b) that the Filer be exempt from the obligation to file monthly reports in respect of such related party transactions (the “Reporting Relief”),
- ((a) and (b) are collectively the “Requested Relief”).

Definitions

“Current Relief” means the relief from certain self-dealing prohibitions in securities legislation granted to the predecessor of the Filer by the British Columbia Securities Commission on October 8, 1992, by the Alberta Securities Commission on September 17, 1992, by the Saskatchewan Securities Commission on September 30, 1992, by the Ontario Securities Commission on September 29, 1992, by the Commission des valeurs mobilières du Québec on August 18, 1992, by the Nova Scotia Securities Commission on July 29, 1992, and by the Newfoundland Department of Justice, Securities Division on July 21, 1992.

Representations

1. The Filer is a corporation amalgamated under the laws of Canada and has its head office in Toronto, Ontario. It is registered in the categories of investment counsel and portfolio manager in each of the Jurisdictions.
2. Scotia Securities Inc. (“SSI”) is a corporation amalgamated under the laws of Ontario. SSI is the trustee and manager of the Fund.

2007 BCSECCOM 685

3. The Fund is an open-end mutual fund established under the laws of the Province of Ontario.
4. The Fund is a reporting issuer under the securities laws of each of the provinces and territories of Canada and is not in default of any requirements of applicable securities legislation.
5. The Fund is qualified for distribution in each of the provinces and territories of Canada under a simplified prospectus and annual information form dated October 31, 2006, as amended.
6. SSI has appointed an independent review committee (“IRC”) under National Instrument 81-107 *Independent Review Committee for Investment Funds* (“NI 81-107”) for the Fund.
7. SSI has appointed the Filer to provide portfolio management and investment advisory services to the Fund. As portfolio manager of the Fund, the Filer is a “responsible person” as defined in the Legislation.
8. The investment objective of the Fund is to provide regular interest income. It invests primarily in high quality mortgages on residential properties in Canada.
9. The Current Relief permits the Filer, on behalf of the Fund, to purchase and sell mortgages to and from Scotia Mortgage Corporation, an affiliate of BNS, and to sell mortgages to BNS. BNS has agreed to repurchase from the Fund any mortgage purchased from Scotia Mortgage Corporation or BNS if the mortgage is in default or is not a valid first mortgage.
10. In reliance on the Current Relief, the Fund currently purchases mortgages for its portfolio from Scotia Mortgage Corporation.
11. Scotia Mortgage Corporation and BNS are “affiliates” of the Filer within the meaning of the Legislation and accordingly, the Filer is deemed to own securities beneficially owned by Scotia Mortgage Corporation or BNS.
12. Neither Scotia Mortgage Corporation or BNS, nor any director, officer or employee of either of them participates in the formulation of investment decisions made on behalf of, or advice given to, the Fund by the Filer.
13. The Filer is prohibited under the Legislation from purchasing or selling, on behalf of the Fund, the securities of any issuer from or to its own account so that the Fund is prohibited from purchasing mortgages from, or selling

2007 BCSECCOM 685

mortgages to BNS, Scotia Mortgage Corporation or any other affiliate of the Filer, as such mortgages are deemed to be beneficially owned by the Filer.

14. The Filer seeks greater flexibility to purchase and sell mortgages, on behalf of the Fund, in the event that Scotia Mortgage Corporation is unable for any reason to sell mortgages to the Fund. The Requested Relief, if granted, will permit the Filer greater flexibility to purchase and sell mortgages, on behalf of the Fund, from or to Scotia Mortgage Corporation, BNS, or any other affiliate of the Filer. Accordingly, the Requested Relief will permit the Filer, on behalf of the Fund, to continue to engage in principal trades of mortgages with Scotia Mortgage Corporation, BNS, or any other affiliate of the Filer.
15. National Instrument 81-107, *Independent Review Committee for Investments* (“NI-81-107”) does not provide an exemption for principal trading of the type contemplated by the Requested Relief.
16. The provisions of National Policy Statement No. 29 set out guidelines relating to the acquisition of mortgages by a mutual fund from lending institutions with whom such fund does not deal at arm’s length and provide certain protections to the investing public.
17. The IRC of the Fund will consider the policies and procedures of SSI and will provide its approval on whether the proposed transactions in mortgages achieve a fair and reasonable result for the Fund in accordance with section 5.2(2) of NI 81-107.
18. To the extent that the Fund is purchasing mortgages from, or selling mortgages to, BNS, Scotia Mortgage Corporation or another affiliate of the Filer, this fact is set out, and will continue to be set out, in the simplified prospectus and annual information form of the Fund.
19. The Legislation requires the filing of a report by the Filer with respect to each transaction involving the purchase and sale of mortgages between the Fund and any related person or company (“Related Company”) as defined in the Legislation, including BNS, Scotia Mortgage Corporation or another affiliate of the Filer, and with respect to each transaction involving the purchase and sale of a mortgage effected by the Fund in respect of which BNS, Scotia Mortgage Corporation or another affiliate of the Filer receives a fee either from the Fund or the Filer or from both (the “Reporting Requirement”).
20. The Current Relief granted the Filer an exemption from the Reporting Requirement provided that the Filer cause the Fund to file and deliver to each of its unitholders on a semi-annual basis a statement of portfolio transactions

2007 BCSECCOM 685

prepared in accordance with the Legislation which discloses (a) the total number of mortgages purchased or sold during the period reported upon that were effected through Scotia Mortgage Corporation or BNS, (b) the total cost of mortgages purchased from Scotia Mortgage Corporation and the total consideration for the mortgages sold to Scotia Mortgage Corporation or BNS during the period reported on, and (c) the total fees, if any paid by the Fund, the other party to the transaction or both to Scotia Mortgage Corporation or BNS during the period reported on.

21. Since the introduction of National Instrument 81-106 *Investment Fund Continuous Disclosure* ("NI 81-106"), mutual funds are no longer required to prepare a statement of portfolio transactions. NI 81-106 now requires the Fund to prepare and file annual and interim management reports of fund performance that include a discussion of transactions involving related parties to the Fund. When discussing portfolio transactions with related parties, NI 81-106 requires the Fund to include the dollar amount of commission, spread, or any other fee paid to a related party in connection with a portfolio transaction.
22. The Current Relief was originally granted by the Decision Makers in each Jurisdiction, other than New Brunswick. The Current Relief will expire on November 1, 2007 pursuant to the application of Section 7.2 of NI 81-107, which provides that any exemption under a provision of securities legislation that was effective before NI 81-107 came into force and that deals with the matters that NI 81-107 regulates will expire on November 1, 2007.

Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers 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

(1) With respect to the Related Party Relief:

- (a) the purchase or sale is consistent with, or is necessary to meet, the investment objective of the Fund;
- (b) the IRC of the Fund has approved the transaction in accordance with section 5.2(2) of NI 81-107;
- (c) SSI, as manager of the Fund, complies with section 5.1 of NI 81-107;

2007 BCSECCOM 685

- (d) SSI, as manager of the Fund, and the IRC of the Fund comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transactions; and
- (e) the Fund keeps the written records required by section 6.1(2)(g) of NI 81-107;

(2) With respect to the Reporting Relief:

- (a) the annual and interim management reports of fund performance for the Fund disclose
 - (i) the name of the Related Company,
 - (ii) the amount of fees paid to each Related Company, and
 - (iii) the person or company who paid the fees if they were not paid by the Fund; and
- (b) the records of portfolio transactions maintained by each Fund include, separately for every portfolio transaction effected by the Fund through a Related Company,
 - (i) the name of the Related Company
 - (ii) the amount of fees paid to the Related Company, and
 - (iii) the person or company who paid the fees.

Robert L. Shirriff
Commissioner
Ontario Securities Commission

Lawrence E. Ritchie
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Ontario Securities Commission