

2002 BCSECCOM 835

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief from the requirement to deliver annual financial statements and, where applicable, an annual report - annual financial statements covered a short operating period.

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 91(1)(b)

Securities Rules, B.C. Reg. 194/97, s. 149

**IN THE MATTER OF THE SECURITIES LEGISLATION OF ONTARIO,
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA,
QUÉBEC, NOVA SCOTIA AND NEWFOUNDLAND AND LABRADOR**

AND

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

AND

IN THE MATTER OF BNS SPLIT CORP.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Québec, Nova Scotia and Newfoundland and Labrador (the “Jurisdictions”) has received an application from BNS Split Corp. (the “Issuer”) for decisions under the securities legislation (the “Legislation”) of the Jurisdictions that the Issuer be exempted from the requirement to send its annual financial statements and annual report, where applicable, for its fiscal year ended August 2, 2002 to its security holders, as would otherwise be required pursuant to applicable Legislation;

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), Ontario is the principal regulator for this application;

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or in Québec Commission Notice 14-101.

AND WHEREAS the Issuer has represented to the Decision Maker that:

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1. The Issuer filed a final prospectus dated July 25, 2002 (the "Prospectus") with the securities regulatory authority in each of the Provinces of Canada pursuant to which a distribution of 2,040,000 class A capital shares (the "Capital Shares") and 1,020,000 class A preferred shares (the "Preferred Shares") of the Issuer was completed on August 2, 2002.
2. The Issuer was incorporated under the laws of the Province of Ontario on June 14, 2002. The fiscal year end of the Issuer is August 2, with the first fiscal year end occurring on August 2, 2002.
3. The authorized capital of the Issuer consists of an unlimited number of Capital Shares, of which 2,040,000 are issued and outstanding, an unlimited number of Preferred Shares, of which 1,020,000 are issued and outstanding, an unlimited number of class B, class C, class D and class E capital shares, issuable in series, none of which are issued and outstanding, an unlimited number of class B, class C, class D and class E preferred shares, issuable in series, none of which are issued and outstanding, and an unlimited number of class J shares (the "Class J Shares"), of which 100 are issued and outstanding. The attributes of the Capital Shares and the Preferred Shares are described in the Prospectus under "Description of Share Capital".
4. The Class J Shares are the only class of voting securities of the Issuer. Scotia Capital Inc. ("Scotia Capital") owns all of the issued and outstanding Class J Shares. Scotia Capital acted as an agent for, and was the promoter of, the Issuer in respect of the offerings of the Capital Shares and the Preferred Shares.
5. The principal undertaking of Issuer is the holding of a portfolio of common shares (the "Portfolio Shares") of The Bank of Nova Scotia in order to generate distributions for the holders of Preferred Shares and to provide the holders of Capital Shares with a leveraged investment, the value of which is linked to changes in the market price of the Portfolio Shares. The Portfolio Shares held by the Issuer will only be disposed of as described in the Prospectus.
6. The Prospectus included an audited balance sheet of the Issuer as at July 25, 2002 and an unaudited pro forma balance sheet prepared on the basis of the completion of the sale and issue of Capital Shares and Preferred Shares of the Issuer. There are no material differences in the financial position of the Issuer as at August 2, 2002 and, as such, the financial position of the Issuer as at August 2, 2002 will have been substantially reflected in the pro forma financial statements contained in the Prospectus.

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7. The Issuer is an inactive company, the sole purpose of which is to provide a vehicle through which different investment objectives with respect to participation in the Portfolio Shares may be satisfied. Holders of Capital Shares will be entitled on redemption to the benefits of any capital appreciation in the market price of the Portfolio Shares after payment of operating expenses of the Issuer and the fixed distributions on the Preferred Shares, and holders of Preferred Shares will be entitled to receive fixed cumulative preferential distributions on a quarterly basis equal to \$0.3162 per Preferred Share.
8. The benefit to be derived by the security holders of the Issuer from receiving a hard copy of the financial statements and annual report for the fiscal year ended August 2, 2002 would be minimal in view of (i) the very short period from the date of the Prospectus to its fiscal year end; (ii) the pro forma financial statements contained in the Prospectus; (iii) the contemporary occurrence of the closing of the offerings and the Issuer's first year end on August 2, 2002; and (iv) the nature of the minimal business carried on by the Issuer.
9. The expense to the Issuer of sending to its security holders the financial statements and annual report for the fiscal year ended August 2, 2002 would not be justified in view of the availability of such statements through the SEDAR website and the Issuer's website.

AND WHEREAS pursuant to the System, this MRRS Decision Document evidences the decision of each Decision Maker (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;

IT IS HEREBY DECIDED by the Decision Makers pursuant to the Legislation that the Issuer is exempted from sending to its security holders its annual financial statements for its fiscal year ended August 2, 2002 and is exempted from preparing, filing and sending to its security holders an annual report, where applicable, for the period ended August 2, 2002, provided that, the Issuer sends a copy of such annual financial statements to any security holder of the Issuer who so requests.

DATED September 27, 2002.

Howard Weston

Robert Shirriff