

# **2002 BCSECCOM 575**

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – relief granted from the prohibition against investing in the securities of a person who is a substantial securityholder of the manager of mutual funds, subject to certain conditions – applicant manages mutual fund which tracks the performance of a specified target index – manager is a wholly-owned subsidiary of a company whose shares form part of the target index.

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 120(1), 120(2), 121(2)(a), and 123

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

**AND**

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

**AND**

**IN THE MATTER OF SCOTIA AMERICAN STOCK INDEX FUND**

## **MRRS DECISION DOCUMENT**

WHEREAS the Canadian securities regulatory authority or regulator (the "Decision Makers") in each of the provinces of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland and Labrador (collectively, the "Jurisdictions") have received an application (the "Application") from Scotia Securities Inc. ("SSI"), in its capacity as trustee and manager of the Scotia American Stock Index Fund (the "Index Fund"), for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the restrictions contained in the Legislation prohibiting a mutual fund from knowingly making or holding an investment in any person or company who is a substantial security holder of the mutual fund, its management company or distribution company (together, the "Restrictions"), shall not apply in respect of investments made by the Index Fund;

AND WHEREAS pursuant to the Mutual Reliance Review System ("MRRS") for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for this Application;

## 2002 BCSECCOM 575

AND WHEREAS SSI has represented to the Decision Makers that:

1. SSI is a corporation incorporated under the laws of the Province of Ontario. SSI is the trustee and manager of the Index Fund.
2. The Index Fund is an open-end mutual fund trust established under the laws of the Province of Ontario. The Index Fund is a reporting issuer under the securities legislation of each Jurisdiction and units of the Index Fund are qualified for distribution under a simplified prospectus and annual information form dated December 3, 2001, as amended, and accepted by the Decision Makers in each of the Jurisdictions.
3. The portfolio advisor of the Index Fund is State Street Global Advisors, Ltd. ("SSGA"). SSGA was appointed portfolio advisor of the Fund effective March 1, 2002. SSGA is an indirect wholly-owned subsidiary of State Street Corporation ("State Street").
4. The investment objective of the Index Fund is long-term capital growth by tracking the performance of a generally recognized U.S. equity index, currently the Standard & Poor's 500 Total Return Index (the "Target Index"). In order to achieve its investment objective, the Index Fund's primary investment strategy is to invest all of its assets directly in the securities of companies included in the Target Index in substantially the same proportion as such securities are weighted in the Target Index.
5. The Fund is an index mutual fund as defined in National Instrument 81-102 Mutual Funds.
6. Among the securities comprising the Target Index are common shares of State Street.
7. Due to the Restrictions, the Index Fund has not, while under the portfolio management of SSGA, invested in common shares of State Street. It has instead invested in alternate securities to attempt to match the performance and risk composition of the Target Index.
8. The portfolio of the Index Fund is not actively managed. The portfolio is passive and is comprised of securities comprising the Target Index. Purchases and sales of portfolio securities of the Fund are determined by the composition of the Target Index and the weightings therein of the constituent securities.
9. The deviation from the Restrictions will not be the result of any active decision of SSGA to increase the investment of the Index Fund in any particular

## **2002 BCSECCOM 575**

issuer, but rather an indirect consequence of carrying out the investment objective of the Index Fund to match the performance of the Target Index.

10. The investments by the Index Fund in common shares of State Street represent the business judgement of responsible persons uninfluenced by considerations other than the best interests of the Index Fund.

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;

THE DECISION of the Decision Makers pursuant to the Legislation is that the Restrictions do not apply to the investment by the Index Fund in securities of State Street;

PROVIDED THAT the proportion of the Index Fund's assets to be invested in common shares of State Street is determined in accordance with the Index Fund's stated investment strategy of investing in the constituent securities of the Target Index in substantially the same proportion as such securities are weighted in that index, and not pursuant to the discretion of SSI or SSGA.

Dated May 16, 2002.

Paul M. Moore

Harold P. Hands