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March 7, 2008

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Securities Act s. 76 – Exemption from s. 61 requirement to file a prospectus in connection with a distribution – A control person wants to distribute securities without a prospectus - The person is a control person of an issuer whose only business is to buy and sell securities of specific issuers for a fixed portfolio; the control person does not have access to information about the issuer that could materially affect the market price of the issuer's securities; the control person will only trade securities of the issuer to provide liquidity for the issuer's other security holders; the control person does not control any of the issuers in which the issuer invests

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 61 and 76

In the Matter of
the Securities Legislation of
Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Québec,
Newfoundland and Labrador, Nova Scotia, New Brunswick and
Prince Edward Island
(the “Jurisdictions”)

and

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

and

In the Matter of
Allbanc Split Corp.

and

In the Matter of
Scotia Capital Inc.

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 Filers for decisions

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under the securities legislation (the “Legislation”) of the Jurisdictions that the following requirements contained in the applicable Legislation shall not apply to Allbanc Split Corp. (the “Filer”) or Scotia Capital Inc. (“Scotia Capital”) in connection with the public offering (the “Offering”) of class B preferred shares (the “Preferred Shares”) of the Filer:

- (a) The requirements contained in the Legislation requiring the Filer to file a prospectus shall not apply to the Market Making Trades (as hereinafter defined) by Scotia Capital in the class B preferred shares (the “Class B Preferred Shares”) in the share capital of the Filer.

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 defined in this decision.

Representations

This decision is based on the following facts represented by the Filer:

The Filer

1. The Filer was incorporated under the *Business Corporations Act* (Ontario) on December 17, 1997 and became a reporting issuer under the OSA by filing a final prospectus dated February 17, 1998 relating to an initial public offering of capital shares (the “Capital Shares”) and preferred shares (the “Preferred Shares”) completed on February 25, 1998.
2. The authorized capital of the Filer consists of an unlimited number of Capital Shares, an unlimited number of Preferred Shares, an unlimited number of class A capital shares (the “Class A Capital Shares”), an unlimited number of class A preferred shares (the “Class A Preferred Shares”), an unlimited number of class A shares (the “Class A Shares”), an unlimited number of class S shares and an unlimited number of class B preferred shares (the “Class B Preferred Shares”).

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3. On January 14, 2003, the holders of Capital Shares approved a share capital reorganization which permitted holders of Capital Shares, at their option, to retain their investment in the Filer after the scheduled redemption date of March 10, 2003, by converting their Capital Shares into Class A Capital Shares. On January 17, 2003, the holders of 897,444 Capital Shares converted such Capital Shares on a one-for-one basis into 897,444 Class A Capital Shares. All of the issued and outstanding Capital Shares and Preferred Shares were redeemed by the Filer on March 10, 2003.
4. On January 25, 2008, the holders of Class A Capital Shares of the Filer approved a share capital reorganization (the "Reorganization") which permits holders of Class A Capital Shares, at their option, to retain their investment in the Filer after the originally scheduled redemption date of March 10, 2008. In order for the Reorganization to proceed, holders of at least 180,000 Class A Capital Shares must retain their Class A Capital Shares and not exercise their special retraction right (the "Special Retraction Right") to redeem their shares under the Reorganization. All of the Class A Preferred Shares and those Class A Capital Shares for which holders have exercised their Special Retraction Right, will be redeemed on March 10, 2008. Should the Reorganization not proceed, all of the Class A Capital Shares and all of the Class A Preferred Shares will be redeemed on March 10, 2008.
5. The Class B Preferred Shares are being offered in order to maintain the leveraged "split share" structure of the Filer and will be issued on March 10, 2008 (the "Offering") such that there will be an equal number of Class A Capital Shares and Class B Preferred Shares outstanding on and after the expected closing date of March 10, 2008.
6. The Filer will make the Offering to the public pursuant to a final prospectus (the "Final Prospectus") in respect of which the Preliminary Prospectus has already been filed.
7. The Class A Capital Shares will continue to be listed and posted for trading on The Toronto Stock Exchange (the "TSX") and it is expected that the Class B Preferred Shares will be listed and posted for trading on the TSX. An application requesting conditional listing approval will be made by the Filer to the TSX.
8. The Class A Shares are the only voting shares in the capital of the Filer. There are currently, and will be at the time of filing the Final Prospectus relating to the Offering, 100 Class A Shares issued and outstanding. Allbanc Split Holdings Corp. and Scotia Capital each own 50% of the issued and outstanding Class A Shares of the Filer.

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9. The Class A Capital Shares and Class B Preferred Shares may be surrendered for retraction at any time in the manner described in the Preliminary Prospectus.
10. The Filer has a board of directors (the “Board of Directors”) which currently consists of six directors, three of which are independent directors who are not employees of Scotia Capital. Also, the offices of President/Chief Executive Officer and Chief Financial Officer/Secretary of the Filer are held by employees of Scotia Capital.
11. The Filer is a passive investment company whose principal investment objective is to invest in a portfolio (the “Portfolio”) of common shares (the “Portfolio Shares”) of Bank of Montreal, Canadian Imperial Bank of Commerce, Royal Bank of Canada, The Bank of Nova Scotia and The Toronto-Dominion Bank (collectively, the “Banks”) in order to generate fixed cumulative preferential distributions for holders of the Filer’s Class B Preferred Shares, and to allow the holders of the Filer’s Class A Capital Shares to participate in the capital appreciation of the Portfolio Shares after payment of administrative and operating expenses of the Filer. It will be the policy of the Board of Directors of the Filer to pay dividends on the Class A Capital Shares in an amount equal to the dividends received by the Filer on the Portfolio Shares minus the distributions payable on the Class B Preferred Shares and all administrative and operating expenses of the Filer.
12. Class B Preferred Share distributions will be funded from the dividends received on the Portfolio Shares and, if necessary, the revolving credit facility. If necessary, any shortfall in the distributions on the Class B Preferred Shares will be funded by proceeds from the sale of or, if determined appropriate by the Board of Directors, premiums earned from writing covered call options on, Portfolio Shares.
13. The revolving credit facility, if any, will be provided by Scotia Capital or an affiliate.
14. The record date for the payment of Class B Preferred Share distributions, Class A Capital Share dividends or other distributions of the Filer will be set in accordance with the applicable requirements of the TSX.
15. Any Class A Capital Shares and Class B Preferred Shares outstanding on March 8, 2013, will be redeemed by the Filer on such date.

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16. The Filer is considered to be a mutual fund, as defined in the Legislation. Since the Filer does not operate as a conventional mutual fund, it is making an application for a waiver from certain requirements of National Instrument 81-102 – *Mutual Funds*.
17. It will be the policy of the Filer to hold the Portfolio Shares and to not engage in any trading of the Portfolio Shares, except:
 - (a) to complete a one-time rebalancing of the Portfolio as described in the Preliminary Prospectus;
 - (b) to fund retractions or redemptions of Class A Capital Shares and Class B Preferred Shares;
 - (c) following receipt of stock dividends on the Portfolio Shares;
 - (d) if necessary, to fund any shortfall in the distribution on Class B Preferred Shares; and
 - (e) to meet obligations of the Filer in respect of liabilities including extraordinary liabilities.
18. The Portfolio Shares are listed and traded on the TSX.
19. The Filer is not, and will not upon the completion of the Offering be, an insider of the Banks within the meaning of the Legislation.

The Offerings

20. The net proceeds of the Offering (after deducting the agents' fees and expenses of the issue), depending upon the number and value of Class A Capital Shares redeemed pursuant to the Special Retraction Right, will be used by the Filer either: (i) to fund the redemption of all of the issued and outstanding Class A Preferred Shares of the Filer on March 10, 2008 as well as those Class A Capital Shares being redeemed pursuant to the Special Retraction Right (together, with the net proceeds from the sale of a portion of the portfolio, if necessary); or (ii) to purchase additional Portfolio Shares to the extent that the net proceeds of the Offering exceed the funding requirements associated with the redemption of all of the issued and outstanding Class A Preferred Shares of the Filer on March 10, 2008 as well as those Class A Capital Shares being redeemed pursuant to the Special Retraction Right.

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21. The Final Prospectus will disclose selected financial information and dividend and trading history of the Portfolio Shares.

Scotia Capital

22. Scotia Capital was incorporated under the laws of the Province of Ontario and is a direct, wholly-owned subsidiary of BNS. Scotia Capital is registered under the Legislation as a dealer in the categories of “broker” and “investment dealer” and is a member of the Investment Dealers Association of Canada and a participant in the TSX. Scotia Capital is the promoter of the Filer.
23. Pursuant to an agreement (the “Agency Agreement”) to be made between the Filer and Scotia Capital and the other agents expected to be appointed by the Filer (the “Agents”), the Filer will appoint the Agents, as its agents, to offer the Class B Preferred Shares of the Filer on a best efforts basis and the Final Prospectus qualifying the Offering will contain a certificate signed by the Agents, in accordance with the Legislation.
24. Pursuant to an administration agreement (the “Administration Agreement”) to be entered into between BNS and the Filer, the Filer will retain BNS to administer the ongoing operations of the Filer and will BNS a monthly fee of 1/12 of 0.25% of the market value of the Portfolio Shares held by the Filer.
25. BNS’s and Scotia Capital’s economic interest in the Filer and in the material transactions involving the Filer are disclosed in the Preliminary Prospectus and will be disclosed in the Final Prospectus under the heading “Interest of Management and Others in Material Transactions”.

Market Making Trades

26. Scotia Capital will be a significant maker of markets for the Class A Capital Shares and the Class B Preferred Shares. As a result, Scotia Capital will, from time to time, purchase and sell Class A Capital Shares and Class B Preferred Shares and trade in such securities as agent on behalf of its clients, the primary purpose of such trades (the “Market Making Trades”) being to provide liquidity to the holders of Class A Capital Shares and Class B Preferred Shares. All trades made by Scotia Capital as principal will be recorded daily by the TSX.
27. As Scotia Capital owns 50% of the Class A Shares of the Filer, Scotia Capital is deemed to be in a position to affect materially the control of the Filer and consequently, each Market Making Trade will be a “distribution or a “distribution to the public” within the meaning of the Legislation.

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Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the authority to make the decision has been met.

The decision of the Decision Makers is that the Prospectus Requirements shall not apply to the Market Making Trades by Scotia Capital in the Class A Capital Shares and Class B Preferred Shares provided that at the time of each Market Making Trade, Scotia Capital and its affiliates do not beneficially own or have the power to exercise control or direction over a sufficient number of voting securities of the issuers of the Portfolio Shares, securities convertible into voting securities of the issuers of the Portfolio Shares, options to acquire voting securities of the issuers of the Portfolio Shares, or any other securities which provide the holder with the right to exercise control or direction over voting securities of the issuers of the Portfolio Shares which in the aggregate, permit Scotia Capital to affect materially the control of the issuers of the Portfolio Shares and without limiting the generality of the foregoing, the beneficial ownership of or the power to exercise control or direction over securities representing in the aggregate 20 percent or more of the votes attaching to all the then issued and outstanding voting securities of the issuers of the Portfolio Shares shall, in the absence of evidence to the contrary, be deemed to affect materially the control of the issuers of the Portfolio Shares.

David L. Knight
Commissioner

Suresh Thakrar
Commissioner

Ontario Securities Commission