

2006 BCSECCOM 68

November 21, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Application – Securities Act s. 48, 76 Other - Exemption from s. 34(1)(a) requirement to be registered as a dealer for a trade and s. 61 requirement to file a prospectus for a distribution other than in connection with a corporate acquisition or reorganization; business associates; debt settlements; or employee investment plans and consultants - Foreign bank wants to offer certificates of deposit to BC residents - The applicant is subject to a comprehensive scheme of regulation and supervision in its home jurisdiction comparable to Canadian regulatory requirements governing Schedule I and II banks, including its proposed deposit taking activities with Canadian residents. The applicant's Canadian deposit holders will be covered by the deposit insurance scheme in its home jurisdiction.

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
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario,
Québec, New Brunswick, Prince Edward Island,
Nova Scotia and Newfoundland and Labrador
(the Jurisdictions)**

and

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

and

**In the Matter of Credit Suisse (UK) 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) for an exemption (the Requested Relief) from the dealer registration and prospectus requirements (the Registration and Prospectus Requirements) of the Legislation with respect to certain deposit-taking activities to be conducted by the Filer in Canada.

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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:

1. The Filer is a limited liability corporation incorporated under the laws of the United Kingdom. Its head office is located in London, United Kingdom. It is a wholly-owned subsidiary of the Credit Suisse Group (Credit Suisse) and it is regulated as a bank by the United Kingdom Financial Services Authority (the FSA).
2. The Filer does not currently provide any services in any province or territory of Canada but it proposes to offer deposits to Canadian residents as part of the financial products and services that are to be offered to Canadian residents by affiliates of the Filer (Filer Affiliates).
3. The investment products that a Filer Affiliate may offer to Canadian residents from time to time include, but are not limited to, the following (the Investment Products):
 - (a) single manager and fund-of-fund hedge funds;
 - (b) certificates or notes that are fully linked to an index or other underlying interest;
 - (c) principal protected notes that have an interest rate component that is linked to an index or other underlying interest; and
 - (d) ISDA documented over-the-counter derivative contracts such as swaps and forward contracts.

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4. The Investment Products will be offered for sale and sold in reliance upon exemptions from registration and prospectus requirements.
5. Any investor who wishes to acquire Investment Products from a Filer Affiliate will be required to establish a deposit account with the Filer for trade settlement purposes and to satisfy FSA client identification and anti-money laundering requirements.
6. Deposits with the Filer will be “securities” under the Legislation because the Filer is neither a Schedule I nor a Schedule II bank.
7. The offering of deposits by the Filer would constitute a “distribution” within the meaning of the Legislation. As such, the Filer would be required to conduct the offering and sale of deposits in accordance with the Registration and Prospectus Requirements.
8. It is commercially impractical for the Filer to qualify the offering and sale of deposits pursuant to a prospectus or to sell its deposits through registered dealers.
9. The issuance of deposits by the Filer to Canadian residents will not contravene any federal or provincial deposit-taking legislation or any provisions of the Bank Act.
10. The Filer is regulated as a bank by the FSA. The Filer has been authorized and regulated by the FSA to conduct deposit-taking activities in the United Kingdom since August 6, 2002.
11. Deposits of the Filer that are purchased by residents of Canada will be subject to the same regulation and oversight by the FSA as deposits of the Filer that are purchased by residents of the UK.
12. The Filer will comply with FSA supervision and record-keeping requirements to ensure that the Filer maintains adequate books and records, including accounting records, in respect of all aspects of the Filer’s business including any off-balance sheet or agency/arranger business.
13. The Filer will comply with the FSA’s capital adequacy and large exposure requirements, including the requirement to maintain capital resources which are commensurate with the nature and scale of business and with the risks that are inherent in the business, which shall not be less than € 5 million.

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14. The Filer will report quarterly to the FSA any exposures in excess of its Large Exposure Capital Base (LECB). Any potential exposure greater than 25% of LECB must be preauthorized by the FSA.
15. The Filer will prepare and file with the FSA prescribed consolidated capital adequacy information on a semi-annual basis and annual audited financial statements within 3 months of its financial year end.
16. The UK has, through the FSA, established a scheme (the Deposit Protection Scheme) for compensating customers of insolvent authorized banks. The Deposit Protection Scheme provides compensation to the customers of a bank that is authorized to accept deposits by the FSA if and when the bank becomes insolvent. In order to qualify for such compensation, a customer must meet Financial Services Compensation Scheme Limited eligibility requirements which generally require the customer to be a private individual or a prescribed form of small business. An eligible customer is entitled to full compensation for the first £ 2000 on deposit with an insolvent authorized bank and compensation equal to 90% of the next £ 33,000 on deposit for a maximum compensation amount that is equal to £ 31,700.
17. Deposits purchased by residents of Canada will remain throughout the term of such deposits fully entitled to the benefits of the Deposit Protection Scheme as if such deposits had been made by residents of the UK.
18. The Filer is therefore subject to a comprehensive scheme of regulation and supervision that is substantially similar to regulatory requirements governing Schedule I and Schedule II banks pursuant to the Bank Act and the supervisory responsibilities of The Office of the Superintendent of Financial Institutions.

Decision

Each of the Decision Makers is satisfied that the tests 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 Requested Relief is granted provided that:

- (a) the Filer remains regulated as a bank in the United Kingdom;
- (b) deposits issued by the Filer are entitled to the benefits of the Deposit Protection Scheme whether or not the holders thereof are residents of the UK; and

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- (c) details of the Deposit Protection Scheme are disclosed to each holder of a deposit before any deposits are issued to the holder by the Filer.

Suresh Thakrar
Commissioner
Ontario Securities Commission

Harold P. Hands
Commissioner
Ontario Securities Commission