

# 2002 BCSECCOM 205

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications – 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 this target index; exemption granted from the investment prohibitions in section 121 of the Act in respect of proposed investments by the mutual fund in securities of substantial security holder of mutual fund's manager.

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C.1996, c. 418, ss 120(1), 120(2)(c), 121(2)(a), 121(3) 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 CANADIAN 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, 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 Canadian 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;

AND WHEREAS SSI has represented to the Decision Makers that:

1. SSI is a corporation incorporated under the laws of the Province of Ontario and is a wholly owned subsidiary of The Bank of Nova Scotia ("BNS"). 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.

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3. The portfolio advisor of the Index Fund is currently Barclays Global Investors Canada Limited ("Barclays"). On March 1, 2002, the portfolio advisor of the Index Fund will be State Street Global Advisors, Ltd. ("State Street"). Barclays and State Street (each a "Portfolio Advisor") are not related companies of BNS.
4. The investment objective of the Index Fund is long-term capital growth by tracking the performance of a generally recognized Canadian equity index, currently The Toronto Stock Exchange 300 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 ("NI 81-102").
6. Among the securities comprising the Target Index are common shares of BNS.
7. Due to the Restrictions, the Index Fund has not, while under the management of SSI, invested in common shares of BNS. 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 will be 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 SSI or the Index Fund's Portfolio Advisor to increase the investment of the Index Fund in any particular 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 BNS represent the business judgment 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 BNS;

PROVIDED THAT at the time of each investment made in common shares of BNS pursuant to this Decision, the following conditions are satisfied:

- i. the Target Index, and any successor index to the Target Index, is a "permitted index" as such term is defined in section 1.1 of NI 81-102; and
- ii. the proportion of the Index Fund's assets to be invested in common shares of BNS 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

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are weighted in that index, and not pursuant to the discretion of SSI or the Index Fund's Portfolio Advisor.

**DATED** March 12, 2002

R. Stephen Paddon

H. Lorne Morphy