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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from underwriter conflict requirements, subject to certain conditions, where selling unitholder is related issuer of a registrant

Applicable British Columbia Provisions

National Instrument 33-105 *Underwriting Conflicts*, ss. 2.1, 5.1

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, ONTARIO, QUEBEC, NOVA SCOTIA, NEW BRUNSWICK, PRINCE EDWARD ISLAND AND NEWFOUNDLAND AND LABRADOR

AND

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

AND

IN THE MATTER OF CANACCORD CAPITAL CORPORATION

MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of the Provinces of British Columbia, Alberta, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador has received an application from Canaccord Capital Corporation (“Canaccord”) for a decision under section 5.1 of National Instrument 33-105 – Underwriting Conflicts (“NI 33-105”) that Canaccord be exempt from section 2.1(2)(b) of NI 33-105, which prohibits a registrant from acting as a direct underwriter in a distribution if a related issuer of the registrant is the selling securityholder in the distribution;
2. AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the British Columbia Securities Commission has requested, for the purposes of regulatory expediency, that the Alberta Securities Commission act as the principal regulator for this application, and the Alberta Securities Commission has agreed to so act;
3. AND WHEREAS Canaccord has represented to the Decision Makers that:

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- 3.1. Canaccord's head office is located in Vancouver, British Columbia;
- 3.2. Superior Plus Income Fund ("Superior") is an unincorporated trust created under the laws of the Province of Alberta which completed its initial public offering in September, 1996;
- 3.3. Superior's head office and registered office is located in Calgary, Alberta;
- 3.4. Superior was established as a limited purpose trust and its activities are restricted to owning, acquiring, holding and transferring securities of Superior Plus Inc. and to certain other ancillary purposes. Superior Plus Inc. has three operating divisions, carrying on the businesses of (A) distributing propane, related products and services in Canada, (B) supplying sodium chlorate, chlorine dioxide generators and related technology in North America and developing new generators and technology for the water purification and food treatment industries and (C) retailing natural gas in Ontario;
- 3.5. the authorized capital of Superior consists of an unlimited number of trust units (the "*Units*"). The Units are listed on the Toronto Stock Exchange;
- 3.6. Superior is currently a "reporting issuer" or equivalent in each of the provinces and territories of Canada;
- 3.7. Superior is not in financial difficulty. Superior is not under any immediate financial pressure to proceed with an offering of Units;
- 3.8. on May 26, 2003, Superior announced that it had entered into a bought deal (the "*Offering*") with Scotia Capital Inc., as the lead underwriter. It is proposed that the syndicate will include Scotia Capital Inc., CIBC World Markets Inc., RBC Dominion Securities Inc., TD Securities Inc., National Bank Financial Inc., BMO Nesbitt Burns Inc., Canaccord, Desjardins Securities Inc., FirstEnergy Capital Corp. and HSBC Securities (Canada) Inc. (the "*Underwriters*"). Under the Offering, Superior will issue 4,500,000 Units, and certain unitholders of Superior (the "*Selling Unitholders*") will sell 3,500,000 Units, each at a price of \$20.90 per Unit. The Selling Unitholders have granted the Underwriters an option (the "*Option*") to expand the size of the Offering by up to an additional 1,257,956 Units up to 48 hours prior to closing;

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- 3.9. the proportionate share of the Offering proposed to be underwritten by each of the Underwriters is as follows:

Scotia Capital Inc.	30.0%
CIBC World Markets Inc.	15.0%
RBC Dominion Securities Inc.	15.0%
TD Securities Inc.	15.0%
National Bank Financial Inc.	12.0%
BMO Nesbitt Burns Inc.	6.0%
Canaccord	4.0%
Desjardins Securities Inc.	1.0%
FirstEnergy Capital Corp.	1.0%
HSBC Securities (Canada) Inc.	1.0%

- 3.10. it is anticipated that a preliminary prospectus relating to the Offering will be filed on May 28, 2003. The preliminary prospectus and the (final) prospectus relating to the Offering (together, the “*Prospectus*”) will contain a certificate signed by each of the Underwriters;
- 3.11. one of the Selling Unitholders is The Manufacturers Life Insurance Company (“*Manulife*”). Manulife will sell 557,278 Units under the Offering (increasing to 757,572 Units if the Option is exercised by the Underwriters in full);
- 3.12. Manulife owns 1,904,762 of the Class “C” common shares and certain convertible debentures of Canaccord Holdings Ltd., which represents more than 20% of the outstanding voting and equity securities of Canaccord Holdings Ltd. on a fully diluted basis. Canaccord is a wholly-owned subsidiary of Canaccord Holdings Ltd.;
- 3.13. Scotia Capital Inc., CIBC World Markets Inc., RBC Dominion Securities Inc., TD Securities Inc. and National Bank Financial Inc. (the “*Connected Registrants*”) are each, directly or indirectly, a wholly-owned or majority owned subsidiary of a Canadian chartered bank which is a lender to Superior Plus Inc. Superior Plus Inc. is wholly-owned by Superior;
- 3.14. the Prospectus will contain the information required to be disclosed pursuant to Appendix C to NI 33-105;
- 3.15. pursuant to sections 1.1 and 1.2 of NI 33-105, Manulife is a “related issuer” of Canaccord, since it is an “influential securityholder” of Canaccord by virtue of its securityholdings in Canaccord Holdings Ltd.;

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- 3.16. by virtue of the lending arrangements with the parent companies of the Connected Registrants, Superior may be considered a “connected issuer” to each Connected Registrant;
- 3.17. BMO Nesbitt Burns Inc., Desjardins Securities Inc., FirstEnergy Capital Corp. and HSBC Securities (Canada) Inc. are “independent underwriters” within the meaning of NI 33-105;
- 3.18. section 2.1(2)(b) of NI 33-105 prohibits a registrant from acting as a direct underwriter in a distribution made under a prospectus if a related issuer of the registrant is a selling securityholder in the distribution;
- 3.19. section 2.1(3)(a) of NI 33-105 provides for an exemption from section 2.1(2) if at least one registrant acting as direct underwriter acts as principal, so long as an independent underwriter underwrites not less than the lesser of (A) 20% of the dollar value of the distribution, and (B) the largest portion of the distribution underwritten by a registrant that is not an independent underwriter. Under the Offering, no independent underwriter will underwrite 20% or more of the dollar value of the distribution, and the largest portion of the distribution is not being underwritten by an independent underwriter;
- 3.20. the only financial benefits which Canaccord will receive as a result of the Offering are the normal arm’s length underwriting commission and possible reimbursement of expenses associated with a public offering in Canada;
- 3.21. Canaccord did not participate in the decision to make the Offering or in the determination of the terms of the distribution or the use of proceeds thereof except to the extent that the lead underwriter of the Offering was entering into the bought deal arrangements on behalf of those underwriters that ultimately would be part of the underwriting syndicate;
4. AND WHEREAS, under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);
5. AND WHEREAS each of the Decision Makers is satisfied that it would not be prejudicial to the public interest to make the Decision;

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6. THE DECISION of the Decision Makers under section 5.1 of NI 33-105 is that Canaccord is exempt from the provisions of section 2.1(2)(b) of NI 33-105 in connection with the Offering.

DATED this 29th day of May, 2003

Glenda A. Campbell, Q.C., Vice-Chair

Stephen R. Murison, Vice-Chair