

2008 BCSECCOM 507

August 19, 2008

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Securities Act, ss. 48 and 76 – Registration and Prospectus Requirements - Exemption from registration and prospectus requirements for situations other than a corporate acquisition or reorganization; trades to business associates; debt settlements; or trades involving employee investment plans and consultants - Registration and prospectus relief for trades in debt securities that are analogous to debt securities of or guaranteed by any municipal corporation in Canada, or debt securities secured by or payable out of rates or taxes levied under the law of a jurisdiction of Canada on property in the jurisdiction and to be collected by or through the municipality in which the property is situated - The filer's structure and obligations are analogous to a municipal finance authority and other municipal corporations in British Columbia; the filer's borrowing program provides comparable protections and rights for debt securityholders to those found in municipal borrowing programs; the filer will only issue debt securities; the filer will provide prospective purchasers of debt securities with a comprehensive disclosure document

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, Nova Scotia, Prince Edward Island, Newfoundland and Labrador,
Yukon Territory, Northwest Territories and Nunavut Territory
(the Jurisdictions)

and

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

and

In the Matter of
First Nations Finance Authority
(the Filer)

MRRS Decision Document

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Background

- ¶ 1 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) that the dealer registration requirements and the prospectus requirements of the Legislation do not apply to trades in debt securities of the Filer (the Requested Relief);

Under the Mutual Reliance Review System for Exemptive Relief Applications

- (a) the British Columbia Securities Commission is the principal regulator for this application,
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

- ¶ 2 Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:
1. the Government of Canada introduced the *First Nations Fiscal and Statistical Management Act* (the Federal Act) in order to promote the inherent right of self-government for aboriginals;
 2. the Federal Act provides First Nations with access to capital markets available to other governments, strengthens the real property tax systems of First Nations, and provides greater representation for taxpayers by providing assistance to those First Nations that choose to exercise real property taxation jurisdiction on reserve lands;
 3. the Federal Act came into force on April 1, 2006;
 4. the Filer was established as a statutory corporation when the Federal Act came into force;
 5. the Filer does not have any share capital, nor is it considered a “reporting issuer” (as defined in the Legislation) in any of the Jurisdictions;
 6. from time to time, the Filer will issue debt “securities” as defined in section 57 of the Federal Act (the Securities) to promote economic development through the application of real property tax revenues and other revenues to support

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borrowing on capital markets for the development of public infrastructure and other purposes that is otherwise available to other governmental bodies in Canada;

7. the Federal Act establishes a structure for First Nation borrowing from the Filer where property taxes will be used to repay incurred debt; the structure is modeled on, and is substantially similar to, the British Columbia municipal model, as operated by the Municipal Finance Authority of British Columbia (the MFABC) under the *Municipal Finance Authority Act* (British Columbia);
8. independent regulatory functions are provided by both the First Nations Financial Management Board (the FMB), and the First Nations Tax Commission (the FNTC); together, the FNTC and FMB fulfill a role substantially similar to the role of the Inspector of Municipalities under the *Local Government Act* (British Columbia) in respect of the regulation of municipalities in British Columbia; the FMB approves the financial management laws of First Nations who are entering into property taxation, certify financial management systems, practices and standards, monitor financial management performance, and intervenes in exceptional circumstances by way of co-management or third-party management arrangements;
9. under the Federal Act:
 - (a) the FNTC must approve First Nation property tax revenue laws before they are enacted;
 - (b) the FNTC must also approve borrowing laws of the First Nation authorizing borrowing by the First Nation from the Filer; and
 - (c) the Filer shall not make a long-term loan to a borrowing member for the purpose of financing capital infrastructure for the provision of local services on reserve lands unless the FNTC has approved the borrowing laws of the borrowing member and the loan is to be paid out of the property tax revenues of the borrowing member in priority to other creditors of the borrowing member;
10. under the Federal Act, a First Nation applies to the Filer to become a borrowing member; the Filer only accepts the First Nation as a borrowing member if the FMB has issued a certificate to the First Nation under section 50(3) of the Federal Act; before a certificate is issued, the FMB may review the First Nation's financial management system or financial performance for

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compliance with standards established by the FMB under section 55 of the Federal Act and the regulations made under the Federal Act;

11. under the Federal Act, the Filer must establish:

- (a) a sinking fund to fulfill its repayment obligations to the holders of each Security issued by the Filer;
- (b) a debt reserve fund to make payments or sinking fund contributions for which insufficient moneys are available from borrowing members; and
- (c) a fund for the enhancement of the Filer's credit rating;

12. the Filer will engage a rating agency to conduct a formal credit rating for the Filer prior to its first issuance of Securities; and

13. the Filer will provide a bond circular to each prospective purchaser of Securities before that purchaser's first purchase of Securities that sets out:

- (a) the terms and conditions of the Securities;
- (b) the use of proceeds;
- (c) a summary description of the Filer and its business;
- (d) risk factors applicable to an investment in the Securities;
- (e) the procedure to be followed to subscribe for Securities;
- (f) the tax consequences of an investment in the Securities by a Canadian purchaser resident in Canada; and
- (g) the most recent annual and interim financial statements for the Filer.

Decision

- ¶ 4 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 under the Legislation is that the Requested Relief is granted, provided that:

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- (a) in Ontario and Newfoundland and Labrador, the exemption from the dealer registration requirement is not available for a market intermediary except for a trade in a Security with a registered dealer that is an affiliate of the market intermediary; and
- (b) for each Jurisdiction, this decision will terminate seven years after the date of this decision.

Douglas M. Hyndman
Chair
British Columbia Securities Commission