

2002 BCSECCOM 227

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from the requirements to file interim financial statements and audited annual financial statements and send such statements to security holders, and to make an annual filing in lieu of filing an information circular, granted to a corporation affiliated with a bank, on specified conditions, where the security holder's return depends on the financial condition of the sponsoring bank and not on the affiliated corporation; the corporation was formed to offer units to the public in order to provide the bank with a cost-effective means of raising capital; the security holders receive fixed distributions, which are effectively guaranteed by the bank because the units are automatically exchanged for preferred shares of the bank if the distributions are not paid when due.

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c.418, ss. 91(1) and 119(2)

Securities Rules, B.C. Reg. 194/97, ss. 144, 145, 149 and 184(2)

IN THE MATTER OF THE SECURITIES LEGISLATION OF ONTARIO, BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, QUEBEC, NEWFOUNDLAND AND LABRADOR AND NOVA SCOTIA

AND

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

IN THE MATTER OF THE BANK OF NOVA SCOTIA

AND

IN THE MATTER OF SCOTIA MORTGAGE INVESTMENT CORPORATION

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker", and, collectively, the "Decision Makers") in each of the Provinces of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, Newfoundland and Labrador and Nova Scotia (collectively, the "Jurisdictions") has received an application (the "Application") from Scotia Mortgage Investment Corporation ("SMIC") and The Bank of Nova Scotia (the "Bank") for a decision, pursuant to the securities legislation of the Jurisdictions (collectively, the "Legislation"), that the requirements contained in the Legislation to:

- (a) file interim financial statements and audited annual financial statements (collectively, "Financial Statements") with the Decision Makers and deliver such Financial Statements to the security holders of SMIC;
- (b) make an annual filing ("Annual Filing") with the Decision Makers in lieu of filing an information circular, where applicable;
- (c) file an annual report ("Annual Report") and an information circular with the Decision Maker in Quebec and deliver such report or information circular to the security holders of SMIC resident in Quebec; and

2002 BCSECCOM 227

(d) prepare and file with the applicable Decision Makers an annual information form ("AIF") in Ontario, Saskatchewan and Quebec, annual management's discussion and analysis of the financial condition and results of operation of SMIC ("Annual MD&A") in Ontario, Saskatchewan and Quebec, interim management's discussion and analysis of the financial condition and results of operation of SMIC ("Interim MD&A") in Ontario and Saskatchewan, and send such MD&A to security holders of SMIC, where applicable;

shall not apply to SMIC, subject to certain terms and conditions;

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS SMIC and the Bank have represented to the Decision Makers that:

The Bank of Nova Scotia

1. The Bank is a Schedule 1 Canadian chartered bank incorporated under the Bank Act (Canada) (the "Bank Act"). The Bank is a reporting issuer or equivalent in the Jurisdictions and is not, to its knowledge, in default of any requirement of the Legislation.
2. The authorized share capital of the Bank consists of an unlimited number of common shares ("Bank Common Shares") and an unlimited number of preferred shares. As at July 31, 2001, 502,240,000 Bank Common Shares and 60,993,000 preferred shares were outstanding.
3. The Bank Common Shares are listed and posted for trading on The Toronto Stock Exchange (the "TSE"), and the London Stock Exchange.

Scotia Mortgage Investment Corporation

4. SMIC is a corporation governed by the Trust and Loan Companies Act (Canada) (the "Act"). SMIC is a reporting issuer or its equivalent in the Jurisdictions and is not, to its knowledge, in default of any requirement of the Legislation.
5. The outstanding securities of SMIC consist of: (i) 62,500 common shares, all of which are held by the Bank; and (ii) 250,000 Bank Originated Over-Collateralized Mortgage Securities, each consisting of one non-cumulative Preferred Share Class A of SMIC (the "Scotia BOOMS") that were distributed in a public offering pursuant to a prospectus dated October 23, 1997.
6. The Scotia BOOMS are listed and posted for trading on the TSE.
7. The business objective of SMIC is to acquire and hold Canada Mortgage and Housing insured residential first mortgages acquired primarily from the Bank and/or its affiliates (the "Mortgage Assets"). The Scotia BOOMS provide the Bank with a cost-effective means of raising capital for Canadian bank regulatory purposes.

Scotia BOOMS

8. Each Scotia BOOMS entitles the holder (a "Scotia BOOMS Holder") to receive a fixed cash distribution of \$65.70 per annum (the "Indicated Yield") payable semi-annually by SMIC on the last day of April and October of each year (an "Indicated Yield Payment Date").
9. Upon the occurrence of certain adverse tax events (a "Tax Event") prior to October 31, 2007, the Scotia BOOMS will be exchangeable, at the option of the Bank without the consent of the

2002 BCSECCOM 227

holders thereof (the "Bank Tax Event Exchange Right"), for a formula determined number of Bank Common Shares.

10. On and after October 31, 2007, each Scotia BOOMS will be exchangeable, at the option of the Scotia BOOMS Holder, for a formula determined number of Bank Common Shares in accordance with the terms of a Bank Share Exchange Agreement, (the "Bank Share Exchange Agreement") made between the Bank, SMIC and Montreal Trust Company of Canada as trustee for the Scotia BOOMS Holders.

11. On and after October 31, 2007, each Scotia BOOMS will be exchangeable, at the option of the Bank, for a formula determined number of Bank Common Shares in accordance with the Bank Share Exchange Agreement.

12. Each Scotia BOOMS will be automatically exchanged without the consent of the holder, for non-cumulative Preferred Shares Series Z of the Bank ("Series Z Shares") if: (i) SMIC fails to declare and pay or set aside for payment when due the declared Indicated Yield on any Indicated Yield Payment Date; (ii) the Bank fails to declare and pay or set aside for payment when due any declared dividend on any issue of its non-cumulative preferred shares; (iii) the Superintendent of Financial Institutions (Canada) (the "Superintendent") takes control of the Bank pursuant to the Bank Act or of SMIC pursuant to the Act or proceedings arguments for the winding-up of the Bank or SMIC pursuant to the Winding-Up and Restructuring Act (Canada); (iv) the Superintendent has determined that the Bank has a Tier 1 risk-based capital ratio of less than 5.0% or a total risk-based capital ratio of less than 8.0%; or (v) the Superintendent, by order, directs the Bank to act pursuant to subsection 485(3) of the Bank Act, or directs SMIC to act pursuant to subsection 473(3) of the Act, to increase its capital or to provide additional liquidity and either the Bank or SMIC, as the case may be, elects to cause the exchange as a consequence of the issuance of such order or either the Bank or SMIC, as the case may be, does not comply with such order to the satisfaction of the Superintendent within the time specified therein.

13. The Series Z Shares will be convertible on and after October 31, 2007, at the option of the holder, into Bank Common Shares.

14. The Scotia BOOMS may be redeemed by SMIC for cash in the following circumstances: (i) subject to the Bank Tax Event Exchange Right, upon the occurrence of a Tax Event on or after October 31, 2002 and prior to October 31, 2007; or (ii) on and after October 31, 2007, subject to the approval of the Superintendent.

15. The Scotia BOOMS are non-voting except as required by applicable law.

16. Except to the extent that the Indicated Yield is payable to Scotia BOOMS Holders and other than in the event of liquidation of SMIC, Scotia BOOMS Holders have no claim or entitlement to the income of SMIC or the Mortgage Assets.

17. In certain circumstances (as described in paragraph 12 above), including at a time when the Bank's financial condition is deteriorating or proceedings for the winding-up of the Bank have been commenced, the Scotia BOOMS will be automatically exchanged for preferred shares of the Bank without the consent of Scotia BOOMS Holders and, as a result, Scotia BOOMS Holders will have no claim or entitlement to the assets of SMIC, other than indirectly in their capacity as preferred shareholders of the Bank.

18. Scotia BOOMS Holders may not take any action to wind-up or dissolve SMIC except as provided by law.

2002 BCSECCOM 227

19. The Bank and SMIC have entered into an Advisory Agreement pursuant to which the Bank provides advice and counsel with respect with certain matters to SMIC and provides certain employees to serve as officers of SMIC to administer the day-to-day operations of SMIC.

20. The Mortgage Assets of SMIC are serviced by the Bank and Scotia Mortgage Corporation ("SMC") pursuant to a Mortgage Sales and Servicing Agreement entered into among SMIC, the Bank and SMC.

21. SMIC has not requested relief for the purposes of filing a short form prospectus pursuant to National Instrument 44-101 -- Short Form Prospectus Distributions ("NI 44-101") (including, without limitation, any relief which would allow SMIC to use the Bank's AIF as a current AIF of SMIC) and no such relief is provided by this Decision Document from any of the requirements of NI 44-101.

22. Disclosure in respect of SMIC will be provided in a note to the annual financial statements of the Bank and those statements together with all other materials sent to shareholders of the Bank will be sent to all holders of Scotia BOOMS.

23. Notice will be provided to holders of Scotia BOOMS that as a result of the relief granted herein to SMIC, such holders will receive the continuous disclosure filings of the Bank described in paragraph 22 above.

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 under the Legislation is that the requirement contained in the Legislation:

(a) to file Financial Statements with the Decision Makers and deliver such statements to holders of Scotia BOOMS;

(b) to make an Annual Filing, where applicable, with the Decision Makers in lieu of filing an information circular;

(c) to file an Annual Report and an information circular with the Decision Maker in Quebec and deliver such report or information circular to holders of Trust Securities resident in Quebec;

shall not apply to SMIC for so long as:

(i) the Bank remains a reporting issuer under the Legislation;

(ii) the Bank sends its annual financial statements, interim financial statements, annual and interim management discussion and analysis to holders of Scotia BOOMS and its Annual Report to holders of Scotia BOOMS resident in the Province of Quebec at the same time and in the same manner as if the holders of Scotia BOOMS were holders of Bank Common Shares;

(iii) all outstanding securities of SMIC are either Scotia BOOMS or common shares;

(iv) the rights and obligations of holders of additional series of Scotia BOOMS are the same in all material respects as the rights and obligations of the holders of Scotia BOOMS Holders at the date hereof; and

2002 BCSECCOM 227

(v) the Bank or its affiliates are the beneficial owners of all outstanding common shares of SMIC;

and provided that if a material change occurs in the affairs of SMIC, this Decision shall expire 30 days after the date of such change.

DATED this 13th day of March, 2002.

Paul M. Moore, Q. C.

Mary Theresa McLeod

AND THE FURTHER DECISION of the Decision Makers in Ontario, Quebec and Saskatchewan is that the AIF and MD&A Requirements to file and send and deliver to the registered holders of Scotia BOOMS, as the case may be, the AIF, the Annual MD&A and the Interim MD&A, shall not apply to SMIC.

DATED this 13th day of March, 2002.

John E. Hughes