

2003 BCSECCOM 233

Headnote

Mutual Reliance Review System for Exemptive Relief Application – subdivided offering – relief granted from the prospectus requirement for market making trades, subject to conditions – relief granted from the prohibition contained in the Legislation from trading in portfolio shares by persons or companies having information concerning the trading programs of mutual funds with respect to certain principal trades

Applicable British Columbia Provisions

Securities Act, R.S.B.C.1996, c. 418, ss. 76 and 130

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

AND

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

AND

IN THE MATTER OF ALLBANC SPLIT CORP.

AND

IN THE MATTER OF SCOTIA CAPITAL INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Ontario, British Columbia, Alberta, Saskatchewan, Nova Scotia, Newfoundland and Labrador, New Brunswick and Prince Edward Island (the “Jurisdictions”) has received an application from Allbanc Split Corp. (the “Issuer”) and Scotia Capital Inc. (“Scotia Capital”) for decisions under the securities legislation (the “Legislation”) of the Jurisdictions that:

- (a) the requirements contained therein for the filing and obtaining of a receipt for a preliminary prospectus and final prospectus (the “Prospectus Requirements”) shall not apply to Market Making Trades (as hereinafter defined) by Scotia

2003 BCSECCOM 233

Capital in the Class A Capital Shares and Class A Preferred Shares of the Issuer; and

- (b) the restrictions contained therein prohibiting trading in portfolio shares by persons or companies having information regarding the trading program of mutual funds (the “Principal Trading Prohibitions”) shall not apply to Scotia Capital in connection with the Principal Purchases (defined below).

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or in Quebec Commission Notice 14-101;

AND WHEREAS the Issuer has represented to the Decision Makers that:

1. Scotia Capital is a direct, wholly-owned subsidiary of The Bank of Nova Scotia (“BNS”) and is registered under the Legislation as a dealer in the categories of “broker” and “investment dealer” and is a member of the Investment Dealers Association of Canada and The Toronto Stock Exchange.
2. The Issuer was incorporated on December 17, 1997 under the laws of the Province of Ontario.
3. The authorized capital of the Issuer consists of an unlimited number of Capital Shares, an unlimited number of Preferred Shares, an unlimited number of Class A Capital Shares, an unlimited number of Class A Preferred Shares and an unlimited number of Class A Shares, having the attributes set forth under the headings “Description of Share Capital” and “Details of the Offerings” commencing on page 19 of the Preliminary Prospectus.
4. The Issuer became a reporting issuer under the Act by filing a final prospectus dated February 17, 1997 relating to an initial public offering of Capital Shares and Preferred Shares (the “Initial Public Offering”).
5. On January 14, 2003, the holders of the Capital Shares approved a share capital reorganization (the “Reorganization”) which permitted holders of Capital Shares, at their option, to retain their investment in the Company after the scheduled redemption date of March 10, 2003, by converting their Capital Shares into Class A Capital Shares.

2003 BCSECCOM 233

6. On January 17, 2003, the holders of 897,444 Capital Shares converted such Capital Shares on a one-for-one basis into 897,444 Class A Capital Shares. All of the issued and outstanding Capital Shares and Preferred Shares will be redeemed by the Company on March 10, 2003.
7. The Class A Preferred Shares are being offered in order to maintain the leveraged “split share” structure of the Company and will be issued on the scheduled redemption date of the Capital Shares and the Preferred Shares such that there will be an equal number of Class A Capital Shares and Class A Preferred Shares outstanding.
8. The Issuer has filed with the securities regulatory authorities of each Province of Canada a preliminary prospectus dated January 24, 2003 (the “Preliminary Prospectus”) in respect of the offering of Class A Preferred Shares (the “Offering”).
9. The Class A Shares are the only voting shares in the capital of the Issuer. There are currently, and will be at the time of the filing of the final prospectus (the “Final Prospectus”) relating to the Offering, 100 Class A Shares issued and outstanding. Allbanc Split Holdings Corp. and Scotia Capital each own 50% of the issued and outstanding Class A Shares of the Issuer.
10. The Class A Capital Shares and Class A Preferred Shares may be surrendered for retraction at any time in the manner described in the Preliminary Prospectus.
11. The Class A Capital Shares are listed on the Toronto Stock Exchange (the “TSX”) and the TSX has granted conditional approval to list the Class A Preferred Shares.
12. The Issuer has a board of directors which currently consists of five directors. Three of the directors are employees of Scotia Capital. In addition, the President and Chief Executive Officer and the Chief Financial Officer and Secretary of the Issuer are also employees of Scotia Capital.
13. Pursuant to an agreement (the “Agency Agreement”) to be made between the Issuer and Scotia Capital, BMO Nesbitt Burns Inc., CIBC World Markets Inc. and RBC Dominion Securities Inc. (collectively, the “Agents” and individually, an “Agent”), the Issuer will appoint the Agents, as its agents, to offer the Class A Preferred Shares of the Issuer on a best efforts basis and the Final Prospectus qualifying the Offering will contain a certificate signed by each of the Agents in accordance with the Legislation.

2003 BCSECCOM 233

14. The Issuer is considered to be a mutual fund but does not operate as a conventional mutual fund and in connection with its Initial Public Offering applied for and obtained a waiver under National Policy No. 39 from certain of its requirements.
15. The Issuer is a passive investment company whose principal undertaking is to invest in a portfolio (the "Portfolio") of publicly listed common shares (the "Portfolio Shares") of the five largest Canadian banks in order to generate dividend income for the holders of the Class A Preferred Shares and to enable the holders of the Class A Capital Shares to participate in capital appreciation in the Portfolio Shares after payment of operating expenses.
16. The fixed distributions on the Class A Preferred Shares will be funded from the dividends received on the Portfolio Shares. If necessary, any shortfall in the distributions on the Class A Preferred Shares will be funded by proceeds from the sale of, or if determined appropriate by the issuer's board of directors, premiums from writing covered call options on, Portfolio Shares. Based on the current dividends paid on the Portfolio Shares, it is not expected that the Issuer would have to sell any Portfolio Shares or write any call options to fund the Class A Preferred Share distributions. The Issuer intends to establish a revolving credit facility, likely with Scotia Capital, which may be used by the Issuer to fund the payment of a portion of the fixed distribution on the Class A Preferred Shares on a temporary basis, if necessary.
17. The Portfolio Shares are currently listed and traded on the TSX.
18. The Issuer is not, and will not upon the completion of the Offering, be an insider of the issuers of the Portfolio Shares within the meaning of the Legislation.
19. Scotia Capital's economic interest in the Issuer and in the material transactions involving the Issuer are disclosed in the Preliminary Prospectus and will be disclosed in the Final Prospectus under the heading "Interest of Management and Others in Material Transactions". Scotia Capital is the promoter of the Issuer.
20. The net proceeds from the sale of the Class A Preferred Shares under the Final Prospectus, after payment of commissions to the Agents and expenses of issue will be used by the Issuer to fund the redemption of all of the issued and outstanding Capital Shares and Preferred Shares on March 10, 2003.
21. All Class A Capital Shares and Class A Preferred Shares outstanding on March 10, 2008 will be redeemed by the Issuer on such date and the Class A

2003 BCSECCOM 233

Preferred Shares will be redeemable at the option of the Issuer on any Annual Retraction Payment Date (as described in the Preliminary Prospectus).

22. It will be the policy of the Issuer to hold the Portfolio Shares and to not engage in any trading of the Portfolio Shares, except:
 - (a) to fund the redemption of all Capital Shares and Preferred Shares on March 10, 2003;
 - (b) to fund retractions or redemptions of the Class A Capital Shares and the Class A Preferred Shares;
 - (c) following receipt of stock dividends on Portfolio Shares; or
 - (d) in certain other limited circumstances described in the Preliminary Prospectus.
23. Pursuant to an administration agreement (the "Administration Agreement") to be entered into, Scotia Capital will continue to administer the ongoing operations of the Issuer and the Issuer will pay Scotia Capital a fee equal to:
 - (a) a monthly fee of 1/12 of 0.15% of the market value of the Portfolio Shares;
 - (b) any interest income earned by the Issuer from time to time, excluding interest earned on any investment of excess dividends received on the Portfolio Shares (which are for the benefit of the Class A Capital Shares).
24. In connection with the services to be provided by Scotia Capital to the Issuer pursuant to the Administration Agreement, Scotia Capital may sell Portfolio Shares to fund retractions of Class A Capital Shares and Class A Preferred Shares prior to March 10, 2008 (the "Redemption Date") and upon liquidation of the Portfolio Shares prior to the Redemption Date. These sales will be made by Scotia Capital as agent on behalf of the Issuer, but in certain circumstances, such as where a small number of Class A Capital Shares and Class A Preferred Shares have been surrendered for retraction, Scotia Capital may purchase Portfolio Shares as principal (the "Principal Purchases") subject to receipt of all regulatory approvals.
25. In connection with any Principal Purchases, Scotia Capital will comply with the rules, procedures and policies of the applicable stock exchange of which it is a member and in accordance with orders obtained from all applicable securities regulatory authorities. The Final Prospectus will disclose that Scotia Capital may realize a gain or loss on the resale of such securities.

2003 BCSECCOM 233

26. The Preliminary Prospectus discloses and the Final Prospectus will disclose that any Principal Purchases will be made in accordance with the rules of the applicable stock exchange and the price payable by Scotia Capital (inclusive of all transaction costs, if any) will not be less than the price which would have been payable (inclusive of all transaction costs, if any) if the sale had been made through the facilities of the principal stock exchange on which the Portfolio Shares are listed and posted for trading at the time of the sale to Scotia Capital.
27. The Administration Agreement will provide that Scotia Capital must take reasonable steps, such as soliciting bids from other market participants or such other steps as Scotia Capital, in its discretion, considers appropriate after taking into account prevailing market conditions and other relevant factors, to enable the Issuer to obtain the best price reasonably available for the Portfolio Shares so long as the price obtained (net of all transaction costs, if any) by the Issuer to Scotia Capital is more or at least as advantageous to the issuer as the price which is available (net of all transaction costs, if any) through the facilities of the applicable stock exchange at the time of the trade.
28. Scotia Capital will not receive any commissions from the Issuer in connection with the Principal Purchases and, in carrying out the Principal Purchases, Scotia Capital shall deal fairly, honestly and in good faith with the Issuer.
29. Scotia Capital will be a significant maker of markets for the Class A Capital Shares and Class A Preferred Shares. As a result, as discussed above Scotia Capital will, from time to time, purchase and sell Class A Capital Shares and Class A Preferred Shares and trade in such securities as agent on behalf of its clients, the primary purpose of such trades (the "Market Making Trades") being to provide liquidity to the holders of Class A Capital Shares and Class A Preferred Shares. All trades made by Scotia Capital as principal will be recorded daily by the TSX.
30. As Scotia Capital owns 50% of the Class A Shares of the Issuer, Scotia Capital will be deemed to be in a position to affect materially the control of the Issuer and consequently, each Market Making Trade will be a "distribution" or "distribution to the public" within the meaning of the Legislation.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

2003 BCSECCOM 233

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:

- (a) The Prospectus Requirements shall not apply to the Market Making Trades by Scotia Capital in the Class A Capital Shares and Class A Preferred Shares provided that at the time of each Market Making Trade, Scotia Capital and its affiliates do not beneficially own or have the power to exercise control or direction over a sufficient number of voting securities of the issuers of the Portfolio Shares, securities convertible into voting securities of the issuers of the Portfolio Shares, options to acquire voting securities of the issuers of the Portfolio Shares, or any other securities which provide the holder with the right to exercise control or direction over voting securities of the issuers of the Portfolio Shares which in the aggregate, permit Scotia Capital to affect materially the control of the issuers of the Portfolio Shares and without limiting the generality of the foregoing, the beneficial ownership of or the power to exercise control or direction over securities representing in the aggregate 20 percent or more of the votes attaching to all the then issued and outstanding voting securities of the issuers of the Portfolio Shares shall, in the absence of evidence to the contrary, be deemed to affect materially the control of the issuers of the Portfolio Shares; and
- (b) The Principal Trading Prohibitions shall not apply to Scotia Capital in connection with the Principal Purchases.

DATED March 6, 2003.

Paul M. Moore

Howard I. Wetston