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March 7, 2008

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - *Securities Act* s. 130 - Relief from certain self-dealing restrictions in Part 15 of the Act - A mutual fund wants relief from s. 121(2)(a) of the Act so that it can make or hold an investment in a person who is a substantial security holder of the mutual fund, its mutual fund manager or its mutual fund distributor - The portfolio of the mutual fund is fixed; the portfolio is passively managed; the mutual fund will purchase the securities at a predetermined time and at no more than the ask price of the securities on the exchange where the securities are listed; independent directors of the mutual fund will approve all principal purchases and sales

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 121(2)(a) and 130

In the Matter of
the Securities Legislation of
Ontario, British Columbia, Alberta, Saskatchewan,
Newfoundland and Labrador, Nova Scotia and New Brunswick
(the “Jurisdictions”)

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

Background

The local securities regulatory authority or regulator (the “Decision Maker”) in each of the Jurisdictions has received an application from the Filers for decisions under the securities legislation (the “Legislation”) of the Jurisdictions that the

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following requirements contained in the applicable Legislation shall not apply to Allbanc Split Corp. (the “Filer”) or Scotia Capital Inc. (“Scotia Capital”) in connection with the public offering (the “Offering”) of class B preferred shares (the “Class B Preferred Shares”) of the Filer:

- (a) The prohibitions contained in the Legislation prohibiting trading in portfolio shares by persons or companies having information concerning the trading programs of mutual funds (the “Principal Trading Prohibitions”) shall not apply to Scotia Capital in connection with the Principal Sales and Principal Purchases (as hereinafter defined);
- (b) The restrictions contained in the Legislation prohibiting the Filer from making investments in the common shares of the banks included in the portfolio, which banks are or may be substantial security holders of Scotia Capital and the other agents expected to be appointed by the Filer (the “Related Agent”) to be distribution companies of the Filer (the “Investment Restrictions”), shall not apply to the Filer in connection with the Offering.

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Ontario Securities Commission is the principal regulator for this application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

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

Representations

This decision is based on the following facts represented by the Filer:

The Filer

1. The Filer was incorporated under the *Business Corporations Act* (Ontario) on December 17, 1997 and became a reporting issuer under the OSA by filing a final prospectus dated February 17, 1998 relating to an initial public offering of capital shares (the “Capital Shares”) and preferred shares (the “Preferred Shares”) completed on February 25, 1998.

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2. The authorized capital of the Filer consists of an unlimited number of Capital Shares, an unlimited number of Preferred Shares, an unlimited number of class A capital shares (the “Class A Capital Shares”), an unlimited number of class A preferred shares (the “Class A Preferred Shares”), an unlimited number of class A shares (the “Class A Shares”), an unlimited number of class S shares and an unlimited number of Class B Preferred Shares.
3. On January 14, 2003, the holders of Capital Shares approved a share capital reorganization which permitted holders of Capital Shares, at their option, to retain their investment in the Filer after the scheduled redemption date of March 10, 2003, by converting their Capital Shares into Class A Capital Shares. 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 were redeemed by the Filer on March 10, 2003.
4. On January 25, 2008, the holders of Class A Capital Shares of the Filer approved a share capital reorganization (the “Reorganization”) which permits holders of Class A Capital Shares, at their option, to retain their investment in the Filer after the originally scheduled redemption date of March 10, 2008. In order for the Reorganization to proceed, holders of at least 180,000 Class A Capital Shares must retain their Class A Capital Shares pursuant to the Reorganization right (the “Special Retraction Right”). All of the Class A Preferred Shares and those Class A Capital Shares for which holders have exercised their Special Retraction Right, will be redeemed on March 10, 2008. Should the Reorganization not proceed, all of the Class A Capital Shares and all of the Class A Preferred Shares will be redeemed on March 10, 2008.
5. The Class B Preferred Shares are being offered in order to maintain the leveraged “split share” structure of the Filer and will be issued on March 10, 2008 (the “Offering”) such that there will be an equal number of Class A Capital Shares and Class B Preferred Shares outstanding on and after the expected closing date of March 10, 2008.
6. The Filer will make the Offering to the public pursuant to a final prospectus (the “Final Prospectus”) in respect of which the Preliminary Prospectus has already been filed.
7. The Class A Capital Shares will continue to be listed and posted for trading on The Toronto Stock Exchange (the “TSX”) and it is expected that the Class B Preferred Shares will be listed and posted for trading on the TSX. An application requesting conditional listing approval has been made by the Filer to the TSX.

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8. The Class A Shares are the only voting shares in the capital of the Filer. There are currently, and will be at the time of filing 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 Filer.
9. The Class A Capital Shares and Class B Preferred Shares may be surrendered for retraction at any time in the manner described in the Preliminary Prospectus.
10. The Filer has a board of directors (the “Board of Directors”) which currently consists of six directors, three of which are independent directors who are not employees of Scotia Capital. Also, the offices of President/Chief Executive Officer and Chief Financial Officer/Secretary of the Filer are held by employees of Scotia Capital.
11. The Filer is a passive investment company whose principal investment objective is to invest in a portfolio (the “Portfolio”) of common shares (the “Portfolio Shares”) of Bank of Montreal, Canadian Imperial Bank of Commerce, Royal Bank of Canada, The Bank of Nova Scotia and The Toronto-Dominion Bank (collectively, the “Banks”) in order to generate fixed cumulative preferential distributions for holders of the Filer’s Class B Preferred Shares, and to allow the holders of the Filer’s Class A Capital Shares to participate in the capital appreciation of the Portfolio Shares after payment of administrative and operating expenses of the Filer. It will be the policy of the Board of Directors of the Filer to pay dividends on the Class A Capital Shares in an amount equal to the dividends received by the Filer on the Portfolio Shares minus the distributions payable on the Class B Preferred Shares and all administrative and operating expenses of the Filer.
12. Class B Preferred Share distributions will be funded from the dividends received on the Portfolio Shares and, if necessary, the revolving credit facility. If necessary, any shortfall in the distributions on the Class B Preferred Shares will be funded by proceeds from the sale of or, if determined appropriate by the Board of Directors, premiums earned from writing covered call options on, Portfolio Shares.
13. The record date for the payment of Class B Preferred Share distributions, Class A Capital Share dividends or other distributions of the Filer will be set in accordance with the applicable requirements of the TSX.

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14. Any Class A Capital Shares and Class B Preferred Shares outstanding on a date approximately five years from the closing of the Offering, which date will be specified in the Final Prospectus, will be redeemed by the Filer on such date.
15. The Filer is considered to be a mutual fund, as defined in the Legislation. Since the Filer does not operate as a conventional mutual fund, it is making an application for a waiver from certain requirements of National Instrument 81-102 – *Mutual Funds*.
16. It will be the policy of the Filer to hold the Portfolio Shares and to not engage in any trading of the Portfolio Shares, except:
 - (a) to complete the one-time rebalancing of the Portfolio as described in the Preliminary Prospectus;
 - (b) to fund retractions or redemptions of Class A Capital Shares and Class B Preferred Shares;
 - (c) following receipt of stock dividends on the Portfolio Shares;
 - (d) if necessary, to fund any shortfall in the distribution on Class B Preferred Shares; and
 - (e) to meet obligations of the Filer in respect of liabilities including extraordinary liabilities.
17. The Portfolio Shares are listed and traded on the TSX.
18. The Filer is not, and will not upon the completion of the Offering be, an insider of the Banks within the meaning of the Legislation.

The Offerings

19. The net proceeds of the Offering (after deducting the agents' fees and expenses of the issue), depending upon the number and value of Class A Capital Shares redeemed pursuant to the Special Retraction Right, will be used by the Filer either: (i) to fund the redemption of all of the issued and outstanding Class A Preferred Shares of the Filer on March 10, 2008 as well as those Class A Capital Shares being redeemed pursuant to the Special Retraction Right (together, with the net proceeds from the sale of a portion of the portfolio, if necessary); or (ii) to purchase additional Portfolio Shares to the extent that the net proceeds of the Offering exceed the funding

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requirements associated with the redemption of all of the issued and outstanding Class A Preferred Shares of the Filer on March 10, 2008 as well as those Class A Capital Shares being redeemed pursuant to the Special Retraction Right.

20. The Final Prospectus will disclose selected financial information and dividend and trading history of the Portfolio Shares.
21. As discussed above, application will be made to list the Class B Preferred Shares on the TSX and all of the Class A Capital Shares and Class B Preferred Shares outstanding on a date approximately five years from the closing of the Offering will be redeemed by the Filer on such date.

Scotia Capital

22. Scotia Capital was incorporated under the laws of the Province of Ontario and is a direct, wholly-owned subsidiary of BNS. Scotia Capital 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 a participant in the TSX. Scotia Capital is the promoter of the Filer.
23. Pursuant to an agreement (the “Agency Agreement”) to be made between the Filer and Scotia Capital and other agents expected to be appointed by the Company (the “Agents”), the Filer will appoint the Agents, as its agents, to offer the Class B Preferred Shares of the Filer on a best efforts basis and the Final Prospectus qualifying the Offering will contain a certificate signed by the Agents, in accordance with the Legislation.
24. Pursuant to an administration agreement (the “Administration Agreement”) to be entered into between BNS and the Filer, the Filer will retain BNS to administer the ongoing operations of the Filer and will pay BNS a monthly fee of 1/12 of 0.25% of the market value of the Portfolio Shares held by the Filer.
25. BNS’s and Scotia Capital’s economic interest in the Filer and in the material transactions involving the Filer 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” and include the following:
 - (a) agency fees with respect to the Offering;
 - (b) commissions in respect of the disposition of Portfolio Shares to fund a redemption, retraction or purchase for cancellation of the Class A Capital Shares and Class B Preferred Shares;

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(c) interest and reimbursement of expenses, in connection with any acquisition of Portfolio Shares; and

(d) amounts in connection with Principal Purchases (as described below).

The Principal Trades

26. Through Scotia Capital, the Filer may purchase Portfolio Shares in the market on commercial terms or from non-related parties with whom Scotia Capital and the Filer deal at arm's length. Subject to regulatory approval, certain of such Portfolio Shares may also be purchased from Scotia Capital, as principal (the "Principal Sales").

27. Scotia Capital may receive commissions not exceeding normal market rates in respect of its purchase of Portfolio Shares, as agent on behalf of the Filer, and the Filer will pay any carrying costs or other expenses incurred by Scotia Capital, on behalf of the Filer, in connection with its purchase of Portfolio Shares, as agent on behalf of the Filer. In respect of any Principal Sales made to the Filer by Scotia Capital as principal, Scotia Capital may realize a financial benefit to the extent that the proceeds received from the Filer exceed the aggregate cost to Scotia Capital of such Portfolio Shares. Similarly, the proceeds received from the Filer may be less than the aggregate cost to Scotia Capital of the Portfolio Shares and Scotia Capital may realize a financial loss.

28. The Preliminary Prospectus discloses and the Final Prospectus will disclose that any Principal Sales will be made in accordance with the rules of the applicable stock exchange and the price paid to Scotia Capital (inclusive of all transaction costs, if any) will not be greater than the price which would have been paid (inclusive of all transaction costs, if any) if the acquisition 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 purchase from Scotia Capital.

29. Scotia Capital will not receive any commissions from the Filer in connection with the Principal Sales and all Principal Sales will be approved by the independent directors of the Filer. In carrying out the Principal Sales, Scotia Capital will deal fairly, honestly and in good faith with the Filer.

30. Scotia Capital may sell Portfolio Shares to fund retractions of Class A Capital Shares and Class B Preferred Shares prior to the Redemption Date and upon liquidation of the Portfolio Shares in connection with the final redemption of Class A Capital Shares and Class B Preferred Shares on the Redemption Date.

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These sales will be made by Scotia Capital as agent on behalf of the Filer, but in certain circumstances, such as where a small number of Class A Capital Shares and Class B 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.

31. In connection with any Principal Purchases, Scotia Capital will comply with the rules, procedures and policies of the applicable stock exchange of which they are members and in accordance with orders obtained from all applicable securities regulatory authorities. The Preliminary Prospectus discloses, and the Final Prospectus will disclose, that Scotia Capital may realize a gain or loss on the resale of such securities.
32. Scotia Capital will 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 Filer 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 Filer from Scotia Capital is at least as advantageous to the Filer 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.
33. Scotia Capital will not receive any commissions from the Filer in connection with Principal Purchases and, in carrying out the Principal Purchases, Scotia Capital shall deal fairly, honestly and in good faith with the Filer.

Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the authority to make the decision has been met.

The decision of the Decision Makers is that the Requested Relief is granted.

David L. Knight
Commissioner

Suresh Thakrar
Commissioner

ONTARIO SECURITIES COMMISSION