

# 2004 BCSECCOM 180

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – relief granted to an issuer from requirement to deliver annual financial statement – the annual financial statement covered a short operating period

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, s. 91

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

**AND**

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

**AND**

**IN THE MATTER OF RBC DOMINION SECURITIES INC. AND  
DIVERSIFIED PREFERRED SHARE TRUST**

## **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador (the “Jurisdictions”) has received an application (the “Application”) from RBC Dominion Securities Inc. (the “Administrator”) on behalf of Diversified Preferred Share Trust (the “Trust” and, collectively with the Administrator, the “Filer”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirements contained in the Legislation to deliver comparative audited annual financial statements (the “Annual Financial Statements”) and from the requirement to prepare, file and deliver an annual report, where applicable, to holders of units of the Trust (the “Unitholders”) shall not apply to the Trust in connection with the Trust's financial year ended on December 31, 2003 (the “2003 Financial Year”).

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AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Application (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;

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

1. The Trust is a closed-end investment trust established under the laws of the Province of Ontario pursuant to a declaration of trust dated October 16, 2003, as amended and restated on November 25, 2003. The address of the principal office of the Administrator is P.O. Box 50, 200 Bay Street, Royal Bank Plaza, 4<sup>th</sup> Floor, South Tower, Toronto, Ontario M5J 2W7.
2. The financial year-end of the Trust is December 31, with its first financial year-end having occurred on December 31, 2003.
3. The Trust filed a final prospectus dated November 25, 2003 (the “Prospectus”) with the securities regulatory authorities in each of the provinces and territories in Canada pursuant to which a distribution of 5,600,000 units of the Trust (the “Units”) was completed on December 12, 2003 (the “Offering”).
4. The Trust issued an additional 225,000 Units to the public pursuant to the agents' partial exercise of the over-allotment option in connection with the Offering on January 8, 2004.
5. The authorized capital of the Trust consists of an unlimited number of Units, of which 5,825,000 Units are issued and outstanding, with the attributes described in the Prospectus.
6. The Trust is not a mutual fund and does not intend to hold annual meetings for the Unitholders, as described in the Prospectus.
7. The principal undertaking of the Trust is the investment in an equally weighted diversified portfolio of preferred shares and preferred securities (the “Portfolio Securities”) of Canadian issuers that have been rated Pfd-1, Pfd-2 or Pfd-3 by Dominion Bond Rating Service Limited, are listed on the Toronto Stock Exchange and have an aggregate redemption value of Cdn.\$100 million or greater. Portfolio Securities will only be disposed of or acquired in limited circumstances, as described in the Prospectus.

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8. The Prospectus included an audited statement of financial position of the Trust as at November 25, 2003 and an unaudited *pro forma* statement of financial position prepared on the basis of the completion of the sale and issue of Units in the Offering. As such, the financial position of the Trust as at December 12, 2003 was substantially reflected in the *pro forma* financial statements contained in the Prospectus.
9. The Trust is a passive investment vehicle designed to provide Unitholders with the opportunity to receive quarterly cash distributions and the benefits of a low management expense ratio. Unitholders will be entitled to receive distributions if and when declared by the trustees of the Trust. The trustees generally intend to declare and pay quarterly distributions substantially equal to the amount by which dividends and distributions received by the Trust from the Portfolio Securities exceed the estimated expenses and taxes payable by the Trust, as described in the Prospectus.
10. The Trust did not declare a distribution in the 2003 Financial Year and does not intend to declare a distribution until March 31, 2004, as described in the Prospectus.
11. The benefit to be derived by Unitholders from receiving the Annual Financial Statements for the 2003 Financial Year would be minimal in view of the short period from the date of the Prospectus to the Trust's financial year-end and given the passive nature of the business carried on by the Trust.
12. The expense to the Trust in printing and delivering the Annual Financial Statements to the Unitholders for the 2003 Financial Year and in preparing, filing and delivering to its Unitholders an annual report where applicable for the fiscal year ended December 31, 2003 would not be justified in view of the minimal benefit to be derived by the Unitholders from receiving the Annual Financial Statements;

AND WHEREAS under 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 pursuant to the Legislation is that the Trust is exempt from the requirements to deliver to its Unitholders the Annual Financial Statements for the 2003 Financial Year and is exempt from the requirement to prepare, file and deliver an annual report, where applicable, to its

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Unitholders for the period ended December 31, 2003, provided that once such Annual Financial Statements have been filed by the Trust, the Trust sends a copy of such Annual Financial Statements to any Unitholder of the Trust who so requests.

DATED March 16, 2004.

Paul Moore

Suresh Thakrar