

2006 BCSECCOM 338

May 5, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 171 -Revoke or Vary Decision - An issuer wants to vary a previous decision it received to revise the conditions to the relief granted - The applicant previously obtained relief from certain requirements in securities legislation; the policy reasons for granting that relief have not changed, but certain of the conditions to the relief do not accurately reflect the issuer's circumstances; alternative conditions more accurately reflect the issuer's circumstances

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 171

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

and

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

and

In the Matter of
Windsor Auto Trust
(the Filer)

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 Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) varying the following previous decisions of the Decision Makers:

(a) in the case of:

- (i) the Decision Makers, other than the Decision Maker in New Brunswick, the decision entitled “*In the Matter of Windsor Auto Trust*” dated June 3, 2004 (the Prior MRRS CD Decision); and

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- (ii) the Decision Maker in New Brunswick, the decision entitled “*In the Matter of Windsor Auto Trust*” dated August 30, 2005 (the Prior New Brunswick CD Decision),

(collectively, the Prior CD Decisions), to amend the filing deadlines specified in the Prior CD Decisions in relation to certain interim and annual filings that are described in the Prior CD Decisions in order to reflect the Filer’s status as a “venture issuer” (as defined in National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) (the Requested CD Amendment Relief); and

- (b) in the case of:

- (i) the Decision Makers, other than the Decision Maker in Québec and British Columbia, the decision entitled “*In the Matter of Windsor Auto Trust*” dated June 3, 2005 (the Prior MRRS Certification Decision); and

- (ii) the Decision Maker in Québec, Decision No. 2005-PDG-0429 dated December 20, 2005 (the Prior Québec Certification Decision),

(collectively the Prior Certification Decisions), to amend the filing deadlines specified in the Prior Certification Decisions in relation to certain interim certificates and annual certificates that are described in the Prior Certification Decisions in order to reflect the Filer’s status as a “venture issuer” (the Requested Certification Amendment Relief).

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*, in the Prior CD Decisions or the Prior Certification Decisions, as applicable, 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:

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1. The Filer was established by The Canada Trust Company (Canada Trust), pursuant to an amended and restated declaration of trust made as of October 14, 2003, under the laws of the Province of Ontario.
2. The Filer is a special purpose entity whose business is described in paragraph 5 of the Prior MRRS CD Decision, paragraph 3 of the Prior New Brunswick CD Decision and paragraph 3 of the Prior MRRS Certification Decision.
3. The Filer is a reporting issuer or has equivalent status under the Legislation of the Jurisdictions and is not in default of any requirement of such Legislation, except the certification requirements of MI 52-109 in British Columbia, wherein the Filer has complied with the alternative certification requirements of the Prior MRRS Certification Decision.
4. The Filer is a “venture issuer” as that term is defined in NI 51-102.
5. The only securities that the Filer distributes to the public are asset-backed securities (Notes).
6. The Prior CD Decisions exempted the Filer from, other among things, the requirements of the Legislation of the Jurisdictions concerning the preparation, filing and delivery of unaudited interim financial statements and audited annual financial statements (the Continuous Disclosure Requirements), provided that the Filer complies with, among other things:
 - (a) a condition which requires the Filer, within 45 days of the end of each interim period in each financial year of the Filer, to make available on the applicable website and mail to holders of Notes who so request and file on SEDAR contemporaneously therewith, MD&A with respect to the pool of Purchased Assets acquired with the proceeds of the Notes held by such holders; and
 - (b) a condition which requires the Filer, within 90 days of the end of each financial year of the Filer, to make available on the applicable website and mail to holders of Notes who so request and file on SEDAR contemporaneously therewith, the following:
 - (i) MD&A with respect to the pool of Purchased Assets acquired with the proceeds of the Notes held by such holders;
 - (ii) the Annual Servicer’s Compliance Certificate; and

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- (iii) the Annual Accountant's Servicing Report in respect of the Receivables Purchase Agreement related to the Notes held by such holders.
- 7. The Prior Certification Decisions exempted the Filer from, among other things, the requirements of Multilateral Instrument 52-109 - *Certification of Disclosure in Issuer's Annual and Interim Filings* to file interim certificates and annual certificates (the Certification Requirements), provided that the Filer complied with, among other things:
 - (a) a condition which requires the Filer, within 90 days (140 days in the case of the Prior Québec Certification Decision) of the end of the financial year, to file through SEDAR an annual certificate in the form set out in Schedule A of the applicable Prior Certification Decision; and
 - (b) a condition which requires the Filer, within 45 days (60 days in the case of the Prior Québec Certification Decision) of the end of the interim period, to file through SEDAR an interim certificate in the form set out in Schedule B of the applicable Prior Certification Decision.
- 8. Since the Filer is a venture issuer, the Filer desires to:
 - (a) make available on the applicable website, mail to holders of Notes who so request, and to file, the documents described in paragraph 6 of this decision (paragraphs 24 and 25 of the Prior MRRS CD Decision and paragraph 10 of the Prior New Brunswick CD Decision); and
 - (b) file the certificates described in paragraph 7 of this decision (paragraphs (b) and (d) of the operative portion of the Prior Certification Decisions),at the same time that it would be required to file interim financial statements and annual financial statements pursuant to NI 51-102.
- 9. The Filer is making application to the Decision Maker in British Columbia for an exemption from the Certification Requirements on conditions that correspond with the Prior MRRS Certification Decision, as varied by this decision.

Decision

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.

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The decision of the Decision Makers under the Legislation is that the Requested CD Amendment Relief is granted and the Prior CD Decisions are amended as follows:

- (a) in the case of the Decision Makers, other than the Decision Maker in New Brunswick:
 - (i) in paragraph 24 of the Prior MRRS CD Decision, the phrase “45 days” is deleted and the phrase “45 days if the Trust is not a venture issuer, or 60 days if the Trust is a venture issuer,” is substituted therefor; and
 - (ii) in paragraph 25 of the Prior MRRS CD Decision, the phrase “90 days” is deleted and the phrase “90 days if the Trust is not a venture issuer, or 120 days if the Trust is a venture issuer,” is substituted therefor; and
- (b) in the case of the Decision Maker in New Brunswick, the operative portion of the Prior New Brunswick CD Decision is amended by deleting the words “provided that the Applicant is in compliance with the conditions of the Previous Decision” and by substituting therefore the words “provided that the Applicant is in compliance with the conditions of the Previous Decision, as amended by the subsequent decision of the Previous Decision Jurisdictions issued in May 2006”,

provided that the Filer continues to comply with the conditions of the Prior CD Decisions, except as varied by this decision.

The further decision of the Decision Makers, other than the Decision Maker in British Columbia, under the Legislation is that the Requested Certification Amendment Relief is granted and the Prior Certification Decisions are amended as follows:

- (a) in the case of such Decision Makers, other than the Decision Maker in Québec:
 - (i) in paragraph (b) of the operative portion of the Prior MRRS Certification Decision, the phrase “90 days” is deleted and the phrase “90 days if the Filer is not a venture issuer, or 120 days if the Filer is a venture issuer,” is substituted therefor; and
 - (ii) in paragraph (d) of the operative portion of the Prior MRRS Certification Decision, the phrase “45 days” is deleted and the phrase “45 days if the Filer is not a venture issuer, or 60 days if the Filer is a venture issuer,” is substituted therefor, and

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(b) in the case of the Decision Maker in Québec:

- (i) in paragraph (b) of the operative portion of the Prior Québec Certification Decision, the phrase “140 days” is deleted and the phrase “90 days if the issuer is not a venture issuer, or 120 days if the issuer is a venture issuer” is substituted therefor; and
- (ii) in paragraph (d) of the operative portion of the Prior Québec Certification Decision, the phrase “60 days” is deleted and the phrase “45 days if the issuer is not a venture issuer, or 60 days if the issuer is a venture issuer,” is substituted therefor,

provided that the Filer continues to comply with the conditions of the Prior Certification Decisions, except as varied by this decision.

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