

2008 BCSECCOM 154

February 13, 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 manager wants relief from the requirement in section 126(c) of the Act to report any purchase or sale effected through a related person of the mutual fund - The portfolio advisers of the mutual funds have discretion to allocate brokerage business in any manner consistent with the fund's best interests; the allocation of brokerage business represents the business judgement of responsible persons uninfluenced by considerations other than the best interests of the mutual funds; the management report of fund performance for the funds will disclose the names of and fees paid to related persons; the fund's records of portfolio transactions will include information about purchases or sales effected through a related person on a per transaction basis

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 126(c), 130

In the Matter of
the Securities Legislation of
Ontario, British Columbia, Alberta, Saskatchewan,
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
Scotia Cassels Investment Counsel Limited
(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), that the provisions

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of the Legislation requiring a management company, or in British Columbia and New Brunswick, a mutual fund manager, to file a report within thirty days after each month end relating to every purchase or sale effected by a mutual fund through any related person or company with respect to which the related person or company received a fee either from the mutual fund or from the other party to the transaction or both (the Reporting Requirement) shall not apply to purchases and sales effected by the Funds (as defined below) through any Related Party (as defined below) (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications (MRRS):

- (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.

Funds means those Scotia Mutual Funds and Pinnacle Program Funds, together with such other current and future funds managed by SSI or SCI in respect of which the Filer acts as portfolio manager from time to time.

NI 81-106 means National Instrument 81-106 *Investment Fund Continuous Disclosure*.

Related Party means SCI or other brokers or dealers that are subsidiaries of The Bank of Nova Scotia.

SCI means Scotia Capital Inc.

SSI means Scotia Securities Inc.

Representations

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

1. The Filer is a corporation existing under the laws of Canada. The Filer is registered as an investment counsel and portfolio manager (or equivalent) under the securities legislation in each of the Jurisdictions. It is also registered as a commodity trading manager in Ontario.

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2. Each of SSI and SCI is a corporation existing under the laws of Ontario.
3. In addition to acting as investment fund manager of the Pinnacle Program Funds, SCI is registered as an investment dealer under the securities legislation in each of the Jurisdictions. SCI is an affiliate of the Filer.
4. SSI is the investment fund manager of the Scotia Mutual Funds. SSI is registered as a mutual fund dealer under the securities legislation in each of the Jurisdictions. SSI is an affiliate of the Filer.
5. The Funds are or will be mutual funds that are reporting issuers in each province and territory of Canada.
6. Each Related Party is a “related person or company” to the Funds within the meaning of the Legislation because each Related Party and each of SSI and SCI is a subsidiary of The Bank of Nova Scotia.
7. The Filer is the portfolio manager of the Funds and accordingly is a “management company” or equivalent under the Legislation. From time to time, the Filer may hire sub-advisors to the Funds.
8. The Filer has discretion to allocate the brokerage transactions of the Funds in any manner that it believes to be in the Funds’ best interests. As disclosed in the annual information forms of the existing Funds, the Filer may allocate brokerage business of the Funds to a Related Party, provided that such transactions are made on terms and conditions comparable to those offered by unrelated brokers and dealers.
9. The purchase or sale of securities effected through a Related Party reflects the business judgement of the Filer uninfluenced by considerations other than the best interests of the Funds. In allocating brokerage, consideration is given to commission rates and to research, execution and other services offered.
10. The introduction of NI 81-106 on June 1, 2005 has resulted in the Funds having to disclose in their interim and annual management reports of fund performance (MRFPs) any transactions involving Related Parties, and the Filer having to make essentially the same disclosure within 30 days at the end of any month in which a transaction with a Related Party occurs.
11. Pursuant to NI 81-106, the Funds prepare and file interim and annual MRFPs that disclose any transactions involving a Related Party, including the identity of the Related Party, its relationship to the Fund, the purpose of the

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transaction, the measurement basis used to determine the recorded amount and any ongoing commitments to the Related Party. A discussion of portfolio transactions with a Related Party must include the dollar amount of commission, spread or any other fee that a Fund paid to any Related Party in connection with the transaction.

12. In the absence of the Requested Relief, the Reporting Requirement requires the Filer to prepare a report of any purchase or sale of securities by a Fund that is effected through a Related Party and file it with the Decision Makers within 30 days of the end of the month in which the transaction occurs. This report discloses the issuer of the securities, the class or designation of the securities, the amount or number of securities, the consideration, the name of the Related Party, the name of the person or company that paid the fee to the Related Party and the amount of the fee received.
13. It is costly and time consuming to provide the information required by the Reporting Requirement on a monthly and segregated basis for each Fund.

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.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that:

- (a) the annual and interim MRFPs for each Fund disclose
 - (i) the name of the Related Party,
 - (ii) the amount of fees paid to each Related Party, and
 - (iii) the person or company who paid the fees, if they were not paid by the Fund; and
- (b) the records of portfolio transactions maintained by each Fund include, separately for every portfolio transaction effected by the Fund through a Related Party,
 - (i) the name of the Related Party,
 - (ii) the amount of fees paid to the Related Party, and

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(iii) the person or company who paid the fees.

Carol S. Perry
Commissioner

Paul K. Bates
Commissioner
ONTARIO SECURITIES COMMISSION