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May 2, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 48,76 Other - Exemption from s. 34(1)(a) requirement to be registered as a dealer for a trade and s. 61 requirement to file a prospectus for a distribution other than in connection with a corporate acquisition or reorganization; business associates; debt settlements; or employee investment plans and consultants - An issuer's securities are converted into or redeemed for securities of another issuer - The investor could have acquired the underlying securities directly from the other issuer in compliance with the registration and prospectus requirements of the Securities Act at the time the investor acquired the convertible securities from the issuer

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61 and 76

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New
Brunswick, Prince Edward Island, Nova Scotia, Newfoundland and Labrador,
Northwest Territories, Yukon and Nunavut
(collectively, the Jurisdictions)

and

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

and

In the Matter of
HSBC Bank Canada (the Bank) and HSBC Canada Asset Trust (the Trust)
(collectively the Filers)

MRRS Decision Document

Background

- ¶ 1 The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the Legislation) that certain trades in Class 1 Preferred Shares (as defined below) of the Bank contemplated by

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the exchange features attaching to the HSBC Canada Asset Trust Securities (HSBC HaTS) are exempt from

- (a) the dealer registration requirements of the Legislation, and
- (b) except in Québec, the prospectus requirements of the Legislation.

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

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

Interpretation

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

Representations

- ¶ 3 This decision is based on the following facts represented by the Filers:
- 1. the Bank is a Schedule II chartered bank regulated under the *Bank Act* (Canada) and is a reporting issuer within the meaning of the Legislation in each of the Jurisdictions that provide for a reporting issuer regime;
 - 2. to its knowledge, the Bank is not in default of any applicable requirement under the Legislation;
 - 3. the Bank's authorized share capital is 993,677,000 common shares without par value and an unlimited number of non-cumulative redeemable Class 1 Preferred Shares (Class 1 Preferred Shares) and Class 2 Preferred Shares, each issuable in series;
 - 4. currently, only the Bank's Class 1 Preferred Shares - Series A and Series C are publicly traded, and are listed and posted for trading on the Toronto Stock Exchange;
 - 5. the Trust completed an offering of HSBC HaTS - Series 2010 under the Filers' prospectus dated June 21, 2000;

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6. the Trust now proposes to offer to the public by way of prospectus an additional series of HSBC HaTS designated as HSBC HaTS - Series 2015 (HSBC HaTS - Series 2015), and may, in the future, offer additional series of HSBC HaTS on terms similar in all material respects to the HSBC HaTS - Series 2010 and HSBC HaTS - Series 2015;
7. the distribution of each additional series of HSBC HaTS, including the HSBC HaTS – Series 2015, will be qualified by a prospectus (a Prospectus) filed in the Jurisdictions in which they are offered for sale;
8. the Bank will sign a certificate in the Prospectus both in its own capacity and on behalf of the Trust, in its capacity as administrative agent;
9. the terms of each series of HSBC HaTS will provide for, among other things, the automatic exchange of the HSBC HaTS into Class 1 Preferred Shares upon the occurrence of certain defined events, including events relating to the solvency of the Bank or actions taken by certain regulators against the Bank (the Automatic Exchange);
10. the Filers and an independent trustee will enter into a share exchange agreement (each, an Exchange Agreement) to facilitate the Automatic Exchange in respect of each series of HSBC HaTS;
11. under the Exchange Agreements, the Bank will give the Trust a right to subscribe (the Subscription Right) for Class 1 Preferred Shares in order to redeem the HSBC HaTS (if any remain outstanding) if the Automatic Exchange is triggered and, for any reason, does not result in the exchange of the HSBC HaTS for Class 1 Preferred Shares;
12. the Automatic Exchange will be effected through the Share Exchange Agreement and the Declaration of Trust governing the Trust;
13. as of the time of the Automatic Exchange, each holder of HSBC HaTS will be deemed to have transferred all of the holder's interest in its HSBC HaTS to the Bank in exchange for a specified number of Class 1 Preferred Shares per HSBC HaTS exchanged, at which time all rights of the holder as a securityholder of the Trust will cease;
14. the exchange ratio for the HSBC HaTS – Series 2015 will be equal to 40 Class 1 Preferred Shares per HSBC HaTS;
15. if the Automatic Exchange does not result in the exchange of all outstanding HSBC HaTS for Class 1 Preferred Shares, for example, if the exchange would

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render a former holder of HSBC HaTS a “significant shareholder” of the Bank,

- (a) the Trust will exercise the Subscription Right to acquire Class 1 Preferred Shares, which it will use to redeem each HSBC HaTS not exchanged, or
- (b) if the former holder of HSBC HaTS would become a “significant shareholder” of the Bank, the independent trustee will sell Class 1 Preferred Shares on behalf of the former holder of HSBC HaTS and pay the holder the proceeds of the sale;

- 16. in addition to qualifying the distribution of the HSBC HaTS, the Prospectus will also qualify the distribution of the Automatic Exchange and the Subscription Right;
- 17. there are not available exemptions from the dealer registration and prospectus requirements of the Legislation in each of the Jurisdictions in connection with
 - (a) the issuance of Class 1 Preferred Shares to holders of HSBC HaTS (and the related acquisition of HSBC HaTS by the Bank) upon the occurrence of an Automatic Exchange, or
 - (b) the trade by the Trust of Class 1 Preferred Shares acquired upon exercise of the Subscription Right to former holders of HSBC HaTS(collectively, the Trades);
- 18. the Filers obtained exemptive relief from some of the Decision Makers to permit the Trades in connection with the offering of the HSBC HaTS – Series 2010.

Decision

- ¶ 4 Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the Decision has been met.

The decision of the Decision Makers under the Legislation is that

- (a) the dealer registration requirement does not apply in respect of the Trades, and
- (b) except in Québec, the prospectus requirement does not apply in respect of the Trades, provided that the first trade in the Class 1 Preferred Shares

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acquired under the Decision, other than a trade by the Trust or the Bank under the Automatic Exchange or the Subscription Right, will be deemed to be a distribution or a primary distribution to the public under the Legislation of the Jurisdiction in which the trade takes place (the Applicable Legislation) unless:

- (i) the Bank has filed and obtained a receipt for the prospectus under the Applicable Legislation;
- (ii) the Bank is a reporting issuer or the equivalent under the Applicable Legislation at the time of the trade, to the extent that the Applicable Legislation provides a reporting issuer regime; and
- (iii) the trade is not a control distribution as defined in Multilateral Instrument 45-102 *Resale of Securities*.

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British Columbia Securities Commission