

2006 BCSECCOM 487

August 2, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - *Securities Act*, ss. 48 and 76 -Exemption from registration and prospectus requirements - Other than a corporate acquisition or reorganization, trades to business associates, debt settlements or trades involving employee investment plans and consultants - Trades in short-term debt securities that have more than one rating with only one rating being an approved rating - The issuer issues short term debt that has at least one rating at an approved rating, as defined in NI 81-102; the issuer has another rating below an approved rating; the issuer will only issue short-term debt that is not convertible or exchangeable other than into short-term debt; the issuer will have at least one approved rating; the decision will terminate on the earlier of three years after the date of the decision or 90 days after NI 45-106 is amended

Applicable British Columbia Provisions

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

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

and

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

and

In the Matter of
WestLB AG, New York Branch
(the Filer)

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the Decision Makers) in each of the Jurisdictions has received an application of the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for:

2006 BCSECCOM 487

- (a) an exemption from the dealer registration requirement in respect of a trade in negotiable promissory notes or commercial paper of the Filer maturing not more than one year from the date of issue (together Notes); and
- (b) an exemption from the prospectus requirement in respect of the distribution of the Notes

(collectively, 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 otherwise defined in this decision.

Representations

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

1. The Filer is a corporation incorporated under the laws of Germany. The Filer is not a reporting issuer in any of the Jurisdictions.
2. The Filer intends to establish a commercial paper program in Canada (the CP Program) by way of an information memorandum to be dated on or about August, 2006 pursuant to which the Filer intends to offer Notes for purchase and sale in each of the provinces of Canada.
3. The Notes will mature not more than one year from the date of issue. The Notes will not be convertible or exchangeable into or accompanied by a right to purchase another security.
4. The Notes will be offered for purchase and sale pursuant to exemptions from the dealer registration requirement and the prospectus requirement contained in the Legislation. One such exemption is the Short Term Debt Exemption (as defined below).

2006 BCSECCOM 487

5. Subsection 2.35(1)(b) of National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) provides that exemptions from the registration and prospectus requirements of the Legislation for short-term debt (the Short Term Debt Exemption) are available only where such short-term debt “has an approved credit rating from an approved credit rating organization.” NI 45-106 incorporates by reference the definitions for “approved credit rating” and “approved credit rating organization” that are used in National Instrument 81-102 *Mutual Funds* (NI 81-102).
6. The definition of an “approved credit rating” in NI 81-102, requires, among other things, that (a) the rating assigned to short term debt must be “at or above” certain prescribed short-term ratings, and (b) such debt must not have been assigned a rating by any “approved credit rating organization” that is not an “approved credit rating.”
7. The Filer’s Notes have received an “R-1(low)” rating from Dominion Bond Rating Service Limited (DBRS), and the Filer has a short-term debt rating of P-1 from Moody’s Investors Services (Moody’s), both of which ratings meet the prescribed threshold in NI 81-102.
8. The Filer’s short-term debt does not, however, meet the “approved credit rating” definition in NI 81-102 because it has a rating of “A-2” from Standard & Poor’s (S&P), which is a lower rating than required by the Short Term Debt Exemption. Accordingly, section 2.35 of NI 45-106 may not be available to the Filer.

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 the Notes:

- (a) mature not more than one year from the date of issue;
- (b) are not convertible or exchangeable into or accompanied by a right to purchase another security other than Notes;
- (c) have a rating issued by one of the following rating organizations, or any of their successors, at or above one of the following rating categories or a rating category that replaces a category listed below:

2006 BCSECCOM 487

Rating Organization	Rating
Dominion Bond Rating Service Limited	R-1 (low)
Fitch Ratings Ltd.	F2
Moody's Investors Service	P-2
Standard & Poor's	A-2

For each Jurisdiction, this decision will terminate on the earlier of:

- (a) 90 days after the coming into force of any rule, other regulation or blanket order or ruling under the Legislation of the Jurisdiction that amends section 2.35 of NI 45-106 or provides an alternate exemption; and
- (b) three years from the date of this decision.

David L. Knight

Harold P. Hands