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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from the registration and prospectus requirements for trades in financial contracts to authorized participants in wholesale electricity marketplace operated by issuer

Applicable British Columbia Provisions

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

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA,
ALBERTA, SASKATCHEWAN, MANITOBA, NOVA SCOTIA, NEW BRUNSWICK,
NEWFOUNDLAND AND LABRADOR, AND PRINCE EDWARD ISLAND

AND

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

AND

IN THE MATTER OF THE INDEPENDENT ELECTRICITY MARKET OPERATOR
MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Newfoundland and Labrador, and Prince Edward Island (the "Jurisdictions") has received an application from the Independent Electricity Market Operator (the "IMO") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the IMO and certain market participants be exempt from the requirements under the Legislation to be registered to trade in a security and to file and obtain receipts for a preliminary prospectus and a prospectus (the "Registration and Prospectus Requirements") in connection with trades in financial contracts ("Contracts") in the IMO-administered financial markets;

2. AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Alberta Securities Commission has agreed to be the principal regulator for this application;

3. AND WHEREAS the IMO has represented to the Decision Makers that:

3.1. the IMO is an independent, not for profit, non share capital corporation created by statute pursuant to Part II of the *Electricity Act, 1998* (Ontario) (the "Electricity Act");

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3.2. the Government of Ontario has assigned the responsibility for creating and administering the IMO-administered markets to the IMO;

3.3. the IMO has been allocated the statutory mandate of meeting the following objects as set out in subsection 5(1) of the Electricity Act:

3.3.1. to exercise and perform the powers and duties assigned to the IMO under the Electricity Act, the Market Rules and in accordance with the terms of the IMO's Ontario Energy Board license (the "OEB License") as issued by the Ontario Energy Board (the "OEB");

3.3.2. to enter into agreements with transmitters giving the IMO authority to direct the operations of their transmission systems;

3.3.3. to direct the operations and maintain the reliability of the IMO-controlled grid to promote the purposes of the Electricity Act;

3.3.4. to establish and operate the IMO-administered markets to promote the purposes of the Electricity Act;

3.3.5. to collect and provide to the public, information relating to the current and future electricity needs of Ontario and the capacity of the integrated power system to meet those needs;

3.3.6. to participate in the development of standards and criteria relating to the reliability of Ontario's transmission systems; and

3.3.7. to work with the responsible authorities outside of Ontario to efficiently and effectively co-ordinate the IMO's activities with their activities;

3.4. the trading facilities of the IMO will exist only in Ontario and all initial trades will be executed only through the facilities of the IMO in Ontario. The Ontario Securities Commission (the "OSC") granted exemptive relief relating to the operations of the IMO as a stock exchange and a clearing agency under an order issued by the OSC dated March 6, 2002 pursuant to sections 21 and 147 of the *Securities Act* (Ontario) and section 15.1 of National Instrument 21-101 Marketplace Operation (the "Exchange Order");

3.5. the markets administered and operated by IMO in accordance with the Electricity Act consist of both physical and financial markets;

3.6. the physical markets govern the real-time operation of the power system, allowing load and generation to be balanced, flows on the transmission system to be within limits and voltage and frequency to be maintained;

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3.7. the financial markets, which are the subject matter of this decision document, consist of:

3.7.1. the Energy Forward Market (the "EFM"), wherein authorized market participants ("Authorized Financial Market Participants") can acquire financial contracts linked to the real-time energy market on a forward basis; and

3.7.2. the Transmission Rights Market (the "TRM"), wherein Authorized Financial Market Participants can acquire financial contracts linked to locational price differences across the interties and/or nodes. The first auction of rights in the TRM is scheduled to occur on April 1, 2002;

3.8. in carrying out its objects, the IMO is empowered to and has developed a codified set of rules to govern the wholesale electricity marketplace in Ontario (collectively, the "Market Rules");

3.9. the provisions of the Market Rules are intended to be complete codes, covering the form and content of the Contracts to be entered into by Authorized Financial Market Participants in the EFM and the TRM (collectively, the "Financial Markets");

3.10. the Contracts are issued by the IMO through the auction processes stipulated in the Market Rules;

3.11. in order to become an Authorized Financial Market Participant and to gain access to the Financial Markets, an interested party must:

3.11.1. submit to the IMO a formal application for authority to participate;

3.11.2. demonstrate that they fall within the category of permitted participants;

3.11.3. satisfy any applicable prudential requirements in the Market Rules;

3.11.4. meet financial thresholds that are at least equal to those applicable to an *accredited investor* under OSC Rule 45-501 *Exempt Distributions*; and

3.11.5. execute a participation agreement with the IMO, under which the participant agrees to be bound by the Market Rules;

Regulatory Oversight

3.12. the IMO operates pursuant to the OEB License granted to it by the OEB under the *Ontario Energy Board Act, 1988*. The OEB is the sole regulatory body under the Electricity Act vested with the powers of oversight in connection with the business and/or aim of the IMO, including its operation of the Financial Markets;

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3.13. the IMO is bound to make certain reports to the Minister of Energy, Science and Technology (the "Minister") pursuant to the Electricity Act and to the OEB pursuant to the terms of the OEB License;

3.14. under section 3.2 of the Electricity Act, the IMO is permitted to make rules "...establishing and governing markets related to electricity...". As part of its efforts, the Market Design Committee prepared a set of "Market Rules for the Ontario Electricity Market" in early 1999. Since that time, the IMO has been refining those rules. The approval process at the present time requires any new rule or rule amendment to be approved by the Board of Directors of the IMO by at least a two-thirds majority and then submitted to the Minister for final approval. The Market Rules are publicly available and are accessible on the Internet and may be downloaded from the IMO's web site at: www.theimo.com;

3.15. under subsection 32(6) of the Electricity Act, on the opening of the IMO-administered markets, the Minister will transfer formal rule making authority to the IMO, subject at all times to the appeal rights to the OEB, as set out in the Electricity Act. In addition, the IMO has the power to amend the Market Rules on an urgent basis pursuant to section 34 of the Electricity Act, subject at all times to the appeal rights to the OEB, as set out in the Electricity Act;

3.16. all Contracts concluded within the Financial Markets will conform to the Market Rules, and all market participants will receive transaction confirmations from the IMO in accordance with those provisions;

3.17. the IMO has the mandate to administer, supervise and enforce all aspects of the IMO-administered markets and has put in place employees and diagnostic software to fulfill this function;

3.18. the Contracts are securities under the Legislation and there is no exemption available from the Registration and Prospectus Requirements for the issuance by the IMO of the Contracts.

4. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

5. 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;

6. THE DECISION of the Decision Makers under the Legislation is that the IMO and Authorized Financial Market Participants participating in the Financial Markets, including the issuance of the Contracts by the IMO through the auction processes set out in the Market Rules, are exempt from the Registration and Prospectus Requirements under the Legislation, provided that:

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6.1. further trades in the Contracts distributed under this Decision by Authorized Financial Market Participants are restricted to other Authorized Financial Market Participants;

6.2. the IMO continues to operate pursuant to a valid license issued by the OEB; and

6.3. that the Exchange Order remains in force and effect.

March 28, 2002.

Glenda A. Campbell, Q.C.

Eric T. Spink