

2006 BCSECCOM 715

October 19, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications

National Instrument 44-101 s. 15.2 - In connection with the offering of non-convertible debt securities, an issuer wants an exemption from the requirement that its credit supporter have a 12-month reporting issuer history in a Canadian jurisdiction, that it include certain information in its prospectus, and that its credit supporter's financial statements comply with the reconciliation requirements - The credit supporter is the beneficial owner of all of the issued and outstanding securities of the issuer; the credit supporter is registered under the 1934 Act and is eligible to use MJDS to distribute approved rating non-convertible debt in Canada; the issuer will incorporate into its prospectus certain continuous disclosure documents of its credit supporter in place of its own continuous disclosure

National Instrument 51-102 s. 13.4 - A credit support issuer wants an exemption from having to file continuous disclosure documents to permit it to rely on the continuous disclosure documents of its credit supporter. - The issuer is a credit support issuer that can comply with all of the conditions for continuous disclosure relief in section 13.4 of NI 51-102 except the requirement in 13.4(2)(d)

Applicable British Columbia Provisions

National Instrument 44-101 s. 2.5(1), 7.1, 7.5

Form 44-101F3 Item 20

National Instrument 51-102 s. 13.4

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

and

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

and

In the Matter of
Wachovia Corporation and Congress Financial Capital Company

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MRRS Decision Document

Background

The securities regulatory authority or regulator (the “Decision Makers” or the “Commissions”) in each of the Jurisdictions has received an application (the “Application”) from Wachovia Corporation (“Wachovia”) on its own behalf and on behalf of its wholly-owned subsidiary, Congress Financial Capital Company (“FinanceCo”, and together with Wachovia, the “Applicants”) for a decision pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that:

- A. the Applicants be exempted from the following requirements contained in the Legislation:
 - (i) the requirements that a person or company guaranteeing non-convertible debt issued by an issuer be a reporting issuer with a 12-month reporting history in a Canadian province or territory and have a current annual information form (an “AIF”) (the “Eligibility Requirement”), in order to permit FinanceCo to issue (the “Offering”) non-convertible debt securities, in particular medium term notes (the “Notes”), with an approved rating (as such term is defined in NI 44-101) which will be fully and unconditionally guaranteed by Wachovia (as set out in section 2.5(1) of National Instrument 44-101 (“NI 44-101”)); and
 - (ii) the application of National Instrument 51-102 Continuous Disclosure Obligations (“51-102”) pursuant to section 13.4 of NI 51-102.
- B. the Application and the Decision, as defined below, be held in confidence by the Decision Makers subject to certain conditions.

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

- (a) the Nova Scotia 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.

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Representations

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

1. Wachovia was incorporated under the laws of North Carolina in 1967.
2. Wachovia was formed by the merger of First Union Corporation and Former Wachovia on September 1, 2001. The surviving corporation of the merger is First Union Corporation, although the name of the surviving corporation has been changed to Wachovia Corporation. References herein to “Wachovia” refer to the merged entity.
3. Wachovia is registered as a financial holding company and a bank holding company under the U.S. *Bank Holding Company Act of 1956*, as amended. Wachovia provides a wide range of commercial and retail banking and trust services through full-service banking offices located throughout the United States. It also provides various other financial services in the United States, including mortgage banking, credit card, investment banking, investment advisory, home equity lending, asset-based lending, leasing, insurance, and international securities brokerage services through its subsidiaries.
4. Wachovia is not (nor has it ever been) a reporting issuer in any of the provinces or territories of Canada.
5. Wachovia has been a reporting company under the United States *Securities Exchange Act of 1934*, as amended (the “1934 Act”) since 1967. More recently, Wachovia has filed with the United States Securities and Exchange Commission (the “SEC”) an annual report on Form 10-K for the fiscal year ended December 31, 2003 quarterly reports under Form 10-Q for the quarterly periods ended March 31, 2004, June 30, 2004, and September 30, 2004, and reports on Form 8-K in respect of the financial year following the year that is the subject of the Wachovia Form 10-K in accordance with the filing obligations set out in sections 13 and 15(d) of the 1934 Act (collectively, the “Wachovia Disclosure Documents”).
6. The aggregate market value of Wachovia’s equity securities (which are listed and posted for trading over the facilities of the New York Stock Exchange (the “NYSE”)), calculated in accordance with NI 44-101, on November 30, 2004 was approximately US\$82.5 billion.
7. Wachovia’s senior long-term debt is rated A by Standard & Poor’s; Aa3 by Moody’s; and A+ by Fitch. Wachovia’s subordinated debt is rated A- by Standard & Poor’s, A1 by Moody; and A by Fitch and its short-term

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obligations are rated A-1 by Standard & Poor's; P-1 by Moody's; and F1 by Fitch.

8. FinanceCo is incorporated under the laws of Nova Scotia and is an indirect wholly-owned subsidiary of Wachovia.
9. FinanceCo became a reporting issuer or its equivalent in each of the Jurisdictions by virtue of it filing a short form prospectus dated February 4, 2002 (the "2002 Prospectus") in each of the Jurisdictions in connection with the offering of \$300,000,000 aggregate principal amount of medium term notes due January 31, 2005 (the "2002 Offering").
10. FinanceCo is not in default of any of its obligations under the Legislation.
11. FinanceCo's primary business is to access Canadian capital markets to raise funds on behalf of the Canadian subsidiary companies of Wachovia, and has no other operations.
12. In connection with the 2002 Offering, the Applicants obtained a decision document entitled *In the Matter of Wachovia Corporation and Congress Financial Capital Company* dated November 15, 2001 (the "Previous Decision"), in which the Decision Makers granted relief, substantially similar to that granted herein, from the Eligibility Requirements and the Reconciliation Requirements, as well as certain continuous disclosure requirements (including the requirement that FinanceCo have a current AIF and file renewal AIFs, the requirement that FinanceCo file with the Commissions and send, where applicable, to its security holders audited annual financial statements or annual reports, where applicable, including without limitation management's discussion and analysis thereon, the requirement the FinanceCo file with the Commissions and send, where applicable, to its securityholders unaudited interim financial statements, including, without limitation, management's discussion and analysis thereon, the requirement that FinanceCo issue and file with the Commissions press releases and file material change reports, the requirement that insiders of FinanceCo file with the Commissions insider reports and the requirement that FinanceCo comply with the proxy and proxy solicitation requirements, including filing an information circular or report in lieu thereof).
13. In reliance on the Previous Decision, FinanceCo filed and received a receipt for the 2002 Prospectus in each of the Jurisdictions for 4.55% medium term notes due January 31, 2005 in the aggregate principal amount of \$300,000,000.

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14. Pursuant to the Previous Decision, FinanceCo has filed under its SEDAR profile, the Wachovia Disclosure Documents.
15. Wachovia is in compliance with the requirements and conditions of section 13.4 of NI 51-102 other than the requirement in subsection 13.4(2)(d) as, pursuant to the provisions of the Previous Decision, FinanceCo is required to file only reports made by Wachovia pursuant to Sections 13 (other than Section 13(d), (f) and (g) in respect of its investments in other public companies), 14 and Section 15(d) of the 1934 Act.
16. FinanceCo proposes to issue additional Notes in the Jurisdictions by way of short form prospectus.
17. Wachovia satisfies the criteria set forth in paragraph 3.1(a) of National Instrument 71-101 ("NI 71-101") and is eligible to use the multi-jurisdictional disclosure system ("MJDS"), as set out in NI 71-101, for the purpose of distributing approved rating non-convertible debt in Canada based on compliance with United States prospectus requirements with certain additional Canadian disclosure.
18. Except for the fact that FinanceCo is not incorporated under United States law, the Offering would comply with the alternative eligibility criteria for offerings of nonconvertible debt having an approved rating under the MJDS as set forth in Section 3.2 of NI 71-101.
19. FinanceCo is ineligible to issue the Notes by way of a prospectus in the form of a short form prospectus under NI 44-101 as Wachovia, as credit supporter for the payments to be made by FinanceCo under the Notes, is not a reporting issuer in any province or territory of Canada, Wachovia does not itself have a current AIF or meet the criteria set out in clause 2.5(1)2 of NI 44-101 and FinanceCo does not itself have a current AIF and has not filed audited financial statements for its most recently completed financial year in accordance with the terms of the Previous Decision.
20. In connection with the Offering:
 - (i) the prospectus will be prepared pursuant to the short form prospectus requirements contained in NI 44-101 and will comply with the requirements set out in Form 44-101F3 of NI 44-101 with the disclosure required by item 12 of Form 44-101F3 of NI 44-101 being addressed by incorporating by reference Wachovia's public disclosure documents, including the annual report on Form 10-K for the year ended December 31, 2003 (the "Wachovia Form 10-K") and

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with the disclosure required by item 7 of Form 44-101F3 of NI 44-101 being addressed by disclosure with respect to Wachovia in accordance with requirements of the 1934 Act;

- (ii) the prospectus will include or incorporate by reference all material disclosure concerning FinanceCo;
- (iii) the prospectus will incorporate by reference the Wachovia Form 10-K (as filed under the 1934 Act) together with the quarterly reports on Form 10-Qs for the periods ended March 31, 2004, June 30, 2004 and September 30, 2004 and reports on Form 8-Ks of Wachovia filed under the 1934 Act in respect of the financial year following the year that is the subject of the Wachovia Form 10-K, as would be required were Wachovia to file a registration statement on Form S-4 in the United States, and will incorporate by reference any documents of the foregoing type filed after the date of the prospectus and prior to termination of the Offering and will state that purchasers of the Notes will not receive separate continuous disclosure information regarding FinanceCo;
- (iv) the consolidated annual and interim financial statements of Wachovia and its subsidiaries that will be included in or incorporated by reference into the short form prospectus are prepared in accordance with U.S. GAAP and otherwise comply with the requirements of U.S. law, and in the case of audited annual financial statements, such financial statements are audited in accordance with U.S. GAAS.
- (v) Wachovia will fully and unconditionally guarantee the payments to be made by FinanceCo as stipulated in the terms of the Notes or in an agreement governing the rights of holders of Notes (the "Noteholders") such that the Noteholders shall be entitled to receive payment from Wachovia within 15 days of any failure by FinanceCo to make a payment as stipulated;
- (vi) the Notes will have an approved rating;
- (vii) Wachovia will sign the prospectus as credit supporter and promoter; and
- (viii) Wachovia will undertake to file with the Commissions, in electronic format under FinanceCo's SEDAR profile, all documents that it files under Sections 13 (other than sections 13(d), (f) and (g) which relate,

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inter alia, to holdings by Wachovia of securities of other public companies), 14 and 15(d) of the 1934 Act, together with the appropriate filing fees, until such time as the Notes are no longer outstanding;

Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides each Decision Maker with the jurisdiction to make the Decision has been met;

The Decision of the Decision Makers pursuant to the Legislation *nunc pro tunc* with effect from January 10, 2005, is that the Applicants be exempted from the Eligibility Requirement in connection with the Offering provided that:

- (i) each of FinanceCo and Wachovia complies with paragraph 20 above;
- (ii) FinanceCo complies with all of the filing requirements and procedures set out in NI 44-101 except as varied by the Decision;
- (iii) Wachovia remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities of FinanceCo; and
- (iv) Wachovia continues to satisfy the criteria set forth in paragraph 3.1 of NI 71-101 (or any successor provision) and remains eligible to use MJDS (or any successor instrument) for the purposes of distributing approved rating non-convertible debt in Canada based on compliance with United States prospectus requirements with certain additional Canadian disclosure.

The Further Decision of the Decision Makers pursuant to the Legislation *nunc pro tunc* with effect from January 10, 2005, is that, in connection with the Offering, the AIF Requirement shall not apply to FinanceCo, provided that (i) Wachovia complies with the AIF requirements of NI 44-101 as if it is the issuer; and (ii) the Applicants comply with all of the conditions in the Decisions above and below.

J. William Slattery
Deputy Director
Nova Scotia Securities Commission

The Further Decision of the Decision Makers pursuant to the Legislation *nunc pro tunc* with effect from January 10, 2005, is that the requirements of NI 51-102 shall not apply to FinanceCo provided that:

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- A. FinanceCo is in compliance with the requirements and conditions of section 13.4 of NI 51-102 other than subsection 13.4(2)(d), and
- B. Wachovia files copies of all documents it is required to file with the SEC under Section 13 (other than reports filed pursuant to Section 13(d), 13(f) and 13(g) of the 1934 Act), 14 and 15(d) of the 1934 Act, at the same time as or as soon as practicable after the filing by Wachovia of those documents with the SEC.

The Further Decision of the Decision Makers pursuant to the Legislation *nunc pro tunc* with effect from January 10, 2005, is that the Application and the Decision shall be held in confidence by the Decision Makers until the earlier of the date that the preliminary prospectus is filed in connection with the Offering and January 31, 2005.

J. William Slattery
Deputy Director
Nova Scotia Securities Commission