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December 21, 2007

Headnote

Mutual Reliance Review System for Exemptive Relief Applications

National Instrument 51-102 *Continuous Disclosure Obligations*, s. 13.1 – preparation, filing and delivery of annual and interim financial statements and related MD&A; annual information form requirement - An issuer wants relief from the requirements in NI 51-102 to prepare, file and deliver all financial statements, MD&A, and annual information forms - The issuer is a trust; the issuer's security holders receive fixed distributions guaranteed by a bank, trust company or insurance company; the continuous disclosure materials of the guarantor will be filed and provided to security holders of the trust

Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*, s. 4.5 – certification of annual and interim financial statements - An issuer wants relief from the requirements in Part 2 and 3 of MI 52-109 to file annual and interim certificates - The issuer has applied for and received an exemption from filing interim and annual financial statements

Applicable British Columbia Provisions

Securities Act, R.B.C. 1996, c. 418, s. 91(1)

Securities Rules, B.C. Reg. 194/97, ss. 144 and 145

National Instrument 51-102, s. 4.1, 4.3, 4.6, 5.1, 5.6, 6.1, s. 13.1

Multilateral Instrument 52-109, Parts 2 and 3, s. 4.5

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan,
Manitoba, Ontario, Québec, New Brunswick,
Nova Scotia, Newfoundland and Labrador
and Northwest Territories
(collectively, the Jurisdictions)

and

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

and

In the Matter of
the Bank of Nova Scotia

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and

In the Matter of
Scotiabank Subordinated Notes Trust

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 Bank of Nova Scotia (the Bank) and Scotiabank Subordinated Notes Trust (the Trust) for a decision, pursuant to the securities legislation of the Jurisdictions (the Legislation), that the requirements contained in the Legislation to:

- (a) (i) file interim financial statements and audited annual financial statements and deliver same to the security holders of the Trust, pursuant to sections 4.1, 4.3 and 4.6 of National Instrument 51-102 – *Continuous Disclosure Obligations* (NI 51-102);
- (ii) file interim and annual management's discussion and analysis (MD&A) of the financial conditions and results of operations and deliver same to the security holders of the Trust pursuant to section 5.1 and 5.6 of NI 51-102;
- (iii) file an annual information form pursuant to section 6.1 of NI 51-102; and
- (iv) comply with any other requirements of NI 51-102;

(collectively, the Continuous Disclosure Obligations); and

- (b) file interim and annual certificates contained in Parts 2 and 3 of Multilateral Instrument 52-109 – *Certification of Disclosure in Issuer's Annual and Interim Filings* (MI 52-109) (the Certification Obligations);

shall not apply to the Trust, subject to certain terms and conditions;

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

- (a) the Ontario Securities Commission is the Principal Regulator for this application; and

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- (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.

- “90-day Bankers’ Acceptance Rate” means, for any quarterly floating rate interest period, the average bid rate of interest (expressed as an annual percentage rate) rounded down to the nearest one hundred – thousandth of 1% (with 0.000005% being rounded up) for Canadian Dollar bankers’ acceptances with maturities of 90 days which appears on the Reuters Screen CDOR Page as of 10:00 a.m. (Toronto time) on the first Business Day of such period, provided that if such rate does not appear on the Reuters Screen CDOR Page on such day, the 90-day Bankers’ Acceptance Rate for such period will be the average of the bid rates of interest (expressed and rounded as set forth above) for Canadian Dollar bankers’ acceptances with maturities of 90 days for same day settlement as quoted by such of the Schedule I Canadian chartered banks as may quote such a rate as of 10:00 a.m. (Toronto time) on the first Business Day of such period.
- “Automatic Exchange” means the automatic exchange, without the consent of the holders, of each \$1,000 principal amount of Scotiabank TSNs – Series A into an equal principal amount of subordinated debt of the Bank, upon the occurrence of a Loss Absorption Event or a Non-Deductibility Event.
- “Bank Act” means the *Bank Act* (Canada).
- “Bank Officers Certificates” means the interim and annual officers certificates filed by the Bank under MI 52-109.
- “Bank Subordinated Notes” means the subordinated debt of the Bank issuable upon the occurrence of an Automatic Exchange.
- “Business Day” means a day on which Canadian chartered banks are open for business in Toronto, Ontario, other than a Saturday, Sunday or statutory or civic holiday in Toronto, Ontario.

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- “Canada Yield Price” means a price equal to the price of the Scotiabank TSNs – Series A, calculated on the Business Day preceding the day on which the redemption is authorized, to provide a yield from the date fixed for redemption to, but excluding, November 1, 2012, equal to the Government of Canada Yield, plus 27 basis points.
- “Government of Canada Yield” means the yield from the date fixed for redemption to, but excluding, November 1, 2012 assuming semi-annual compounding, which an issue of non-callable Government of Canada bonds would carry on the remaining term to, but excluding, November 1, 2012. The Government of Canada Yield will be calculated by two independent Canadian investment dealers selected by the Indenture Trustee and approved by the Bank.
- “Indenture Trustee” means BNY Trust Company of Canada.
- “Loss Absorption Event” means the occurrence of any one of the following events: (i) an application for a winding-up order in respect of the Bank pursuant to the Winding-Up Act is filed by the Attorney General of Canada or a winding-up order in respect of the Bank pursuant to the Winding-Up Act is granted by a court; (ii) the Superintendent advises the Bank in writing that the Superintendent has taken control of the Bank or its assets pursuant to the Bank Act; (iii) the Superintendent advises the Bank in writing that the Bank has a risk-based Tier 1 Capital ratio of less than 5.0% or a risk-based Total Capital ratio of less than 8.0%; (iv) the Board of Directors of the Bank advises the Superintendent in writing that the Bank has a risk-based Tier 1 Capital ratio of less than 5.0% or a risk-based Total Capital ratio of less than 8.0%; or (v) the Superintendent directs the Bank, pursuant to the Bank Act, to increase its capital or provide additional liquidity and the Bank elects to cause the Automatic Exchange as a consequence of the issuance of such direction or the Bank does not comply with such direction to the satisfaction of the Superintendent within the time specified.
- “Prospectus” means the final short form prospectus of the Trust dated October 24, 2007 in respect of the Offering (as defined herein).
- “Maturity Date” means the maturity date of the Scotia TSNs – Series A, being November 1, 2017.
- “Non-Deductibility Event” means a circumstance in which the Bank determines, in its absolute discretion, that, as a result of the enactment or

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anticipated enactment of federal Canadian income tax legislation, the interest payable on the Scotiabank TSNs – Series A will not be deductible by the Trust for federal Canadian income tax purposes, and the Bank gives written notice of such determination to the Trust.

- “Superintendent” means the Superintendent of Financial Institutions (Canada).
- “SEDAR” means the System for Electronic Document Analysis Retrieval.
- “Winding-Up Act” means the *Winding-up and Restructuring Act* (Canada).

Representations

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

The Trust

1. The Trust is a closed-end trust established under the laws of Ontario by Computershare Trust Company of Canada (the Trustee), pursuant to a declaration of trust dated as of September 27, 2007. The Trust’s principal office is located in Toronto, Ontario. The Trust was established solely for the purpose of effecting offerings of debt securities in order to provide the Bank with a cost-effective means of raising capital for regulatory purposes under the Bank Act. The Bank is the Administrative Agent of the Trust pursuant to an Administration Agreement between the Trustee and the Bank (the Administration Agreement).
2. The Trust has issued to investors in all provinces and territories of Canada (the Offering) subordinated notes maturing on the Maturity Date, representing direct subordinated unsecured debt obligations of the Trust (the Scotia TSNs – Series A).
3. The Trust is a reporting issuer or its equivalent in each jurisdiction where such concept exists and is not, to its knowledge, in default of any requirement under the Legislation.
4. The Scotia TSNs – Series A distributed pursuant to the Prospectus are held by the public and all outstanding voting securities of the Trust (the Voting Trust Units) are held by the Bank. The Trust may, from time to time, issue further series of debt securities having terms substantially similar to the Scotia TSNs – Series A.

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5. The assets of the Trust will consist primarily of a deposit note issued by the Bank, which will generate income for payment of principal, interest, redemption price, if any, and any other amounts in respect of its debt securities, including the Scotia TSNs – Series A. The Scotia TSNs – Series A form part of the regulatory capital of the Bank. The Trust is a special purpose entity that has no independent business activities other than to acquire and hold eligible investments for the purpose described above.

The Bank

6. The Bank is a chartered bank subject to the provisions of the Bank Act. The Bank's head office is located at 1709 Hollis Street, Halifax, Nova Scotia B3J 1W1 and the Bank's corporate headquarters and executive offices are located at Scotia Plaza, 44 King Street West, Toronto, Ontario, M5H 1H1.
7. The Bank is a reporting issuer or the equivalent in each Jurisdiction where such concept exists and is not, to its knowledge, in default of any requirement under the Legislation.
8. The Bank's common shares are listed and posted for trading on the Toronto Stock Exchange and the New York Stock Exchange.

Scotia TSNs – Series A

9. The Scotia TSNs – Series A were issued under a trust indenture (the Trust Indenture) dated October 31, 2007 between the Trust, the Bank and the Indenture Trustee.
10. The Scotia TSNs – Series A are repayable at 100% of the principal amount at the Maturity Date, unless redeemed earlier.
11. From the date of issue to but excluding November 1, 2012 (the Interest Reset Date), interest will be payable on the Scotia TSNs – Series A at a rate of 5.25% per annum payable semi-annually in arrears in equal instalments. After the Interest Reset Date to, but excluding the Maturity Date, interest will be payable on the Scotia TSNs – Series A at a floating rate equal to the 90-day Bankers' Acceptance Rate, plus 1.00% per annum, payable quarterly.
12. The Bank has fully and unconditionally guaranteed on a subordinated basis (the Bank Guarantee) the payment of principal, interest (including in the event of an Automatic Exchange), accrued and unpaid interest on the date of exchange), the redemption price, if any, and any other amount on the Scotia TSNs – Series A, when they become due and payable, whether at stated

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maturity, call for redemption, Automatic Exchange or otherwise according to the terms of the Bank Guarantee and the Trust Indenture. Following the Automatic Exchange, the Bank's obligation under the Bank Guarantee in respect of accrued and unpaid interest, if any, on the Scotia TSNs – Series A will survive until the Trust or the Bank, as the case may be, pays such interest.

13. The Trust, at its option, and with the prior approval of the Superintendent (the Superintendent Approval), and on not less than 30 nor more than 60 days' prior written notice, may redeem any outstanding Scotia TSNs – Series A, in whole at any time or in part from time to time, without the consent of the holders, at a redemption price which, if the Scotia TSNs – Series A are redeemed prior to the Interest Reset Date, will be equal to the greater of the Canada Yield Price and the principal amount, or, if the Scotia TSNs – Series A are redeemed on or after the Interest Reset Date, will be equal to the principal amount, together in each case with accrued and unpaid interest to but excluding the date fixed for redemption (the Redemption Price).
14. The Scotia TSNs – Series A may be purchased at any time, in whole or in part, by the Trust. The purchases may be made in the open market or by tender or private contract at any price. Such purchase will require the Superintendent Approval.
15. Pursuant to the Automatic Exchange, each \$1,000 principal amount of Scotia TSNs – Series A will be exchanged automatically, without the consent of the holders, into an equal principal amount of Bank Subordinated Notes, upon the occurrence of a Loss Absorption Event or a Non-Deductibility Event.
16. The material attributes of the Bank Subordinated Notes are the same as those of the Scotia TSNs – Series A, except that the Bank Subordinated Notes will constitute subordinated indebtedness for purposes of the Bank Act.
17. The Bank has agreed, pursuant to the Trust Indenture, that it will maintain ownership of 100% of the outstanding Voting Trust Units.
18. As long as any Scotia TSNs – Series A are outstanding, the Trust may only be terminated with the approval of the holder of Voting Trust Units and with the approval of the Superintendent. As long as any Scotia TSNs – Series A are outstanding and held by any person other than the Bank, the Bank will not approve the termination of the Trust, unless the Trust has sufficient funds to pay the Redemption Price.
19. Pursuant to the Administration Agreement, the Trustee has delegated to the Bank certain of its obligations in relation to the administration of the Trust.

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The Bank, as administrative agent, will offer advice and counsel with respect to the administration of the day-to-day operations of the Trust and other matters as may be requested by the Trustee from time to time.

20. The Trust may, from time to time, issue further series of debt securities, the proceeds of which would be used to acquire, amongst other eligible investments, additional notes from the Bank.
21. Because of the nature of the Trust, the terms of the Scotia TSNs – Series A, the Bank Guarantee and the various covenants of the Bank given in connection with the Offering, information about the affairs and financial performance of the Bank, as opposed to that of the Trust, is meaningful to holders of Scotia TSNs – Series A. The Bank's filings will provide holders of Scotia TSNs – Series A and the general investing public with all information required in order to make an informed decision relating to an investment in Scotia TSNs – Series A. Information regarding the Bank is relevant both to an investor's expectation of being paid the principal, interest and the redemption price, if any, and any other amount on the Scotia TSNs – Series A when due and payable.
22. The Trust meets the eligibility requirements set out in section 13.4(2) of NI 51-102 except that the Bank does not meet the test set out in section 13.4(2)(g)(i)(B) of NI 51-102 and the Bank is unable to prepare the table required by section 13.4(2)(g)(ii) of NI 51-102.

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, with the exception of the securities regulator in the Northwest Territories, under the Legislation is that the Trust be exempted from the Continuous Disclosure Obligations provided that:

- (i) the Bank remains a reporting issuer or the equivalent, in each Jurisdiction where such concept exists, under the Legislation and has filed all documents it is required to file;
- (ii) the Bank files with the Decision Makers, in electronic format under the Trust's SEDAR profile, all documents that the Bank is required to file under the Legislation, other than in connection with a distribution, at the same time as they are filed by the Bank with a Decision Maker;

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- (iii) the Trust pays all filing fees that would otherwise be payable by the Trust in connection with the filing of the documents referred to in clause (a) above of this decision;
- (iv) the Trust sends or causes the Bank to send to holders of the Trust's debt securities all disclosure materials that are sent to holders of similar debt securities of the Bank, in the manner and at the time required by the Legislation;
- (v) all outstanding securities of the Trust are either Scotia TSNs – Series A, additional series of debt securities having terms substantially similar to the Scotia TSNs – Series A or Voting Trust Units;
- (vi) the rights and obligations of holders of additional series of debt securities are the same in all material respects as the rights and obligations of the holders of the Scotia TSNs – Series A, with the exceptions of economic terms such as the rate of interest, redemption dates and maturity dates;
- (vii) the Bank is the beneficial owner of all issued and outstanding voting securities of the Trust, including the Voting Trust Units;
- (viii) the Trust continues to have minimal or no assets, operations, revenues or cash flows other than those related to the issuance, administration and repayment of the Scotia TSNs – Series A or additional series of debt securities having terms substantially similar to the Scotia TSNs – Series A; and
- (ix) the Trust issues a news release and files a material change report in accordance with Part 7 of NI 51-102 for all material changes in respect of the Trust that are not also material changes in the affairs of the Bank.

The decision of the Decision Makers under the Legislation is that the Trust be exempted from the Certification Obligations provided that:

- (i) the Trust is and continues to be exempted from the Continuous Disclosure Obligations; and
- (ii) the Bank files with the Decision Makers, in electronic format under the Trust's SEDAR profile, the Bank Officers Certificates at the same

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time as such documents are required under the Legislation to be filed by the Bank.

This decision shall expire 30 days after the date a material adverse change occurs in the representations made by the Trust in this decision.

Jo-Anne Matear
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Ontario Securities Commission