

2002 BCSECCOM 547

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – prospectus relief to allow an underwriter to distribute bonds that are equivalent to government of Canada debt obligations - relief from registration also granted for all trades of the bonds

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, NOVA SCOTIA, PRINCE EDWARD ISLAND, NEWFOUNDLAND AND LABRADOR, YUKON TERRITORY, NORTHWEST TERRITORIES AND NUNAVUT TERRITORY

AND

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

AND

IN THE MATTER OF SCOTIA CAPITAL INC. AND MILIT-AIR INC.

MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon Territory, Northwest Territories and Nunavut Territory (collectively, the “Jurisdictions”) has received an application from Scotia Capital Inc. (the “Underwriter”) and MILIT-AIR Inc. (“MILIT-AIR”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that:
 - 1.1 the requirement contained in the Legislation to file and obtain receipts for a preliminary prospectus and a prospectus (the “Prospectus Requirement”) will not apply to any distribution of Series 2-1 Amortizing Secured Bonds (the “Series 2-1 Bonds”) to be issued by MILIT-AIR including a distribution by the Underwriter (the “Offering”); and

2002 BCSECCOM 547

- 1.2 the requirement contained in the Legislation to be registered to trade in securities (the “Registration Requirement”) will not apply to any trades of the Series 2-1 Bonds subsequent to the Offering;
2. AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”) the Alberta Securities Commission is the principal regulator for this application;
3. AND WHEREAS MILIT-AIR has represented to the Decision Makers that:
 - 3.1 MILIT-AIR is a not-for-profit corporation, with no share capital, incorporated on March 12, 1998 under Part II of the Canada Corporations Act;
 - 3.2 the head office of MILIT-AIR is located at Edmonton, Alberta;
 - 3.3 MILIT-AIR is not a reporting issuer under the Legislation and has no intention of becoming a reporting issuer under the Legislation;
 - 3.4 the objects of MILIT-AIR are to advance the educational standards in the training of military pilots in Canada;
 - 3.5 the NATO Flying Training in Canada Program (the “NFTC Program”) is a public and private sector collaboration between the Government of Canada (“Canada”) and an industry group, led by Bombardier Inc. (“Bombardier”), involving the establishment of a military pilot training program for the purpose of meeting the training needs of Canada and those of NATO and other participating nations;
 - 3.6 MILIT-AIR was established as an independent entity to acquire and make available to Bombardier aircraft, flight simulation devices and other ancillary capital assets required for the NFTC Program;
 - 3.7 on May 12, 1998, under a trust indenture (the “Trust Indenture”) between MILIT-AIR and Montreal Trust Company of Canada, in its capacity as indenture trustee (the “Bondholders' Trustee”), MILIT-AIR issued an aggregate principal amount of \$720,000,000 5.75% Series 1 Amortizing Secured Bonds (the “Series 1 Bonds”);
 - 3.8 the proceeds of the Series 1 Bonds were used to fund the purchase of certain aircraft, flight simulation devices and other ancillary capital assets (the “Series 1 Assets”) as well as certain administrative costs and other expenses of MILIT-AIR;

2002 BCSECCOM 547

- 3.9 The Series 1 Bonds were issued in reliance upon exemptive relief orders granted by the Decision Maker in each of the Jurisdictions, with the exception of Nunavut;
- 3.10 for the purposes of carrying out the NFTC Program, Canada granted MILIT-AIR a licence (the "Licence") to occupy and use certain premises and facilities (the "NFTC Premises") at the Canadian Armed Forces Bases at Moose Jaw, Saskatchewan, and Cold Lake, Alberta, for a term of 33 years;
- 3.11 under a concession and agency agreement (the "Concession and Agency Agreement"), MILIT-AIR granted Bombardier exclusive concession rights to use and occupy the NFTC Premises for the establishment and operation of a military flying training centre for Canadian and foreign military pilots under the NFTC Program;
- 3.12 the Concession and Agency Agreement appointed Bombardier as MILIT-AIR's exclusive agent to negotiate and manage contracts with suppliers of the assets required for the NFTC Program;
- 3.13 in accordance with the terms of a services agreement between Canada and Bombardier (the "Canada Services Agreement"), Bombardier agreed to provide services in support of the NFTC Program over a term of approximately 22 years;
- 3.14 Canada's commitment to Bombardier under the Canada Services Agreement involves the payment of services fees (the "Tuition Fees") over the term, a portion of which is fixed (the "Firm Fixed Fees");
- 3.15 subject to Section 40 of the Financial Administration Act (Canada) (the "FAA"), Canada's obligation to make payment of the Firm Fixed Fees is unconditional, irrevocable, and without right of set-off;
- 3.16 MILIT-AIR and Bombardier also entered into a lease agreement (the "Series 1 Lease") pursuant to which the Series 1 Assets have been leased by MILIT-AIR to Bombardier for the purposes of carrying out the NFTC Program;
- 3.17 under the Series 1 Lease, Bombardier is obligated to make certain payments ("Series 1 Rental Payments") to MILIT-AIR for the lease of the Series 1 Assets, which obligation is unconditional, irrevocable and without right of set-off;

2002 BCSECCOM 547

- 3.18 under a collection trust agreement (the “Collection Trust Agreement”) among MILIT-AIR, Bombardier, the Bondholders' Trustee, Montreal Trust Company of Canada, in its capacity as collection trustee, (the “Collection Trustee”) and Deloitte & Touche, Bombardier assigned absolutely to the Collection Trustee all of the Tuition Fees owing to it under the Canada Services Agreement, to be held in trust and disbursed in accordance with the terms of the Collection Trust Agreement;
- 3.19 under the contractual arrangements entered into in 1998 among MILIT-AIR, Bombardier and Canada, it was contemplated that additional bonds may be issued in the future to finance the acquisition of additional assets required, from time to time, for the purposes of the NFTC Program;
- 3.20 in 2002, it was determined that certain additional aircraft and other ancillary capital assets (the “Series 2-1 Assets”) would be required as a result of the anticipated expansion of the NFTC Program to include other participant nations;
- 3.21 MILIT-AIR proposes to issue the Series 2-1 Bonds and to use the proceeds of the Offering to finance the purchase of the Series 2-1 Assets;
- 3.22 in connection with the issuance of the Series 2-1 Bonds and the purchase of the Series 2-1 Assets by MILIT-AIR, the following contractual arrangements will be entered into on or before the closing of the Offering:
- 3.22.1 MILIT-AIR and the Bondholders' Trustee will enter into an indenture supplemental to the Trust Indenture (the “Supplemental Indenture”) under which the Series 2-1 Bonds will be issued;
 - 3.22.2 MILIT-AIR will enter into contracts with certain suppliers in respect of the purchase of the Series 2-1 Assets;
 - 3.22.3 MILIT-AIR and Bombardier will enter into a lease in respect of the Series 2-1 Assets (the “Series 2-1 Lease”) under which Bombardier will be required to make rental payments (“Series 2-1 Rental Payments”) for the lease of the Series 2-1 Assets. The obligation to pay Series 2-1 Rental Payments will be unconditional, irrevocable and without right of set-off;

2002 BCSECCOM 547

- 3.22.4 the Canada Services Agreement will be amended (the “Amended Canada Services Agreement”) to, inter alia, increase the Firm Fixed Fees payable by Canada in order to fund the additional payments of principal and interest to be made by MILIT-AIR in respect of the Series 2-1 Bonds;
- 3.22.5 the Collection Trust Agreement will be amended to provide for the disbursement of the additional Firm Fixed Fees to the Bondholders' Trustee, on behalf of the holders of Series 2-1 Bonds, and MILIT-AIR;
- 3.23 the Firm Fixed Fees currently payable by Canada under the Canada Services Agreement are equal in amount to and payable at the same time as the Series 1 Rental Payments payable by Bombardier to MILIT-AIR for the lease of the Series 1 Assets;
- 3.24 the Series 1 Rental Payments are greater in amount than, but payable at the same time as, the payments due to the bondholders in respect of the Series 1 Bonds;
- 3.25 under the Amended Canada Services Agreement, the Firm Fixed Fees payable by Canada will be increased by an amount that is equal to the Series 2-1 Rental Payments payable by Bombardier under the Series 2-1 Lease, and that is at least equal to the principal and interest payments due in respect of the Series 2-1 Bonds;
- 3.26 all amounts due and payable by MILIT-AIR under the Trust Indenture and the Supplemental Indenture, including all principal and interest owing on the Series 1 Bonds and the Series 2-1 Bonds, as well as related administrative costs and expenses of MILIT-AIR, will continue to be funded by the Firm Fixed Fees payable by Canada under the Amended Canada Services Agreement;
- 3.27 the Series 1 Rental Payments and the Series 2-1 Rental Payments (collectively, the “Rental Payments”) and, correspondingly, the Firm Fixed Fees shall be adjusted to reflect any increase or decrease in applicable taxes, duties or expenses of MILIT-AIR, thereby ensuring that sufficient funds continue to be available to meet MILIT-AIR's commitments in respect of the Series 1 Bonds and Series 2-1 Bonds;
- 3.28 if the Amended Canada Services Agreement is terminated for default, convenience or otherwise, or if Canada fails to pay Firm Fixed Fees when due and payable, Canada will be required to assume Bombardier's

2002 BCSECCOM 547

obligations as lessee (including the obligation to pay Rental Payments) under the Series 1 Lease and the Series 2-1 Lease, respectively;

- 3.29 the mechanisms set out in paragraph 3.28 are in place to ensure continued access by Canada to the Series 1 Assets and the Series 2-1 Assets and a resulting stream of Rental Payments to MILIT-AIR that is, subject to Section 40 of the FAA, sufficient in all circumstances to meet MILIT-AIR's obligation to pay the principal and interest on the Series 1 Bonds and the Series 2-1 Bonds, as well as its administrative costs and other expenses;
- 3.30 the Collection Trustee will disburse, out of the Firm Fixed Fees paid by Canada, an amount equal to the aggregate of the principal and interest then due on the Series 1 Bonds and the Series 2-1 Bonds to the Bondholders' Trustee, on behalf of the bondholders. The remaining Firm Fixed Fees shall be held by the Collection Trustee for the direct and, subject to the rights and security of the Bondholders' Trustee, sole benefit of MILIT-AIR for the payment of its reasonable normal course expenses. The balance of Tuition Fees received by the Collection Trustee shall be remitted in accordance with the terms of the Amended Canada Services Agreement;
- 3.31 the Series 2-1 Bonds will be direct obligations of MILIT-AIR and, in accordance with the terms of the Trust Indenture, will rank *pari passu* with the Series 1 Bonds and all additional bonds issued under the Trust Indenture and any supplement(s) thereto;
- 3.32 the obligations of MILIT-AIR in respect of the Series 1 Bonds, Series 2-1 Bonds, and any additional bonds of MILIT-AIR will be secured by:
 - 3.32.1 the Firm Fixed Fees included in the absolute assignment of the Tuition Fees by Bombardier to the Collection Trustee; and
 - 3.32.2 under the Trust Indenture, a first ranking charge on and assignment of all of the assets and undertakings of MILIT-AIR including the Series 1 Assets, the Series 2-1 Assets, the Rental Payments (recourse in respect of which is limited to Bombardier's entitlement to the Firm Fixed Fees), and MILIT-AIR's interest in each of the agreements entered into in connection with the NFTC Program;
- 3.33 the Series 2-1 Bonds will be sold to the Underwriter and then offered for sale in all of the provinces and territories of Canada by the Underwriter;

2002 BCSECCOM 547

- 3.34 in connection with the Offering, a preliminary and final disclosure document in both the English and French languages (the “Offering Memorandum”) describing, among other things, MILIT-AIR, the attributes of the Series 2-1 Bonds, the NFTC Program, the security for the Series 2-1 Bonds, the use of proceeds, eligibility for investment of the Series 2-1 Bonds, ratings for the Series 2-1 Bonds, investment considerations, material contracts and the applicable contractual and statutory rights of action will be prepared and distributed to prospective investors;
- 3.35 each purchaser purchasing from the Underwriter will be given a copy of the Offering Memorandum prior to or at the time of entering into an agreement of purchase and sale for the Series 2-1 Bonds and will have the benefit of the contractual and statutory rights of action described in the Offering Memorandum;
- 3.36 under the Legislation, the distribution of bonds of or guaranteed by Canada or any province of Canada is exempt from the registration and prospectus requirements of the Legislation (with the exception of the Yukon Territory where the exemption extends only to prospectus requirements), and resale restrictions do not apply to such securities in the secondary market (the “Government Debt Exemptions”); and
- 3.37 the Government Debt Exemptions are not available for the distribution of the Series 2-1 Bonds because such arrangements do not constitute a direct obligation of Canada to make payments on the bonds or a collateral obligation of Canada in the nature of a guarantee for the performance of MILIT-AIR's obligations to make payments on the Series 2-1 Bonds;
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 Prospectus Requirement will not apply to a distribution of the Series 2-1 Bonds and the Registration Requirement will not apply to trades by a person or company in Series 2-1 Bonds subsequent to the acquisition of a Series 2-1 Bond by a purchaser on the closing of the Offering and all further trades

2002 BCSECCOM 547

thereafter of the Series 2-1 Bonds, other than a trade by a person or company in a Jurisdiction who is a person or company who is subject to the Registration Requirement under the Legislation of such Jurisdiction in respect of trades of bonds, debentures or other evidences of indebtedness of or guaranteed by the government of Canada provided that:

- 6.1 the Series 2-1 Bonds will have received a rating from Standard & Poors or Dominion Bond Rating Service equal to the rating assigned to the long-term unsecured Canadian dollar debt obligations of Canada prior to completion of the Offering.

DATED this 14th day of June, 2002

Glenda A. Campbell, Q.C., Vice-Chair

John W. Cranston, Member