

# 2003 BCSECCOM 844

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – variation of initial order to extend relief from underwriter conflict requirements in future distributions, subject to certain conditions, where issuer or selling securityholder is a related issuer of the registrant

## **Applicable British Columbia Provisions**

National Instrument 33-105 *Underwriting Conflicts*, ss. 2.1 and 5.1  
*Securities Act*, R.S.B.C. 1996, c. 418, s.171

**IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH  
COLUMBIA, ALBERTA, ONTARIO, QUÉBEC, NEW BRUNSWICK,  
NOVA SCOTIA, PRINCE EDWARD ISLAND, NEWFOUNDLAND AND  
LABRADOR, NORTHWEST TERRITORIES, NUNAVUT AND YUKON**

**AND**

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

**AND**

**IN THE MATTER OF CANACCORD CAPITAL CORPORATION**

## **MRRS DECISION DOCUMENT**

- ¶ 1 WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Nunavut and Yukon (the “Jurisdictions”) has received an application from Canaccord Capital Corporation (the “Filer”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) to vary the MRRS Decision Document dated August 19, 2003 (the “Previous Decision”) which granted relief from section 2.1(2)(b) of National Instrument 33-105 *Underwriting Conflicts* (“NI 33-105”) and sections 236.1, 236.2 and 237.1 of the regulation to the *Securities Act* (Québec) (collectively, the “Independent Underwriter Requirements”);

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- ¶ 2 AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the British Columbia Securities Commission is the principal regulator for this application;
- ¶ 3 AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or in Québec Commission Notice 14-101;
- ¶ 4 AND WHEREAS the Filer has represented to the Decision Makers that:
1. its head office is located in Vancouver, British Columbia;
  2. it is a wholly owned subsidiary of Canaccord Holdings Ltd. (“Canaccord Holdings”);
  3. the Filer is a member of the Investment Dealers Association of Canada and is registered to trade in securities under the Legislation;
  4. Manufacturers Life Insurance Company (“Manulife”) owns more than 20% of the outstanding voting and equity securities of Canaccord Holdings on a fully diluted basis and as a result the Filer and Manulife are “related issuers” under NI 33-105;
  5. the Independent Underwriter Requirements prohibit the Filer from acting as a direct underwriter in a distribution made under a prospectus where a related issuer is the issuer or a selling securityholder in the distribution;
  6. NI 33-105 provides an exemption from the Independent Underwriter Requirements where at least one registrant acting as direct underwriter acts as principal, so long as an independent underwriter underwrites not less than the lesser of (A) 20% of the dollar value of the distribution, and (B) the largest portion of the distribution underwritten by a registrant that is not an independent underwriter, or each registrant acting as direct underwriter acts as agent and is not obligated to act as principal, so long as an independent underwriter receives a portion of the total agents’ fees equal to an amount not less than the less of (A) 20% of the total agents’ fees for the distribution, and (B) the largest portion of the agents’ fees paid or payable to a registrant that is not an independent underwriter;
  7. the Previous Decision granted relief from the Independent Underwriter Requirements for future offerings in which the Filer may participate, subject to certain conditions including:

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- (a) the prospectus or other disclosure document prepared in connection with the future offering complies with section 2.1(1) of NI 33-105;
  - (b) the prospectus or other disclosure document prepared in connection with the future offering complies with the requirements of section 2.1(3)(b) of NI 33-101;
  - (c) the issuer of the securities for which Manulife is the selling securityholder is not in any financial difficulty;
  - (d) independent underwriters will collectively underwrite a portion of the offering greater than the portion underwritten by the Filer;
  - (e) the only financial benefits which the Filer will receive as a result of its participating in an offering are the normal arm's length underwriting commission and reimbursement of expenses associated with a public offering in Canada; and
  - (f) the Filer does not participate in the decision to make the offering or in the determination of the terms of the distribution or the use of proceeds (except in the indirect circumstance where a lead underwriter enters into arrangements on behalf of underwriters that ultimately would be part of the underwriting syndicate of which the Filer becomes apart;
8. the Previous Decision grants relief only when the Filer acts as a direct underwriter in future distributions made under a prospectus where Manulife is the issuer or selling securityholder in the distribution;
9. the Filer wishes to vary the application of the Previous Decision so as to permit the Filer to participate in an offering where the issuer is a related issuer to the Filer because of the Filer's relationship with Manulife;
- ¶ 5 AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");
- ¶ 6 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;
- ¶ 7 THE DECISION of the Decision Makers is that the Previous Decision be varied by amending recital paragraph 4, item 7 to:

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“The Filer wishes to act as direct underwriter in future distributions made under a prospectus where Manulife is the issuer or a selling security holder in the distribution or where the issuer or selling security holder in the distribution is a related issuer with the Filer because of the Filer’s relationship with Manulife (each a “Future Offering”);

¶ 8 December 19, 2003

Brenda Leong  
Director