

2002 BCSECCOM 680

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from the requirements to file and deliver interim financial statements and audited financial statements, and to make an annual filing in lieu of filing an information circular granted to a trust on specified conditions – security holder’s return depends on the financial condition of the bank and not that of the trust

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 91(1), 119(2)

Securities Rules, B.C. Reg. 194/97, ss. 144, 145, 149, 184(2)

In The Matter Of The Securities Legislation Of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia And Newfoundland And Labrador

And

In The Matter Of The Mutual Reliance Review System For Exemptive Relief

And

In The Matter Of The Bank Of Nova Scotia And Scotiabank Capital Trust

MRRS Decision Document

Whereas the local securities regulatory authority or regulator (the Decision Maker, and collectively the Decision Makers) in each of the provinces of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, Nova Scotia and Newfoundland and Labrador (the Jurisdictions) has received an application (the Application) from The Bank of Nova Scotia (the Bank) and Scotiabank Capital 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) file interim financial statements and audited annual financial statements (collectively, Financial Statements) with the Decision Makers and deliver such statements to the security holders of the Trust;
- (b) make an annual filing (Annual Filing) with the Decision Makers in lieu of filing an information circular, where applicable;

2002 BCSECCOM 680

- (c) file an annual report (Annual Report) and an information circular with the Decision Maker in Quebec and deliver such report or information circular to the security holders of the Trust resident in Quebec; and
- (d) file an annual information form (AIF) and annual management's discussion and analysis (MD&A) of the financial condition and results of operation of the Trust with the Decision Makers in Ontario, Saskatchewan and Quebec, an interim MD&A in Ontario and Saskatchewan and send such MD&A to security holders of the Trust, where applicable (collectively the AIF and MD&A Requirements);

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

And Whereas under the Mutual Reliance Review System for Exemptive Relief Applications (the System), the OSC is the Principal Regulator for this application;

And Whereas the Bank and the Trust have represented to the Decision Makers that:

The Bank

1. The Bank is a bank under the *Bank Act* (Canada) and the *Bank Act* (Canada) is its charter.
2. The authorized share capital of the Bank consists of an unlimited number of (i) common shares (Bank Common Shares); and (ii) preferred shares (the Bank Preferred Shares), issuable in series.
3. The Bank is a reporting issuer or the equivalent in each of the provinces and territories of Canada and is not, to its knowledge, in default of any requirement under the Legislation.
4. The Bank Common Shares are listed and posted for trading on The Toronto Stock Exchange (the TSE), the New York Stock Exchange and the London Stock Exchange.

The Trust

5. The Trust is an open-end trust established under the laws of the Province of Ontario by Computershare Trust Company of Canada (Trustee), as trustee, pursuant to a declaration of trust made as of March 28, 2002, (the Declaration of Trust).

2002 BCSECCOM 680

6. The outstanding securities of the Trust consist of (i) Special Trust Securities (the Special Trust Securities); and (ii) Scotiabank Trust Securities - Series 2002-1 (the Scotia BaTS II). The Special Trust Securities and the Scotia BaTS II are collectively referred to herein as the Trust Securities. The Scotia BaTS II and the Special Trust Securities are not quoted or listed on any exchange or organized market.

7. The Trust is a reporting issuer, or the equivalent, in each of the Jurisdictions as a result of having filing a final prospectus dated April 23, 2002 (the Prospectus) and the issuance of a final MRRS Decision Document in relation to the Prospectus and is not, to its knowledge, in default of any requirement of the Legislation.

8. The Trust was established solely for the purpose of effecting a public offering of Scotia BaTS II (the Offering) and possible future offerings of securities in order to provide the Bank with a cost effective means of raising capital for Canadian financial institution regulatory purposes by means of: (i) creating and selling the Trust Securities; and (ii) acquiring and holding assets, which consist primarily of a senior deposit note issued by the Bank (the Bank Deposit Note). The Bank Deposit Note will generate income for distribution to holders of the Trust Securities. The Trust does not and will not carry on any operating activity other than in connection with the Offering and any future offerings.

Scotia BaTS II

7. The Trust distributed Scotia Bats II in the Jurisdictions under the Prospectus. The Trust also issued and sold 1,000 Special Trust Securities, which are voting securities of the Trust, to the Bank in connection with the Offering.

8. Holders of Scotia BaTS II are entitled to receive fixed, semi-annual non-cumulative distributions (each, an Indicated Yield) on the basis described below (Distributions). Each semi-annual payment date for the Indicated Yield in respect of the Scotia BaTS II (a Distribution Date) will be either a Regular Distribution Date or a Distribution Diversion Date. A Distribution Date will be a Distribution Diversion Date, with the result that the Indicated Yield will not be paid in respect of the Scotia BaTS II but, instead, the Trust will pay the net distributable funds of the Trust to the holder of Special Trust Securities, if: (i) the Bank has failed in the period described in the Prospectus to declare regular dividends on its Bank Non-Cumulative Preferred Shares of any series and its Bank Parity Preferred Shares (if any) in accordance with their terms; or (ii) if no Bank Non-Cumulative Preferred Shares or Bank Parity Preferred Shares are then outstanding and the Bank has failed in the period described in the Prospectus to declare regular dividends on its Bank Junior Preferred Shares; or (iii) if no Bank Junior Preferred Shares are then outstanding and the Bank has failed in the period described in the Prospectus to

2002 BCSECCOM 680

declare regular dividends on its Bank Common Shares. In all other cases, a Distribution Date will be a Regular Distribution Date, in which case holders of Scotia BaTS II will be entitled to receive the Indicated Yield. Bank Non-Cumulative Preferred Shares means the non-cumulative Preferred Shares of the Bank (including the Bank Preferred Shares Series W and the Bank Preferred Shares Series X). Bank Parity Preferred Shares means preferred or preference shares issued by the Bank ranking *pari passu* with the Bank Non-Cumulative Preferred Shares. Bank Junior Preferred Shares means preferred or preference shares issued by the Bank ranking junior to the Bank Non-Cumulative Preferred Shares. (The Bank Non-Cumulative Preferred Shares, Bank Common Shares, Bank Parity Preferred Shares and Bank Junior Preferred Shares are hereinafter referred to as the Bank Dividend Restricted Shares).

9. Under a Share Exchange Agreement entered into among the Bank, the Trust and a party acting as Exchange Trustee (the Share Exchange Agreement), the Bank has agreed, for the benefit of the holders of Scotia BaTS II, that in the event that the Trust fails on any Regular Distribution Date to pay the Indicated Yield on the Scotia BaTS II in full: (i) the Bank will not declare or pay Dividends on the Bank Dividend Restricted Shares, until a specified period of time has elapsed, unless the Trust first pays such Indicated Yield (or the unpaid portion thereof) to holders of Scotia BaTS II. Accordingly, it is in the interest of the Bank to ensure, to the extent within their control, that the Trust complies with its obligation to pay the Indicated Yield on each Regular Distribution Date.

10. Under the terms of the Scotia BaTS II and the Share Exchange Agreement, the Scotia BaTS II may be exchanged, at the option of the holders of Scotia BaTS II, for newly issued Bank Preferred Shares Series W. The Scotia BaTS II will be automatically exchanged, without the consent of the holder, for Bank Preferred Shares Series W upon the occurrence of certain stated events relating to the solvency of the Bank or actions taken by the Superintendent of Financial Institutions (the Superintendent) in respect of the Bank (the Automatic Exchange).

11. The terms of the Bank Preferred Shares Series W provide, among other things, that such shares are exchangeable at the option of the holder for Bank Common Shares at certain times and in certain circumstances, but in any event the Bank Preferred Shares Series W are not exchangeable into Bank Common Shares until December 31, 2012. This exchange right is not operative at any time that an event giving rise to the Automatic Exchange in respect of the Scotia BaTS II has occurred and is continuing.

12. The Trust may, subject to regulatory approval, on June 30, 2007 and on any Distribution Date thereafter, redeem the Scotia BaTS II. The price payable in respect of any such redemption will include an early redemption compensation

2002 BCSECCOM 680

component (such price being the Early Redemption Price) in the event of a redemption of Scotia BaTS II prior to June 30, 2012 (the Early Redemption Date). The price payable in all other cases will be \$1,000 per Scotia BaTS II together with any unpaid Indicated Yield thereon (the Redemption Price).

13. Upon the occurrence of certain regulatory or tax events affecting the Bank or the Trust, the Trust may, subject to regulatory approval, redeem at any time all but not less than all of the Scotia BaTS II at the Early Redemption Price (if the Scotia BaTS II are redeemed prior to the applicable Early Redemption Date) and at the Redemption Price (if the Scotia BaTS II are redeemed on or after the applicable Early Redemption Date).

14. The Bank has covenanted, under the Share Exchange Agreement, that the Bank or its affiliates will maintain ownership, directly or indirectly, of 100% of the outstanding Special Trust Securities. As a result, the financial results of the Trust will be consolidated with those of the Bank. Subject to regulatory approval, the Scotia BaTS II will constitute Tier 1 Capital of the Bank.

15. As long as any Scotia BaTS II are outstanding, the Trust may only be terminated with the approval of the holder of Special Trust Securities and with the approval of the Superintendent: (i) upon the occurrence of a Special Event prior to June 30, 2007; or (ii) for any reason on June 30, 2007 or any Distribution Date thereafter. Holders of Trust Securities rank pari passu in the distribution of the property of the Trust in the event of a termination of the Trust, after the discharge of any creditor claims. As long as any Scotia BaTS II are outstanding, the Bank will not approve the termination of the Trust unless the Trust has sufficient funds to pay the Early Redemption Price in the case of a termination prior to the applicable Early Redemption Date, or the Redemption Price in the case of any other termination.

16. As set forth in the Declaration of Trust, the Scotia BaTS II are non-voting except in limited circumstances and Special Trust Securities entitle the holders to vote.

17. Except to the extent that the Distributions are payable to Scotia BaTS II holders and, other than in the event of termination of the Trust (as set forth in the Declaration of Trust), Scotia BaTS II holders have no claim or entitlement to the income of the Trust or the assets held by the Trust.

18. Under an Administration Agreement entered into between the Trustee and the Bank, the Trustee will delegate to the Bank certain of its obligations in relation to the administration of the Trust. The Bank, as administrative agent, will provide advice and counsel with respect to the administration of the day-to-day operations

2002 BCSECCOM 680

of the Trust and other matters as may be requested by the Trustee from time to time.

19. The Trust has not requested relief for the purposes of filing a short form prospectus pursuant to National Instrument 44-101 C Short Form Prospectus Distributions (NI 44-101) (including, without limitation, any relief that would allow the Trust to use the Bank's AIF as a current AIF of the Trust) and no such relief is provided by this Decision Document from any of the requirements of NI 44-101.

20. The Trust may, from time to time, issue further series of Scotiabank Trust Securities, the proceeds of which would be used to acquire additional deposit notes from the Bank.

21. Because of the terms of the Scotia BaTS II, the Share Exchange Agreement and the various covenants of the Bank, information about the affairs and financial performance of the Bank, as opposed to that of the Trust, is meaningful to holders of Scotia BaTS II. The Bank's filings and the delivery of the same material delivered to shareholders of the Bank will provide holders of Scotia BaTS II and the general investing public with all information required in order to make an informed decision relating to an investment in Scotia BaTS II. Information regarding the Bank is relevant both to an investor's expectation of being paid the Indicated Yield on the Scotia BaTS II as well as the return of the investor's principal.

And Whereas under the System this MRRS Decision Document evidences the decision of the Decision Makers (collectively, the Decision);

And Whereas the Decision Makers are satisfied that the tests contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision have been met;

The Decision of the Decision Makers under the Legislation is that the requirement contained in the Legislation:

- (a) to file Financial Statements with the Decision Makers and deliver such statements to holders of Trust Securities;
- (b) to make an Annual Filing, where applicable, with the Decision Makers in lieu of filing an information circular; and

2002 BCSECCOM 680

- (c) to file an Annual Report and an information circular with the Decision Maker in Quebec and deliver such report or information circular to holders of Trust Securities resident in Quebec;

shall not apply to the Trust for so long as:

- (i) the Bank remains a reporting issuer under the Legislation;
- (ii) the Bank files with the Decision Makers, in electronic format under the Trust's SEDAR profile, the documents listed in clauses (a) to (c) above of this Decision, at the same time as they are required under the Legislation to be filed by the Bank;
- (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 clauses (a) to (c) above of this Decision;
- (iv) the Bank sends its Financial Statements and Annual Filing, where applicable, to holders of Trust Securities and its Annual Report to holders of Trust Securities resident in the Province of Quebec at the same time and in the same manner as if the holders of Trust Securities were holders of the Bank Common Shares;
- (v) all outstanding securities of the Trust are either Scotia BaTS II or Special Trust Securities;
- (vi) the rights and obligations (other than the economic terms thereof) of holders of additional series of Scotiabank Trust Securities are the same in all material respects as the rights and obligations of the holders of Scotia BaTS II-Series 2002-1 at the date hereof; and
- (vii) the Bank or its affiliates are the beneficial owners of all Special Trust Securities.

and provided that this Decision shall expire 30 days after the date a material adverse change occurs in the affairs of the Trust.

DATED this 26th day of July, 2002.

Paul M. Moore

Robert L. Shirriff

2002 BCSECCOM 680

And The Further Decision of the Decision Makers in Ontario, Saskatchewan and Quebec is that the AIF and MD&A Requirements shall not apply to the Trust for so long as:

- (i) the conditions set out in clauses (i), (v), (vi) and (vii) of the Decision above are complied with;
- (ii) the Bank files its AIF and its annual and interim MD&A with the Decision Makers, as applicable, in electronic format under the Trust's SEDAR profile at the same time as they are required under the Legislation to be filed by the Bank;
- (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 clauses (a) to (c) above of this Decision;
- (iv) the Bank sends its annual and interim MD&A and its AIF, as applicable, to holders of Trust Securities at the same time and in the same manner as if the holders of Trust Securities were holders of Bank Common Shares;

and provided that this Decision shall expire 30 days after the date a material adverse change occurs in the affairs of the Trust.

Dated this 26th day of July, 2002.

John Hughes