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December 28, 2006

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 84 - Circulation of Materials - Relief from the requirement in section 83 to deliver a prospectus - A registered dealer wants relief from the requirement to deliver a prospectus - The relief applies only to money market funds as defined in NI 81-102 - The relief applies only to investors who hold securities of the money market fund or within one year before the trade have held securities of the money market fund

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 83 and 84

In the Matter of  
the Securities Legislation of  
All Provinces and Territories of Canada  
(the Jurisdictions)

and

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

and

In the Matter of  
Scotia Capital Inc., CIBC World Markets Inc., RBC Dominion Securities Inc.,  
NBCN Inc., BMO Nesbitt Burns Inc., Canaccord Capital Corporation, Blackmont  
Capital Inc., TD Waterhouse Canada Inc., Dundee Securities Corporation,  
Penson Financial Services Canada Inc., ATB Securities Inc.  
(collectively, the Filers)

## 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 Filers for a decision under the securities legislation of the Jurisdictions (the Legislation) granting an exemption from the requirement contained in the Legislation that obliges a Filer to deliver the latest prospectus and any amendment to the prospectus, together with the right not to be bound by an agreement of purchase and sale (the Prospectus

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Delivery Requirements) in respect of a trade (a Subsequent Trade) in securities of a money market mutual fund (Money Market Fund) as defined in, and that is regulated by, National Instrument 81-102 *Mutual Funds* (NI 81-102) made by an investor who holds securities of that Money Market Fund, or has held securities of that Money Market Fund within the one-year period immediately prior to the date of the Subsequent Trade, on the terms and subject to the conditions below (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications

- a. the Ontario 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.

### **Representations**

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

1. The Filers are registered with the applicable Decision Makers as investment dealers (or the equivalent) and are also members of the Investment Dealers Association of Canada (the IDA). The head office of the majority of the Filers is located in Ontario.
2. The cost of complying with the Prospectus Delivery Requirements in respect of Subsequent Trades in Money Market Funds, as borne by the Filers, when coupled with the associated costs borne by Money Market Funds in respect of Subsequent Trades, is disproportionate to the benefits to Money Market Fund investors of receiving a prospectus after a purchase decision is made.
3. The Filers estimate the costs of commercially printing a Money Market Fund prospectus for delivery to investors to be approximately \$1.58 per prospectus printed. These costs are borne by the Money Market Funds, and ultimately investors in those funds. Accordingly, granting the Requested Relief may result in cost savings to Money Market Fund investors.
4. The Filers bear the third party systems processing costs and postage and handling costs associated with the delivery of a Money Market Fund prospectus. They also initially may bear the printing costs as referenced in

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paragraph 3 above, but all or a portion of such costs may be rebated back to the Filers by the fund managers who manage the Money Market Funds.

5. Money Market Funds are generally suitable for investors who:
  - (a) wish to retain all or a portion of their portfolio in cash or near cash, typically pending an intended use for, or decision on how to use, the cash or near cash;
  - (b) wish to keep a portion of their overall portfolio invested in low risk and low cost securities; or
  - (c) seek a steady flow of current income, liquidity and capital liquidity.
6. Investors making a Subsequent Trade in a Money Market Fund typically have no need or inclination to review a prospectus for a Money Market Fund, but a Filer must provide a prospectus in accordance with the Prospectus Delivery Requirements.
7. Given the duties at law owed by a Filer to an investor making a decision to invest additional amounts in a Money Market Fund, the information contained in a Money Market Fund prospectus does not provide any additional information to the investor necessary for informed decision-making about that Subsequent Trade.
8. All disclosure documents required to be filed by Money Market Funds with the regulators under National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (NI 81-101) and National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106) are publicly available on the electronic filing system of SEDAR. These documents are also available on request by investors from the Filers and from fund managers.
9. The Filers will continue to deliver prospectuses and other disclosure documents to investors in Money Market Funds making an initial investment, and on request to investors making a Subsequent Trade.
10. Different prospectus delivery requirements for Subsequent Trades in Money Market Funds are justified for the following reasons:
  - (a) The investments of Money Market Funds are prescribed by NI 81-102 and are limited to cash and near cash instruments and accordingly, Money Market Funds are inherently less risky and are more of a commodity than are other mutual funds;

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- (b) Given the restricted investments of Money Market Funds, Money Market Funds maintain a fixed net asset value and accrue income in favour of investors on a daily basis. Accordingly clients of the Filers enjoy, other than in exceptional circumstances, minimal fluctuation of principal invested and some income accrual;
- (c) Clients of the Filers generally invest in Money Market Funds for temporary purposes, pending decisions for use of money, including longer-term investment decisions. Clients of the Filers also often invest in Money Market Funds on a periodic basis, including investing, then redeeming or switching and then re-investing all within a short period of time;
- (d) Clients of the Filers often purchase Money Market Funds on a no-load or low-load basis. When purchased on a deferred sales charge basis, once a decision is made to move investments, clients generally are “switched” into another fund in the same fund family to avoid payment of deferred sales charges;
- (e) Money Market Funds are redeemable on demand; virtually all Canadian Money Market Funds are redeemable on a daily basis;
- (f) Money Market Funds are significantly lower cost investments than other mutual funds, with considerably lower management expense ratios. Part of the expenses of a Money Market Fund is presently the cost of commercially printing a prospectus for delivery to investors pursuant to the Prospectus Delivery Requirements;
- (g) Given the restricted nature of investments by Money Market Funds and the inherent similarities between Money Market Funds, there are less facts about Money Market Funds that are critical for informed decision making. Accordingly, having regard to the duties of the Filers in making recommendations to clients, the prospectus of a Money Market Fund is less important for investment decision-making than a prospectus for another mutual fund;
- (h) Given the different disclosure requirements for Money Market Funds, prospectus disclosure for Money Market Funds tends to be the most “evergreen” of all mutual fund prospectus disclosure since it rarely changes from year to year. Therefore, an investor making a Subsequent Trade would have even less use for a prospectus in respect of that

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Subsequent Trade than an investor in another type of mutual fund making a subsequent trade in that mutual fund;

- (i) Investors in Money Market Funds have access to the prospectus and continuous disclosure documents of those Money Market Funds.
11. An investor in a Money Market Fund will not lose any substantive rights if a Filer is exempted from the Prospectus Delivery Requirements in respect of a Subsequent Trade and therefore does not deliver a prospectus to the investor in respect of his or her Subsequent Trade in the Money Market Fund because:
- (a) disclosure documents will continue to be available on request;
  - (b) the Filers will continue to send trade confirmations in accordance with the Legislation;
  - (c) investors will continue to have rights equivalent in effect to the withdrawal rights provided in the Legislation of certain Jurisdictions;
  - (d) the rescission rights provided to investors in the Legislation of certain Jurisdictions will still apply; and
  - (e) investors will still have rights to sue for misrepresentations in disclosure documents according to the misrepresentation rights provided in the Legislation.

### **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 under the Legislation is that the Requested Relief is granted to the Filers, any affiliate of the Filers that is registered as an investment dealer and is a member of the IDA and any investment dealer-member of the IDA that becomes affiliated with one of the Filers (all such other affiliate investment dealers will be considered Filers for the purposes of this decision) provided that:

- (a) the trade confirmation (or a separate notice accompanying the trade confirmation) (the Trade Confirmation) sent to investors pursuant to the Legislation by a Filer in respect of a Subsequent Trade will, in addition to containing the information required by the Legislation, inform investors that:

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- (i) a prospectus for the Money Market Fund is available on request by calling a specified toll-free telephone number maintained by the Filer and also on SEDAR;
  - (ii) securities purchased as indicated on the Trade Confirmation can be redeemed on demand and if an investor gives the Filer notice that he or she wishes to redeem those securities within two days (exclusive of weekends and holidays) of receipt of the Trade Confirmation, then the Filer will repay to the investor any sales commissions paid by that investor on that Subsequent Trade;
  - (iii) investors have rights under securities legislation of certain provinces and territories of Canada that are described in the prospectus of the Money Market Fund relating to misrepresentations contained in prospectus disclosure of the Money Market Fund (including documents incorporated by reference into that prospectus); and
  - (iv) investors do not have the rights associated with non-delivery of a prospectus because of this decision, unless the prospectus is not delivered after an investor makes a request for one;
- (b) The Filers repay to investors relying on the right to redeem securities acquired on a Subsequent Trade as provided in paragraph (a)(ii) above, any sales commissions paid by those investors in respect of the Subsequent Trade;
- (c) The Requested Relief is available for a Subsequent Trade in a Money Market Fund only if the investor making the Subsequent Trade holds or has held securities of the Money Market Fund at any time within the one-year period immediately prior to the date of the Subsequent Trade;
- (d) Where the investor making the Subsequent Trade does not hold securities of the Money Market Fund on the date of the Subsequent Trade, the Requested Relief will not be available for the Subsequent Trade if as at the date of the Subsequent Trade, the prospectus for the Money Market Fund contains disclosure about a fundamental change to the Money Market Fund that is contemplated by section 5.1 of NI 81-102;
- (e) This decision will terminate upon the earlier of:

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- (i) the coming into force of any legislation, rule or regulation of the Decision Makers that varies or changes the Prospectus Delivery Requirements in respect of a trade in securities of a mutual fund, and
- (ii) the coming into force of any legislation, rule or regulation of the Decision Makers that permits Money Market Funds to invest in assets in addition to those permitted by NI 81-102 as at the date of this Decision Document;

provided that if the legislation, rule or regulation of the Decision Makers referred to in (i) gives the Filers a transition period before the Filers have to comply with the legislation, rule or regulation, this Decision will continue to the end of that transition period as it applies to the Filers.

Susan Wolburgh Jenah  
Vice-Chair  
Ontario Securities Commission

David L. Knight  
Commissioner  
Ontario Securities Commission