

# 2004 BCSECCOM 584

October 6, 2004

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 91 Financial Statements & Report - Exemption from the filing and delivery requirements for financial statements, annual reports, and quarterly reports - An issuer wants relief from the requirement to deliver audited annual financial statements for a particular year - The issuer filed a final prospectus with audited financials dated prior to its year end; the issuer had limited operations since the date of such audited financial statements and its year end; the issuer's audited annual financials will not disclose any material information that is not already disclosed in the audited financial statements in the prospectus

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, s. 91

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

and

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

and

In the Matter of BMONT Split Corp. (The Filer)

## 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 Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from the requirement to deliver to its shareholders annual financial statements and, where applicable, an annual report, for the period from June 29, 2004 to August 5, 2004, as would otherwise be required pursuant to applicable Legislation (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

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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. In this decision:

“BMO Shares” means the portfolio of common shares of Bank of Montreal held by the Filer;

“Capital Shares” means the 3,050,000 class A capital shares of the Filer distributed pursuant to the Prospectus;

“Prospectus” means the final prospectus of the Filer dated July 29, 2004;

“Initial Financial Statements” means the financial statements of the Filer and, where applicable, the annual report of the Filer, for the period from June 29, 2004 to August 5, 2004; and

“Preferred Shares” means the 1,525,000 class A preferred shares of the Filer distributed pursuant to the Prospectus.

### **Representations**

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

1. The Filer filed the Prospectus with the securities regulatory authority in each of the provinces of Canada pursuant to which the distribution of Capital Shares and Preferred Shares was completed on August 5, 2004.
2. The Filer was incorporated under the laws of the Province of Ontario on June 29, 2004. The fiscal year end of the Filer is August 5, with the first full fiscal year end to occur on August 5, 2005. Pursuant to the requirements of the Legislation, and subject to any relief obtained pursuant to this application, the Filer would be required to prepare and file in the Jurisdictions and deliver to its shareholders the Initial Financial Statements.
3. The final redemption of the Capital Shares and Preferred Shares of the Filer is scheduled to occur on August 5, 2009.
4. The authorized capital of the Filer consists of an unlimited number of Capital Shares, an unlimited number of Preferred Shares, an unlimited number of Class B, Class C, Class D and Class E capital shares, issuable in series, an unlimited number of Class B, Class C, Class D and Class E preferred shares, issuable in series, an unlimited number of Class J Shares and an unlimited

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number of Class S Shares. The issued capital of the Filer consists of 3,050,000 Capital Shares, 1,525,000 Preferred Shares and 150 Class J Shares. The attributes of the Capital Shares, Preferred Shares and Class J Shares are detailed in the Prospectus.

5. Scotia Capital Inc. acted as an agent for, and was the promoter of, the Filer in respect of the offerings of the Capital Shares and Preferred Shares.
6. The Filer is a passive investment company whose principal undertaking is the holding of the BMO Shares in order to generate fixed cumulative preferential distributions for the holders of the Preferred Shares and to enable the holders of Capital Shares to participate in any capital appreciation in the BMO Shares after payment of administrative and operating expenses of the Filer. The BMO Shares held by the Filer will only be disposed of in limited circumstances, as described in the Prospectus.
7. The Prospectus included an audited statement of financial position of the Filer as at July 29, 2004 and an unaudited pro forma statement of financial position as at July 29, 2004 prepared on the basis of the completion of the sale and issue of Capital Shares and Preferred Shares of the Filer. As such, the financial position of the Filer as at August 5, 2004 was substantially reflected in the pro forma financial statements contained in the Prospectus.
8. The Filer is an inactive company, the sole purpose of which is to provide a vehicle through which different investment objectives with respect to participation in the BMO Shares may be satisfied. Holders of Capital Shares will be entitled on redemption to the benefits of any capital appreciation in the market price of the BMO Shares after payment of administrative and operating expenses of the Filer and the fixed distributions on the Preferred Shares. It is the policy of the Board of Directors of the Filer to pay dividends on the Capital Shares in an amount equal to the dividends received by the Filer on the BMO Shares minus the distributions payable on the Preferred Shares and all administrative and operating expenses of the Filer.
9. The benefit to be derived by the shareholders of the Filer from receiving the Initial Financial Statements would be minimal in view of (i) the short period (i.e. 38 days) from the date of incorporation of the Filer to August 5, 2004; (ii) the pro forma financial statements contained in the Prospectus; and (iii) the nature of the minimal business carried on by the Filer.
10. The expense to the Filer of sending to its shareholders the Initial Financial Statements would not be justified in view of the benefit to be derived by the shareholders from receiving such statements.

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11. The semi-annual unaudited financial statements of the Filer for the period ending February 5, 2005 will include the period from June 29, 2004 to August 5, 2004.

### **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 provided that:

- (i) the Filer issue, and file on SEDAR, a press release informing its shareholders of their right to receive the Initial Financial Statements upon request; and
- (ii) the Filer send a copy of the Initial Financial Statements to any shareholder of the Filer who so requests.

Paul M. Moore  
Vice Chair  
Ontario Securities Commission

Paul K. Bates  
Commissioner  
Ontario Securities Commission