

Headnote

Mutual Reliance Review System for Exemptive Relief Applications -- Relief from the prospectus and registration requirements granted for trades in negotiable promissory notes and commercial paper (short-term debt instruments). The short-term debt instruments may not meet the "approved credit rating" requirement contained in the short-term debt exemption in section 2.35 of National Instrument 45-106 Prospectus and Registration Exemptions (NI 45-106). The definition of an "approved credit rating" requires, among other things, that every rating of the short-term debt instrument be at or above a prescribed standard. The relief is granted provided the short-term debt instrument:

- (i) matures not more than one year from the date of issue;
- (ii) is not convertible or exchangeable into or accompanied by a right to purchase another security other than a short-term debt instrument; and
- (iii) has a rating issued by one of the following rating organizations at or above one of the following rating categories: DBRS: "R-1(low); Fitch: "F2"; Moody's: "P-2" or S&P "A-2".

The relief will terminate on the earlier of 90 days upon an amendment to section 2.35 of NI 45-106 or three years from the date of the decision.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 53, 74.

April 26, 2006

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA,
ONTARIO, QUEBEC, NEW BRUNSWICK, PRINCE EDWARD ISLAND,
NOVA SCOTIA, NEWFOUNDLAND AND LABRADOR, YUKON,
NORTHWEST TERRITORIES AND NUNAVUT
(THE JURISDICTIONS)
AND
IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM
FOR EXEMPTIVE RELIEF APPLICATIONS
AND
IN THE MATTER OF
THE TORONTO-DOMINION BANK
(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**) that trades in negotiable promissory notes and commercial paper (**Short-term Debt Instruments**) by the Filer be exempt from the dealer registration requirement and prospectus requirement (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 Filer:

1. The Filer is a bank listed on Schedule I of the *Bank Act* (Canada). The head office of the Filer is located in Toronto, Ontario.
2. The Filer is a reporting issuer in all Jurisdictions and is not in default of its obligations under the Legislation in any Jurisdiction.
3. The Filer is not registered as a dealer or adviser under the Legislation in any Jurisdiction.
4. The Filer both trades and engages in distributions of Short-Term Debt Instruments in the Jurisdictions as part of its activities as a principal and as an agent for issuers.
5. Subsection 2.35(1)(b) of National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**) provides an exemption from the dealer registration requirement and prospectus requirement for a trade in a Short-term Debt Instrument (the **Short-term Debt Exemption**) where, among other things, the Short-term Debt Instrument "has an approved credit rating from an approved credit rating organization".
6. NI 45-106 incorporates by reference the definitions for "approved credit rating" and "approved credit rating organization" that are used in National Instrument 81-102 *Mutual Funds* (**NI 81-102**). The definition of an "approved credit rating" in NI 81-102, requires, among other things, that (a) the rating assigned to such debt must be "at or above" certain prescribed short-term ratings, and (b) such debt must not have been assigned a rating by any "approved credit rating organization" that is not an "approved credit rating".
7. The Filer has in the past traded and proposes in the future to trade Short-term Debt Instruments with the following general characteristics:
 - (a) they mature not more than one year from the date of issue;
 - (b) they are not convertible or exchangeable into or accompanied by a right to purchase another security other than another Short-term Debt Instrument; and
 - (c) they have a credit rating from at least one of the following credit rating organizations not less than the rating indicated:

| Rating Organization | Rating |
|--------------------------------------|-----------|
| Dominion Bond Rating Service Limited | R-1 (low) |
| Fitch Ratings Ltd. | F2 |
| Moody's Investors Service | P-2 |
| Standard & Poor's | A-2 |

8. The Short-term Debt Instruments may have a lower rating than required by the Short-term Debt Exemption and accordingly, the Short-term Debt Exemption may not be available.

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 each Short-term Debt Instrument:

- (a) matures not more than one year from the date of issue;
- (b) is not convertible or exchangeable into or accompanied by a right to purchase another security other than a Short-term Debt Instrument; and
- (c) has a rating issued by one of the following rating organizations, or any of their successors, at or above one of the following rating categories or a rating category that replaces a category listed below:

| Rating Organization | Rating |
|--------------------------------------|-----------|
| Dominion Bond Rating Service Limited | R-1 (low) |
| Fitch Ratings Ltd. | F2 |
| Moody's Investors Service | P-2 |
| Standard & Poor's | A-2 |

For each Jurisdiction, this decision will terminate on the earlier of:

- (a) 90 days after the coming into force of any rule, other regulation or blanket order or ruling under the Legislation of the Jurisdiction that amends section 2.35 of NI 45-106 or provides an alternate exemption; and
- (b) three years from the date of this decision.

"Susan Wolburgh Jenah"
 Vice-Chair
 Ontario Securities Commission

"Wendell S. Wigle"
 Commissioner
 Ontario Securities Commission

