

Headnote

Future-oriented RSP clone fund relief and relief to enter into forward contracts with a related counterparty.

Statutes Cited

Securities Act, R.S.O. 1990, c.S.5, as am., s. 113, s. 117 and ss. 121(2)(a)(ii).

**IN THE MATTER OF THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,
ONTARIO, QUÉBEC, NOVA SCOTIA AND
NEWFOUNDLAND**

AND

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

AND

**IN THE MATTER OF
SCOTIA SECURITIES INC.
CAPITAL U.S. LARGE COMPANIES RSP FUND
CAPITAL U.S. SMALL COMPANIES RSP FUND
CAPITAL INTERNATIONAL LARGE COMPANIES RSP FUND
CAPITAL GLOBAL DISCOVERY RSP FUND
CAPITAL GLOBAL SMALL COMPANIES RSP FUND**

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the **Decision Maker**) in each of the provinces and territories of British Columbia, Alberta, Saskatchewan, Ontario, Québec, Nova Scotia, and Newfoundland (the **Jurisdictions**) has received an application (the **Application**) from Scotia Securities Inc. (the "Manager") in its own capacity and on behalf of Capital U.S. Large Companies RSP Fund, Capital U.S. Small Companies RSP Fund, Capital International Large Companies RSP Fund, Capital Global Discovery RSP Fund and Capital Global Small Companies RSP Fund (the **Existing RSP Funds**) and other mutual funds managed by the Manager after the date of this Decision (defined herein) having an investment objective or strategy that is linked to the returns or portfolio of another specified mutual fund while remaining 100% eligible for registered plans (together with the Existing RSP Funds, the **RSP Funds**) for a decision pursuant to the securities legislation of the Jurisdictions (the **Legislation**) that the following prohibitions or requirements under the Legislation (the **Applicable Requirements**) shall not apply to the RSP Funds or the Manager, as the case

may be, in respect of certain investments made by the RSP Funds in Capital International-U.S. Equity, Capital International-U.S. Small Cap, Capital International-International Equity, Capital International-Global Discovery, Capital International-Global Small Cap or any other specific prospectus-qualified mutual funds (the **Underlying Funds**) and in respect of certain investments made by the RSP Funds in forward contracts (**Forward Contracts**) with the Bank of Nova Scotia (**ABNS**):

1. the restrictions contained in the Legislation prohibiting a mutual fund from knowingly making and holding an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial securityholder;
2. the requirements contained in the Legislation requiring the management company or, in British Columbia, a mutual fund manager, to file a report relating to a purchase or sale of securities between the mutual fund and any related person or company, or any transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, the mutual fund is a joint participant with one or more of its related persons or companies; and
3. the requirements prohibiting the Manager from knowingly causing an RSP Fund to invest in any person or company in which a director, officer or employee of the Manager is a director or officer.

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the **System**), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS it has been represented by the Manager to the Decision Makers that:

1. The RSP Funds will be open-ended mutual fund trusts established under the laws of the Province of Ontario. The Manager is a corporation established under the laws of the Province of Ontario. The Manager is the manager, trustee and promoter of the RSP Funds.
2. The Underlying Funds will be open-end mutual funds established under the laws of the Province of Ontario. The units of the Underlying Funds are to be qualified in the jurisdiction of the Decision Maker for sale pursuant to a simplified prospectus and annual information form which has been filed with and accepted by the Decision Maker.
3. The RSP Funds and the Underlying Funds (collectively, the **Funds**) will be reporting issuers. The units of the RSP Funds are to be qualified under a simplified prospectus and annual information form (collectively, the "Prospectus") or the equivalent under the Legislation, which Prospectus will contain disclosure with respect to the investment objective, investment practices and restrictions of the Funds. The investment objective of each RSP Fund shall include the name of its corresponding Underlying Fund. The RSP Funds are not in default of the requirements of the Legislation.
4. Each RSP Fund seeks to achieve its investment objective while ensuring that its units do not constitute **foreign property** under the *Income Tax Act* (Canada) (the **Tax Act**) for registered retirement savings plans, registered retirement income plans, and deferred profit sharing plans (**Registered Plans**).
5. To achieve its investment objective each RSP Fund invests its assets in securities such that its units will, in the opinion of tax counsel to the RSP Fund, be **qualified investments** for Registered Plans and will not constitute foreign property in a Registered Plan. This will primarily be achieved by the RSP Funds entering into derivative contracts with one or more financial institutions that link the returns to those of the Underlying Funds. However, each RSP Fund also intends to invest a portion of its assets in securities of an Underlying Fund. This investment by an RSP Fund will at all times be below the

maximum foreign property limit prescribed under the Tax Act for Registered Plans (the **Permitted Limit**).

6. **ABNS**, a financial institution which is an affiliate of the Manager, may be a Counterparty to the derivative contracts entered into by the RSP Funds.
7. Except for the transaction costs payable to BNS in relation to any forward contracts with it, none of the RSP Funds, the Underlying Funds, the Manager or any affiliate or associate of any of the foregoing will pay any fees or charges of any kind to any other related party in respect of a trade in such forward contracts.
8. The Prospectus will disclose the involvement of BNS in acting as Counterparty as well as all applicable charges in connection with any forward contracts with BNS.
9. The investment objectives of the Underlying Funds are achieved through investment primarily in foreign securities.
10. The investment by the RSP Funds in the Underlying Funds will be within the Permitted Limit. The Manager and the RSP Funds will comply with the conditions of this Decision in respect of such investments. The amount of direct investment by each RSP Fund in its corresponding Underlying Fund will be adjusted from time to time so that, except for transitional cash, the aggregate of the derivative exposure to, and direct investment in, the Underlying Fund will equal 100% of the assets of that RSP Fund.
11. Except to the extent evidenced by this Decision and specific approvals granted or to be granted by the Canadian securities administrators under National Instrument 81-102 (ANI 81-102"), the investment by each RSP Fund in an Underlying Fund will be structured to comply with the investment restrictions of the Legislation and NI 81-102.
12. The investments by the RSP Funds in securities of the Underlying Funds represent the business judgement of responsible persons uninfluenced by considerations other than the best interests of the Funds.
13. In the absence of this Decision, pursuant to the Legislation, each RSP Fund is prohibited from (a) knowingly making an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial securityholder; and (b) knowingly holding an investment referred to in subsection (a) hereof. As a result, in the absence of this Decision a RSP Fund would be required to divest itself of any investments referred to in subsection (a) herein.
14. In the absence of this Decision, the Legislation requires the Manager to file a report on every purchase or sale of securities of the Underlying Funds by the RSP Funds.

AND WHEREAS pursuant to the System this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the **Decision**);

AND WHEREAS each of the Decision Makers are 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 Applicable Requirements do not apply to the RSP Funds or the Manager, as the case may be, in respect of investments to be made by the RSP Funds in securities of the Underlying Funds and in respect of the Forward Contracts.

PROVIDED IN EACH CASE THAT:

4. The Decision as it relates to the jurisdiction of a Decision Maker, will terminate one year after the publication in final form of any legislation or rule of that Decision Maker dealing with the matters in subsection 2.5 of NI 81-102; and
5. the foregoing Decision shall only apply in respect of investments in, or transactions with, an Underlying Fund that are made by a RSP Fund in compliance with the following conditions:
 - (1) the investment by an RSP Fund in an Underlying Fund is compatible with the fundamental investment objective of such RSP Fund;
 - (2) the securities of the RSP Funds and the Underlying Funds are and will continue to be offered for sale in the jurisdiction of the Decision Maker pursuant to a prospectus which has been filed with and accepted by the Decision Maker;
 - (3) each RSP Fund restricts its aggregate direct investment in its Underlying Fund to a percentage of its assets that is within the Permitted Limit;
 - (4) the investment objectives in the Prospectus of the RSP Funds describe the intent of RSP Funds to invest in the specified Underlying Funds and shall name the Underlying Funds;
 - (5) the RSP Funds may change the Permitted Limit only if they change their fundamental investment objectives in accordance with the Legislation;
 - (6) if at any time, the assets of the RSP Funds that are invested in the Underlying Funds exceed the percentage limit permitted under the Decision the necessary changes are made in the RSP Funds=investment portfolio as at the next valuation date of the RSP Funds in order to bring the RSP Funds=investment portfolio into conformity with the aforesaid amount;
 - (7) there are compatible dates for the calculation of the net asset value of the RSP Fund and its Underlying Fund for the purpose of the issue and redemption of the securities of such mutual funds;
 - (8) in the event of the provision of any notice to securityholders of an Underlying Fund as required by the constating documents of that Underlying Fund or by the laws applicable to that Underlying Fund, such notice will also be delivered to the securityholders of the applicable RSP Fund; all voting rights attached to the securities of the Underlying Fund which are owned by an applicable RSP Fund will be passed through to the securityholders of the applicable RSP Fund.

- (9) if a securityholders meeting is called by the Underlying Fund in respect of a matter requiring securityholder approval under NI 81-102, all of the disclosure and notice material prepared in connection with such meeting will be provided to the securityholders of the RSP Fund and such securityholders will be entitled to direct a representative of the RSP Fund to vote the RSP Fund's holding in the Underlying Fund in accordance with their direction; and the representative of an RSP Fund will not be permitted to vote the RSP Fund's holdings in the Underlying Fund except to the extent the securityholders of the RSP Fund so direct;
- (10) no sales charges are payable by an RSP Fund in relation to its purchases of securities of an Underlying Fund;
- (11) no redemption fees or other charges are charged by an Underlying Fund in respect of the redemption by an RSP Fund of securities of that Underlying Fund owned by that RSP Fund;
- (12) the arrangements between or in respect of an RSP Fund and its Underlying Fund are such as to avoid the duplication of management fees;
- (13) as part of receiving the annual and, upon request, the semi-annual financial statements of an RSP Fund, securityholders of that RSP Fund will receive appropriate summary disclosure in respect of the RSP Fund's holdings of securities of the corresponding Underlying Fund;
- (14) copies of the simplified prospectus, annual information form and annual and semi-annual financial statements relating to the applicable Underlying Fund may be obtained upon request by a securityholder of the RSP Fund without charge and this fact will be disclosed in the Prospectus of the RSP Funds; and
- (15) the RSP Funds will not invest in an Underlying Fund whose investment objective includes investing directly or indirectly in other mutual funds.

AND PROVIDED THAT IN RESPECT OF investments by an RSP Fund in Forward Contracts, the Decision applies to investments in Forward Contracts of BNS as Counterparty, that are made in compliance with the following conditions:

- (1) the pricing terms offered by BNS to the RSP Funds under the forward contracts are at least as favourable as the terms committed by BNS to other third parties, which are of similar size as the RSP Funds;
- (2) prior to the RSP Funds entering into a forward contract transaction with BNS, the independent auditors of the RSP Funds will review the pricing offered by BNS to the RSP Funds against the pricing offered by BNS to other fund groups offering RSP Funds of similar size, to ensure that the pricing is at least as favourable;
- (3) the review by the independent auditors will be undertaken whenever the Prospectus is renewed and whenever it is proposed to amend the pricing and terms of such contract;
- (4) the RSP Funds' Prospectus discloses the independent auditors' role and their review of the forward contracts, as well as the involvement of BNS; and

- (5) the RSP Funds will enter into forward contracts with BNS only once confirmation of favourable pricing is received from the independent auditors or board of Trustees, as the case may be.

DATED at Toronto, Ontario this 13th day of December, 2000.

"J. A. Geller"

"D. A. Brown"
