

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – issuer granted an exemption from the prospectus and registration requirements in connection with trades made subsequent to the date of the decision document of negotiable promissory notes or commercial paper – issuer could not meet the "approved credit rating" requirement contained in the commercial paper exemption of National Instrument 45-106 Prospectus Exempt Distributions (NI 45-106) – the definition of an "approved credit rating" requires, among other things, that every rating received by an issuer be at or above a prescribed standard – concern expressed that the requisite rating thresholds in NI 45-106 are not equivalent among the rating agencies and that correlation among ratings are imperfect – there was also concern that the requisite ratings were not appropriate as applied to the commercial paper market –relief granted provided the commercial paper (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 commercial paper; 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 contains a sunset provision that the decision will terminate on the earlier of 90 days upon an amendment 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(1), 53(1), and 74(1).

April 11, 2006

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA, BRITISH COLUMBIA, ONTARIO, QUEBEC, NOVA SCOTIA,
MANITOBA, NEW BRUNSWICK, NEWFOUNDLAND AND LABRADOR,
PRINCE EDWARD ISLAND, AND SASKATCHEWAN
(the Jurisdictions)

AND

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

AND

IN THE MATTER OF
KELLOGG CANADA INC. (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 of unsecured short term promissory notes (**Notes**) of the Filer be exempt from the dealer registration and prospectus requirements of the Legislation (the **Requested Relief**).

Under the Mutual Reliance Review System for Exemptive Relief Applications (**MRRS**):

- (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 otherwise defined in this decision.

Representations

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

1. The Filer is a corporation under the *Canada Business Corporation Act* with a head office and principal office in Mississauga, Ontario. The Filer is not a reporting issuer in any of the Jurisdictions.
2. Subsection 2.35(1)(b) of National Instrument 45-106 *Prospectus Exempt Distributions (NI 45-106)* provides that exemptions from the dealer registration and prospectus requirements of the Legislation for short-term debt (the Short Term Debt Exemption) is available only where such short-term debt "has an approved credit rating from an approved credit rating organization." 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)*.
3. 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."
4. The Filer's Notes have received an "R-1(low)" rating from Dominion Bond Rating Service Limited (**DBRS**) which meets the prescribed threshold in NI 81-102.
5. The Filer's Notes do not, however, meet the "approved credit rating" in NI 81-102 because it has a rating of "F2" from Fitch Ratings Ltd. (**Fitch**) which is a lower rating than required by the Short Term Debt Exemption. Accordingly, section 2.35 of NI 45-106 is not available to the Filer.

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 the Notes:

- (a) mature 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 Notes; 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

"Paul Bates"
Commissioner
Ontario Securities Commission