

## Headnote

National Policy 11-203 – *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Filer granted exemption from the prospectus requirement in connection with trades of commercial paper/short term debt instruments that do not meet the rating threshold condition requirement of the short-term debt exemption in section 2.35 of National Instrument 45-106 – *Prospectus Exemptions* – Relief granted subject to conditions.

## Applicable Legislative Provisions

*Securities Act*, R.S.N.S. 1989, c. 418 and *Securities Act*, R.S.O 1990, c. S.5

February 9, 2023

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
NOVA SCOTIA AND ONTARIO  
(the Jurisdictions) AND IN THE MATTER OF  
THE PROCESS FOR EXEMPTIVE RELIEF  
APPLICATIONS IN MULTIPLE JURISDICTIONS AND IN THE MATTER OF  
NOVA SCOTIA POWER INCORPORATED  
(the Filer)**

## DECISION

### Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer under the securities legislation (the **Legislation**) of the Jurisdictions, in respect of certain negotiable promissory notes or commercial paper maturing not more than one year from the date of issue (**Notes**), that distributions of Notes issued by the Filer and offered for sale in Canada are exempt from the prospectus requirement under the Legislation (the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (a) the Nova Scotia Securities Commission is the principal regulator for this application;
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 - *Passport System (MI 11-102)* is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Prince Edward Island and Newfoundland and Labrador (the **Passport Jurisdictions**); and

- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

## Interpretation

In this decision, unless otherwise defined herein, terms defined in National Instrument 14-101 *Definitions* or MI 11-102 have the same meaning.

## Representations

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

1. Nova Scotia Power Incorporated (**NSPI**) is incorporated under the *Companies Act* (Nova Scotia). The head office of NSPI is located at 1223 Lower Water Street, Halifax, Nova Scotia, B3J 3S8.
2. The Filer is a reporting issuer or equivalent in the Jurisdictions and each Passport Jurisdiction and is not in default of securities legislation in any such jurisdiction.
3. The Filer has implemented a commercial paper program that involves the sale, from time to time, of Notes issued by the Filer to purchasers located in Canada.
4. The offering and sale of Notes issued by the Filer are subject to the prospectus requirement under the Legislation.
5. Sections 2.35(1)(b) and (c) of National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**) provides that an exemption from the prospectus requirement of the Legislation for short-term debt (the **CP Exemption**) is only available where such short-term debt: (a) “has a credit rating from a designated rating organization ... that is at or above” certain prescribed short-term ratings, and (b) “has no credit rating from a designated rating organization ... that is below” certain prescribed short-term ratings.
6. Prior to November 21, 2022 the Notes had a designated rating of “A-1 (Low)” from S&P Global Ratings (**S&P**) and “R-1 (low)” from DBRS Limited (**DBRS**), which satisfied the rating categories prescribed in the CP Exemption under sections 2.35(1)(b) and (c) of NI 45-106.
7. Accordingly, prior to November 21, 2022, the Notes were offered and sold in Canada pursuant to, and in accordance with, the CP Exemption.
8. On November 21, 2022, S&P downgraded the Notes to “A-3 (Cdn)” (the **S&P Downgrade**). On December 20, 2022, DBRS downgraded the Notes to R-2 (high), with a stable trend (the **DBRS Downgrade** and, together with the S&P Downgrade, the **Downgrades**). The Downgrades are lower ratings than those required by the CP Exemption. The Downgrades were in response to the amendment (Bill 212) made by the province of Nova Scotia to the *Public Utilities Act* that will override the process of the Nova Scotia Utility and Review Board and limit the increase in the Filer’s non-fuel rate to 1.8% until the end of 2024.

9. As a result of the Downgrades, the Filer is no longer able to rely on the CP Exemption for the distribution of Notes. Following the S&P Downgrade, the Filer ceased distribution of Notes under its commercial paper program.
10. All Notes will have a maturity not exceeding 365 days from the date of issuance, and will be sold in denominations of not less than \$250,000.
11. The Notes will be offered and sold in Canada only:
  - (a) through investment dealers registered, or exempt from the requirement to register, under applicable securities legislation in Canada (**Canadian Dealers**); and
  - (b) to persons or companies (**Canadian Qualified Purchasers**) that are “accredited investors” as defined in NI 45-106, other than those that are any of the following:
    - (i) an individual referred to in any of paragraphs (j), (j.1), (k) and (l) of that definition;
    - (ii) a person or company referred to in paragraph (t) of that definition in respect of which any owner of an interest, direct, indirect or beneficial, except the voting securities required by law to be owned by directors, is an individual referred to in any of paragraphs (j), (j.1), (k) and (l); and
    - (iii) a trust referred to in paragraph (w) of that definition.
12. The Filer will require each Canadian Dealer to apply procedures to ensure that sales of Notes by such Canadian Dealer, as well as any subsequent resales of previously issued Notes by such Canadian Dealer, are made only to Canadian Qualified Purchasers in accordance with paragraph 11 of this decision.

## **Decision**

Each of the Decision Makers is satisfied that the decision satisfies the test set out in the Legislation for the Decision Maker to make the decision.

1. The decision of the Decision Makers is that the Exemption Sought is granted in respect of the distribution of Notes, provided that:
  - (a) each Note:
    - (i) is not convertible or exchangeable into, or accompanied by a right to purchase, another security other than a Note;
    - (ii) is not a “securitized product”, as defined in NI 45-106;
    - (iii) is of a class of Notes that has a rating issued by a “designated rating organization” or a “DRO affiliate”, both as defined in NI 45-106, at or above one of the following rating categories:

<b>Designated Rating Organization</b>	<b>Rating</b>
DBRS Limited	R-2 (high)
Fitch Ratings, Inc.	F1
Moodv's Canada Inc.	P-1
S&P Global Ratings Canada	A-3 (Cdn) (Canada national scale)

and has no rating below:

<b>Designated Rating Organization</b>	<b>Rating</b>
DBRS Limited	R-2 (high)
Fitch Ratings, Inc.	F2
Moodv's Canada Inc.	P-2
S&P Global Ratings Canada	A-3 (Cdn) (Canada national scale)

- (b) each distribution of Notes is made:
- (i) to a purchaser that is purchasing as a principal and is a Canadian Qualified Purchaser; and
  - (ii) through a Canadian Dealer;
- (c) each Canadian Dealer has agreed to apply the procedures referred to in paragraph 12 of this decision;
- (d) for each jurisdiction of Canada, the Exemption Sought will terminate on February 9, 2028.

**NOVA SCOTIA SECURITIES COMMISSION**

(signed) "Paul E. Radford"

Paul E. Radford, K.C., Chair