

November 15, 2016

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO (THE JURISDICTION)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS
IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
VERSABANK
(THE FILER)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the principal regulator (the **Legislation**) exempting the Filer pursuant to section 9.1 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**) that the Proposed Transaction (as defined below) be exempt from:

- (a) the requirement set out in section 4.3 of MI 61-101 to obtain a formal valuation; and
- (b) the requirement set out in section 4.5 of MI 61-101 to obtain minority approval,

(collectively, the **Exemption Sought**).

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

- (a) the Ontario Securities Commission is the principal regulator for this application; and
- (b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in Québec.

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102, and MI 61-101 have the same meaning if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filer (and PWC (as defined below) in respect of paragraphs 7 to 14, 18 and 19, as they relate to PWC):

The Filer

1. The Filer is a Schedule I chartered bank incorporated and existing under the *Bank Act* (Canada) (the **Bank Act**) and is member institution of the Canada Deposit Insurance Corporation.
2. The Filer is a reporting issuer in all provinces and territories of Canada.
3. The Filer is not in default of any requirement of Canadian securities laws.
4. The Filer's share capital is comprised of (a) an unlimited number of common shares (the **VersaBank Common Shares**), (b) an unlimited number of Series 1 Preferred Shares (the **VersaBank Series 1 Preferred Shares**), and (c) an unlimited number of Series 3 Preferred Shares (the **VersaBank Series 3 Preferred Shares**). As at November 14, 2016, there are 20,095,065 VersaBank Common Shares, 1,461,460 VersaBank Series 1 Preferred Shares, and 1,681,320 VersaBank Series 3 Preferred Shares issued and outstanding.
5. Each of the VersaBank Common Shares, VersaBank Series 1 Preferred Shares and VersaBank Series 3 Preferred Shares are listed and posted for trading on the Toronto Stock Exchange (the **TSX**).
6. To the Filer's knowledge, as at November 14, 2016, no person or company beneficially owns, or exercises control or direction, directly or indirectly, over more than 10% of the VersaBank Common Shares other than
 - (a) PWC Capital Inc. (**PWC**), which owns 12,615,219 VersaBank Common Shares (representing, approximately, 62.8% of the issued and outstanding VersaBank Common Shares, and such 12,615,219 VersaBank Common Shares, the **VersaBank Inventory Shares**); and
 - (b) 340268 Ontario Inc. (**340**) and one of its directors, Patrick George, who own, in aggregate, 2,341,275 VersaBank Common Shares (representing approximately, 11.7% of the issued and outstanding VersaBank Common Shares).

PWC

7. PWC is a corporation incorporated and existing under the *Canada Business Corporations Act* (the **CBCA**).

8. PWC is a reporting issuer in all provinces and territories of Canada, other than Québec.
9. PWC is not in default of any requirement of Canadian securities laws.
10. The share capital of PWC is comprised of (a) an unlimited number of common shares (the **PWC Common Shares**), (b) an unlimited number of PWC Class A Preferred Shares (the **PWC Class A Preferred Shares**), and (c) an unlimited number of Class B Preferred Shares (the **PWC Class B Preferred Shares**). As at November 14, 2016, there are 44,592,260 PWC Common Shares, 314,572 PWC Class A Shares, and 1,094,058 PWC Class B Preferred Shares issued and outstanding. PWC also has an aggregate principal amount of \$61,686,000 of series C notes issued and outstanding (the **PWC Series C Notes**).
11. Each of the PWC Common Shares, PWC Class A Preferred Shares, PWC Class B Preferred Shares and PWC Series C Notes are listed and posted for trading on the TSX.
12. PWC has no business or operations and its sole material asset are the VersaBank Inventory Shares.
13. All members of management of PWC are also members of management of the Filer, and two of the six directors on the board of PWC (the **PWC Board**) are also directors and/or officers of the Filer.
14. PWC is a related party of the Filer as it beneficially owns, or exercises control or direction over, voting securities of the Filer carrying more than 10% of the voting rights attached to all of the Filer's issued and outstanding voting securities.

The Proposed Transaction

15. On September 12, 2016, the Filer and PWC jointly announced that they had agreed to merge by means of an amalgamation pursuant to section 228 of the Bank Act (the **Proposed Transaction**), with the name of the amalgamated entity (the **Bank**) being "VersaBank".
16. The Proposed Transaction is the result of a strategic review process that was announced by the Filer on March 7, 2016 and conducted under the supervision of an independent committee (the **Filer Independent Committee**) of the Filer's board of directors (the **Filer Board**), and with the advice of qualified and independent financial and legal advisors.
17. After reviewing and deliberating upon the other strategic opportunities reasonably available to the Filer, the Filer Independent Committee and the Filer Board are each of the belief, and have determined that, the Proposed Transaction represents the best available alternative for, and is in the best interests of, the Filer.

18. Immediately prior to the Proposed Transaction, PWC will effect a recapitalization transaction (the **PWC Recapitalization**) such that after giving effect thereto, PWC will have (a) no securities issued and outstanding, other than approximately 754,383,223 PWC Common Shares, and (b) no material actual or contingent liabilities.
19. For the purposes of MI 61-101, certain aspects of the PWC Recapitalization are related party transactions and the Proposed Transaction is a “business combination” for PWC. In accordance with MI 61-101, PWC will be seeking minority approval for the PWC Recapitalization and Proposed Transaction from holders of PWC Common Shares and will be providing to such holders a copy of the formal valuation prepared by Crosbie & Company Inc. in respect of the PWC Common Shares and the Bank Common Shares (as defined below) into which the PWC Common Shares will be converted.
20. Pursuant to the Proposed Transaction, among other things:
 - (a) all issued and outstanding PWC Common Shares will be converted into common shares of the Bank (**Bank Common Shares**) on the basis of one Bank Common Share for every 54.5087 PWC Common Shares;
 - (b) the VersaBank Inventory Shares which will be cancelled without any repayment of capital in respect thereof; and
 - (c) each issued and outstanding VersaBank Common Share other than the VersaBank Inventory Shares will be converted into one Bank Common Share, each issued and outstanding VersaBank Series 1 Preferred Share will be converted into one Series 1 preferred share of the Bank (**Bank Series 1 Preferred Share**), and each issued and outstanding VersaBank Series 3 Preferred Share will be converted into one Series 3 preferred share of the Bank (**Bank Series 3 Preferred Share**), in each case, with such securities of the Bank having the same attributes and characteristics as the applicable securities of the Filer immediately prior to the Proposed Transaction.
21. Accordingly, after giving effect to the Proposed Transaction, the share capital of the Bank will consist of (a) an unlimited number of Bank Common Shares, (b) an unlimited number of Bank Series 1 Preferred Shares, and (c) an unlimited number of Bank Series 3 Preferred Shares. The Filer expects that there will be 21,319,516 Bank Common Shares issued and outstanding immediately after giving effect to the Proposed Transaction, representing 1,224,451 (or approximately 6.1%) more Bank Common Shares issued and outstanding than the number of VersaBank Common Shares that were issued and outstanding immediately prior to the Proposed Transaction (such 1,224,451 Bank Common Shares, the **Effective Consideration**). 1,461,460 Bank Series 1 Preferred Shares and 1,681,320 Bank Series 3 Preferred Shares will be issued and outstanding after giving effect to the Proposed Transaction, being, in each case, the same number of VersaBank Series 1 Preferred Shares and

VersaBank Series 3 Preferred Shares, respectively, as were issued and outstanding prior to the Proposed Transaction.

22. Following completion of the Proposed Transaction, each of the Bank Common Shares, Bank Series 1 Preferred Shares, and Bank Series 3 Preferred Shares will assume the trading symbols currently assigned to such applicable class of securities of the Filer and remain listed and posted for trading on the TSX.
23. Pursuant to the Proposed Transaction, certain tax-loss carry forwards (the **TLCFs**), a non-material amount of cash, proprietary software that is the subject of a perpetual lease to the Filer, certain prepaid expenses, a non-material amount of accounts payable, Part VI tax (under the *Income Tax Act* (Canada)) and other accrued liabilities (collectively, the **Incremental Net Assets**), will be assumed by the Bank from PWC. The TLCFs comprise the majority of the value of the Incremental Net Assets.
24. Pursuant to requirements of the Bank Act, the Proposed Transaction is required be approved by not less than two thirds of the votes validly cast by holders of VersaBank Common Shares at a special meeting (the **VersaBank Special Meeting**) of holders of VersaBank Common Shares (the **VersaBank Common Shareholders**) to be held to consider the Proposed Transaction.
25. The amalgamation agreement in respect of the Proposed Transaction (the **Transaction Agreement**) is required to be approved by the Superintendent of the Office of Financial Institutions pursuant to section 225 of the Bank Act (the **OSFI Approval**) and the Proposed Transaction is required be approved by the Minister of Finance pursuant to section 228 of the Bank Act.
26. The Filer will prepare and mail an information circular (the **VersaBank Circular**) prepared in accordance with applicable securities law requirements, including the requirements set out in section 4.2 of MI 61-101.
27. Immediately prior to the Proposed Transaction, the VersaBank Common Shareholders other than PWC (the **Non-PWC VersaBank Common Shareholders**) will own approximately 37.2% of the issued and outstanding VersaBank Common Shares. After giving effect to the Proposed Transaction, the Non-PWC VersaBank Common Shareholders will own approximately 35.1% of the issued and outstanding Bank Common Shares, which represents an approximate 2.1% decrease in the interest of the Non-PWC VersaBank Common Shareholders in the Bank (as compared to their interest in the Filer).
28. Having regard to the approximately 62.8% of the outstanding VersaBank Common Shares owned by PWC immediately prior to the Proposed Transaction:
 - (a) the direct and indirect beneficial ownership in VersaBank Common Shares of 340, Mr. George and his family members immediately prior to the Proposed Transaction but after giving effect to the PWC Recapitalization will be approximately 42.8%; and

- (b) the direct and indirect beneficial ownership in Bank Common Shares of 340, Mr. George and his family members after giving effect to the Proposed Transaction will be approximately 42.9%.
29. The terms of the Proposed Transaction, including the valuation of the Incremental Net Assets and the determination that the Effective Consideration, being 1,224,451 Bank Common Shares, was the appropriate consideration for the Incremental Net Assets was approved by the Filer Board upon the recommendation of the Filer Independent Committee following arm's length negotiations between the Filer Independent Committee and the independent committee of the PWC Board, with the assistance of their respective independent financial and legal advisors.
30. The financial advisor retained by the Filer Independent Committee (the **Filer Financial Advisor**) has prepared and delivered a fairness opinion (the **Fairness Opinion**) to the Filer Independent Committee and the Filer Board concluding that the Effective Consideration to be paid for the Incremental Net Assets under the Proposed Transaction is fair, from a financial point of view, to the Filer.
31. The Filer Board, on the advice of the Filer Independent Committee and the Filer Financial Advisor, determined that in connection with the Proposed Transaction, the most appropriate manner of determining fairness to the Filer, from a financial point of view, was to look at the Effective Consideration to be paid for the Incremental Net Assets rather than an analysis of the value of the PWC Common Shares to be acquired and the Bank Common Shares to be issued therefor in connection with the Proposed Transaction, as the latter approach would not be relevant to holders of VersaBank Common Shares in their evaluation of the Proposed Transaction.
32. The Proposed Transaction will not have an adverse effect on the Filer or its shareholders, in particular, because:
- (a) the Filer Board does not expect that the Proposed Transaction will result in any adverse tax or other consequences to the Filer, the Bank or the beneficial holders of affected securities of the Filer or the Bank;
 - (b) no material actual or contingent liability of PWC will be assumed by the Filer or the Bank following the Proposed Transaction; and
 - (c) except in relation to the issuance of the Effective Consideration in consideration of the Incremental Net Assets as described herein, following the Proposed Transaction the nature and extent of the voting and financial participating interests of holders of the Non-PWC VersaBank Common Shareholders in the Bank will be the same as, and the value of their financial participating interests will not be less than, that of their interests in the Filer before the Proposed Transaction.
33. In order for the value of the Incremental Net Assets, and particularly the TLCFs, to be preserved, the Proposed Transaction had to be structured as an amalgamation.

34. If the Proposed Transaction was structured as (i) an acquisition by the Filer of the Incremental Net Assets and subsequent distribution by PWC of the Effective Consideration and VersaBank Inventory Shares in connection with the PWC Recapitalization, or (ii) an amalgamation of PWC with a wholly-owned subsidiary of the Filer (each, an **Alternative Transaction Structure**):
- (a) the Bank would have the exact same capital structure as will result pursuant to the Proposed Transaction as currently contemplated;
 - (b) the Proposed Transaction would not be a business combination for the purposes of MI 61-101;
 - (c) the Proposed Transaction would be a related party transaction for the purposes of MI 61-101; and
 - (d) the Bank would be entitled to rely on exemptions from the valuation and minority approval requirements available in paragraphs 5.5(a) and 5.7(1)(a) of MI 61-101 as the Effective Consideration to be issued in consideration for the Incremental Net Assets acquired from PWC represent approximately 6.1% of the issued outstanding Bank Common Shares (prior to giving effect to the issuance thereto), materially less than 25% of the Filer's market capitalization.

However, the Bank would be deprived of the majority of the positive pro forma financial value associated with the Incremental Net Assets so acquired from PWC.

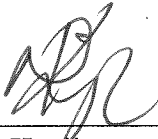
35. The Proposed Transaction is subject to a number of mechanisms to take into account the interests of all VersaBank Common Shareholders, including:
- (a) the establishment of the Filer Independent Committee to review, among other things, the Proposed Transaction;
 - (b) that the Filer Independent Committee obtained independent legal and financial advice, including the Fairness Opinion;
 - (c) that the VersaBank Special Meeting has been called and will be held for VersaBank Common Shareholders to consider, and if deemed advisable, approve the Proposed Transaction;
 - (d) that the VersaBank Circular will comply with the requirements of applicable securities law, including the requirements set out in section 4.2 of MI 61-101, and include the full text of the Fairness Opinion;
 - (e) that the Bank Act requires that the Proposed Transaction be approved by not less than two thirds of VersaBank Common Shareholders; and
 - (f) that the Proposed Transaction is subject to receipt of the OSFI Approval.

36. The business, operations and personnel (directors and management) of the Bank will be the same as those of the Filer immediately prior to the Proposed Transaction.
37. The attributes and characteristics of the Bank Common Shares will be identical in all respects to the attributes and characteristics of the VersaBank Common Shares.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted.



Naizam Karji
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