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December 5, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - *Securities Act* s. 130 - Relief from certain self-dealing restrictions in Part 15 of the Act - A mutual fund(s) wants relief from s. 121(2)(a) of the Act so that it can make or hold an investment in a person who is a substantial security holder of the mutual fund, its mutual fund manager or its mutual fund distributor or an associate of any of them - A mutual fund wants relief from the principal trading prohibitions in s. 128 of the Act to enable persons having access to information concerning the investment program of the fund to purchase or sell securities comprising the portfolio of the mutual fund - The portfolio of the mutual fund is fixed; the portfolio is passively managed; the mutual fund will purchase the securities at a predetermined time and at no more than the ask price of the securities on the exchange where the securities are listed. Independent directors of the mutual fund will approve all principal purchases and sales

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 121(2)(a), 128, 130

In the Matter of
the Securities Legislation of
Ontario, British Columbia, Alberta, Saskatchewan, Newfoundland and Labrador,
Nova Scotia and New Brunswick
(the Jurisdictions)

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of 5Banc Split Inc.

and

In the Matter of TD Securities Inc.

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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 Filers for decisions under the securities legislation (the Legislation) of the Jurisdictions that the following requirements contained in the applicable Legislation shall not apply to TD Securities Inc. (TD Securities) or 5Banc Split Inc. (the Issuer) (collectively, the Filers), as applicable, in connection with the offerings (the Offerings) of class B capital shares (the Capital Shares) and class B preferred shares (the Preferred Shares) of the Issuer:

- (a) The prohibitions contained in the Legislation prohibiting trading in portfolio shares by persons or companies having information concerning the trading programs of mutual funds (the Principal Trading Prohibitions) in connection with the Principal Sales and Principal Purchases (both as hereinafter defined); and
- (b) The restrictions contained in the Legislation prohibiting the Issuer from making and holding investments in the common shares Bank of Montreal, The Bank of Nova Scotia, Canadian Imperial Bank of Commerce, Royal Bank of Canada and The Toronto-Dominion Bank (the Banks), which banks are substantial security holders of BMO Nesbitt Burns Inc., Scotia Capital Inc., CIBC World Markets Inc., RBC Dominion Securities Inc. and TD Securities Inc., respectively (the “Related Agents”) and which are expected to be distribution companies of the Issuer (the Investment Restrictions) shall not apply to the Issuer in connection with the Offerings.

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:

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TD Securities

1. TD Securities is a direct, wholly-owned subsidiary of The Toronto-Dominion Bank and is registered under the Legislation as a dealer in the categories of “broker” and “investment dealer” and is a member of the Investment Dealers Association of Canada and a participant in the Toronto Stock Exchange (the TSX).
2. TD Securities is the promoter of the Issuer and will purchase, as agent for the benefit of the Issuer, the portfolio (the Portfolio) of common shares (the Portfolio Shares) of the Banks.
3. Pursuant to an agreement (the Agency Agreement) to be made between the Issuer, TD Securities and a syndicate of agents, the Issuer will appoint TD Securities and the other agents, as its Agents, to offer the Capital Shares and Preferred Shares of the Issuer on a best efforts basis and the final prospectus (the Final Prospectus) qualifying the Offerings will contain a certificate signed by the Agents in accordance with the Legislation. As discussed above, the syndicate is expected to include the Related Agents. The Banks are substantial security holders of the Related Agents and the Related Agents will be distribution companies of the Issuer.
4. Pursuant to an administration agreement (the Administration Agreement) to be entered into between TD Securities and the Issuer, the Issuer will retain TD Securities to administer the ongoing operations of the Issuer and will pay TD Securities a monthly fee of 1/12 of 0.20% of the market value of the Portfolio Shares held by the Issuer.
5. TD Securities’ economic interest in the Issuer and in the material transactions involving the Issuer are disclosed in the preliminary prospectus of the Issuer dated October 23, 2006 (the Preliminary Prospectus) and will be disclosed in the Final Prospectus under the heading “Interest of Management and Others in Material Transactions” and include the following:
 - (a) agency fees with respect to the Offerings;
 - (b) an administration fee under the Administration Agreement;
 - (c) commissions in respect of the acquisition of Portfolio Shares, the disposition of Portfolio Shares to fund a redemption, retraction or purchase for cancellation of the Capital Shares and Preferred Shares;

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- (d) reimbursement of expenses, in connection with the acquisition of Portfolio Shares; and
 - (e) amounts in connection with Principal Sales and Principal Purchases (as defined below).
6. TD Securities does not have knowledge of a material fact or material change with respect to any of the Portfolio Companies or the Banks that has not been generally disclosed.

The Issuer

7. The Issuer was incorporated on November 9, 2001 and is a reporting issuer under the Legislation. The Issuer is authorized to issue an unlimited number of Capital Shares, an unlimited number of Preferred Shares, an unlimited number of class A capital shares (the Class A Capital Shares), class C and class D capital shares, issuable in series, an unlimited number of class A preferred shares (the Class A Preferred Shares), class C and class D preferred shares, issuable in series, and an unlimited number of class E voting shares (the Class E Shares), having the attributes set forth under the headings “Description of Share Capital” and “Details of the Offerings” in the Preliminary Prospectus.
8. The Issuer is a passive investment company whose principal undertaking will be to invest the net proceeds of the Offerings in the Portfolio Shares in order to generate fixed cumulative preferential distributions for the holders of the Preferred Shares and to enable the holders of Capital Shares to participate in any capital appreciation in the Portfolio Shares and benefit from any increase in the dividends paid on the Portfolio Shares after payment of the expenses of the Issuer. The Issuer intends to pay quarterly dividends on the Capital Shares in an amount equal to the amount by which the dividends received by the Issuer on the Portfolio Shares exceed the distributions paid on the Preferred Shares and the expenses of the Issuer.
9. The Issuer was previously granted relief from the Principal Trading Prohibitions and the Investment Restrictions in connection with its initial public offering of the Class A Capital Shares and Class A Preferred Shares.
10. The Issuer is considered to be a mutual fund, as defined in the Legislation. Since the Issuer does not operate as a conventional mutual fund, it has made application for relief from certain requirements of National Instrument 81-102 Mutual Funds.

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11. It will be the policy of the Issuer to hold the Portfolio Shares and to not engage in any trading of the Portfolio Shares, except:
 - (i) to fund retractions or redemptions of Capital Shares and Preferred Shares;
 - (ii) following receipt of stock dividends on the Portfolio Shares;
 - (iii) in the event of a take-over bid for any of the Portfolio Shares;
 - (iv) if necessary, to fund any shortfall in distributions on the Preferred Shares;
 - (v) to meet obligations of the Issuer in respect of liabilities including extraordinary liabilities; or
 - (vi) certain other limited circumstances as described in the Preliminary Prospectus.
12. The Class E Shares are currently the only voting shares in the capital of the Issuer. There are currently and will be at the time of filing the Final Prospectus, 100 Class E Shares issued and outstanding. All of the issued and outstanding Class E Shares are held by 5Banc Split Trust, a trust established for the holders of the Preferred Shares and Capital Shares from time to time.
13. The Issuer has a Board of Directors which currently consists of six directors, four of whom are employees of TD Securities and two of whom are independent of TD Securities. Also, the offices of President/Chief Executive Officer and Chief Financial Officer/Secretary of the Issuer are held by employees of TD Securities.
14. Selected information with respect to the dividend and trading history of the Portfolio Shares and the market capitalization, dividend yield and historical total returns of the Banks has been disclosed in the Preliminary Prospectus and will be disclosed in the Final Prospectus.
15. The Portfolio Shares are listed and traded on the TSX.
16. The Issuer is not, and will not upon the completion of the Offerings be, an insider of any of the Banks within the meaning of the Legislation.

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17. The Issuer's investments in the Portfolio Shares represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Issuer.

The Offerings

18. There are currently 813,107 Class A Capital Shares and 813,107 Class A Preferred Shares of the Issuer issued and outstanding. The Class A Capital Shares and Class A Preferred Shares are scheduled to be redeemed by the Issuer on December 15, 2006 (the Class A Redemption Date) in accordance with their terms. A holder of Class A Capital Shares may choose to continue his or her investment in the Issuer by electing to receive Capital Shares of the Company as part of the Offerings in satisfaction of the redemption price payable for their Class A Capital Shares on the Class A Redemption Date.
19. The Issuer has filed a Preliminary Prospectus with the securities regulatory authority in each of the provinces of Canada in respect of the Offerings of Capital Shares and Preferred Shares.
20. The net proceeds of the Offerings (after deducting the agents' fees, expenses of issue and costs related to the acquisition of the Portfolio Shares) will be used by the Issuer to (i) fund the purchase of Portfolio Shares, to the extent necessary.
21. The Capital Shares and the Preferred Shares will be listed for trading on the TSX. An application requesting conditional listing approval has been made by the Issuer to the TSX.
22. The Capital Shares and Preferred Shares may be surrendered for retraction at any time in the manner described in the Preliminary Prospectus.
23. All Capital Shares and Preferred Shares outstanding on December 15, 2011 will be redeemed by the Issuer on such date and Capital Shares and Preferred Shares will be retractable at the option of the holder and redeemable at the option of the Issuer as described in the Preliminary Prospectus.

The Principal Trades

24. TD Securities will purchase, as agent for the benefit of the Issuer, Portfolio Shares in the market on commercial terms or from non-related parties with whom TD Securities and the Issuer deal at arm's length. Subject to receipt of all necessary regulatory approvals, TD Securities may, as principal, sell Portfolio Shares to the Issuer (the Principal Sales). The aggregate purchase

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price to be paid by the Issuer for the Portfolio Shares (together with costs and other expenses incurred in connection with the purchase of Portfolio Shares) will not exceed the net proceeds from the Offerings.

25. The Preliminary Prospectus discloses and the Final Prospectus will disclose that any Principal Sales will be made in accordance with the rules of the applicable stock exchange and the price paid by TD Securities (inclusive of all transaction costs, if any) will not be greater than the price which would have been paid (inclusive of all transaction costs, if any) if the acquisition had been made through the facilities of the principal stock exchange on which the Portfolio Shares are listed and posted for trading at the time of the purchase from TD Securities. TD Securities may realize a gain or a loss in respect of Portfolio Shares that it sells as principal to the Issuer in these circumstances. Any costs and other expenses incurred by TD Securities on behalf of the Issuer from the time of purchase of the Portfolio Shares will be for the account of the Issuer.
26. TD Securities will not receive any commissions from the Issuer in connection with the Principal Sales and all Principal Sales will be approved by the independent directors of the Issuer. In carrying out the Principal Sales, TD Securities will deal fairly, honestly and in good faith with the Issuer.
27. For the reasons set forth in Paragraphs 24, 25 and 26 above, in the case of the Principal Sales, the interests of the Issuer and the shareholders of the Issuer may be enhanced by insulating the Issuer from price increases in respect of the Portfolio Shares.
28. In connection with the services to be provided by TD Securities to the Issuer pursuant to the Administration Agreement, TD Securities may sell Portfolio Shares to pay a portion of the distributions payable on the Preferred Shares, to fund retractions of Capital Shares and Preferred Shares prior to the Redemption Date and in connection with the liquidation of the assets of the Issuer prior to the Redemption Date. These sales will be made by TD Securities as agent on behalf of the Issuer, but in certain circumstances, such as where a small number of Capital Shares and Preferred Shares have been surrendered for retraction, TD Securities may purchase Portfolio Shares as principal (the Principal Purchases) subject to receipt of all regulatory approvals.
29. In connection with any Principal Purchases, TD Securities will comply with the rules, procedures and policies of the applicable stock exchange of which it is a member and in accordance with orders obtained from all applicable securities regulatory authorities. The Preliminary Prospectus discloses and

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the Final Prospectus will disclose that TD Securities may realize a gain or loss on the resale of such securities. TD Securities will not receive any commissions from the Issuer in connection with Principal Purchases and, in carrying out the Principal Purchases, TD Securities shall deal fairly, honestly and in good faith with the Issuer.

30. The Administration Agreement will provide that TD Securities must take reasonable steps, such as soliciting bids from other market participants or such other steps as TD Securities, in its discretion, considers appropriate after taking into account prevailing market conditions and other relevant factors, to enable the Issuer to obtain the best price reasonably available for the Portfolio Shares so long as the price obtained (net of all transaction costs, if any) by the Issuer from TD Securities is at least as advantageous to the Issuer as the price which is available (net of all transaction costs, if any) through the facilities of the applicable stock exchange at the time of the trade.
31. All Principal Purchases will be approved by a majority of the independent directors of the Issuer.
32. At the time of making Principal Sales and/or Principal Purchases, TD Securities will not have any knowledge of a material fact or material change with respect to the Portfolio Companies that has not been generally disclosed.

Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the authority to make the decision has been met.

The decision of the Decision Makers is that the Principal Trading Prohibitions shall not apply to TD Securities in connection with the Principal Sales and Principal Purchases and that the Investment Restrictions shall not apply to investments by the Issuer in the Portfolio Shares in connection with the Offerings.

Susan Wolburgh Jenah
Vice-Chair
Ontario Securities Commission

Paul K. Bates
Commissioner
Ontario Securities Commission