2003 BCSECCOM 472

Headnote
Mutual Reliance Review System for Exemptive Relief Application – relief granted from independent underwriter requirement to permit registrant to underwrite 100% of notes issued by a related party, subject to conditions

Applicable British Columbia Provisions
National Instrument 33-105 *Underwriting Conflicts*, s. 5.1

IN THE MATTER OF THE SECURITIES LEGISLATION OF THE PROVINCES OF BRITISH COLUMBIA, ALBERTA, ONTARIO, QUÉBEC, NEW BRUNSWICK, NOVA SCOTIA, PRINCE EDWARD ISLAND AND NEWFOUNDLAND

AND

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

AND

IN THE MATTER OF NATIONAL BANK OF CANADA AND NATIONAL BANK FINANCIAL INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland (collectively, the "Jurisdictions") has received an application from National Bank Financial Inc. ("NBF") and National Bank of Canada (the "Issuer") (collectively, the "Filer") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirement contained in the Legislation regarding acting as an underwriter in connection with a distribution of securities of an issuer made by means of a prospectus where the issuer is a "related issuer" of the registrant (the "Independent Underwriter Requirements"), shall not apply to NBF in respect of the proposed distributions (the "Offerings") of an aggregate amount of up to $500,000,000 of NBC Ex-Tra Total Return Notes (the "Notes") of the Issuer to be made under a short form shelf prospectus (the "Prospectus") and prospectus supplements (the "Prospectus Supplements") expected to be filed with the Decision Maker in each of the Jurisdictions;

AND WHEREAS under the Mutual Reliance System for Exemptive Relief Applications (the "System"), the Commission des valeurs mobilières du Québec is the principal regulator for this application;

AND WHEREAS NBF has represented to the Decision Makers that:

1. The Issuer is a bank governed by the *Bank Act* (Canada). The Issuer's head office and principal place of business is located at 600 de la Gauchetière Street West, Montreal, Québec, H3B 4L2.

2. The Issuer is a "reporting issuer" or the equivalent not in default under the Legislation of all of the provinces of Canada.

3. NBF is registered as an unrestricted dealer under the Legislation of each of the Jurisdictions and has its head office and principal place of business in Québec.

4. NBF is a wholly-owned subsidiary of the Issuer.

5. NBF intends to act as exclusive agent in respect of the Offerings.

6. The proposed offering will consist of an aggregate principal amount of $500,000,000 of Notes, issuable in series, including Notes already issued. The Notes will not bear interest. The return on the Notes will be based on the increase or decrease in the Index Value between the issue date and the maturity date or, as the case may be, between the issue date and the redemption date.

7. On the specified maturity date, each holder of Notes of a series will be entitled to receive an amount equal to the Index Value (the "Index Value") in respect of each Note held by such Noteholder. Until maturity, the Index Value will be calculated weekly by reference to the return of the net asset value per unit of the Bank's External-Traders Program (the "Program") converted from US dollars to the specified currency.

8. The Program is a proprietary investment strategy managed by the Bank for its own funds and those of outside parties. The goal of the Program is to efficiently deploy capital among an optimal number of external highly-specialized trading advisors ("Trading Advisors") to maximize risk-adjusted returns through diversification and trader selection. Capital of the Notes will not be guaranteed.

9. The proposed offering has been structured by the Issuer and NBF in order to provide investors' access to the Program. Holders of Notes would have no

interest in the assets of the Program, but an entitlement under the Notes, enforceable against the Issuer, the value of which will be determined by the performance of the Program.

10. The Notes issued on the closing date under any Prospectus Supplement will be sold at a price per Note equal to the Index Value of the Note at that date.

11. The net asset value ("NAV") of the Program is the market value (both realized and unrealized) based on the closing prices as determined by the Program Manager, or any other price the Program Manager believes to be reliable and representative of the market value of all cash and money market instruments, of all open positions and commodities interest and all other assets held in the Program, minus all applicable liabilities of the Program computed daily in US dollars. The NAV per Unit is the NAV of the Program divided by the number of units then outstanding at the corresponding date.

12. Expenses borne by the Program and paid from assets will include: management and incentive fees of the Trading Advisors, brokerage fees, clearing fees, exchange fees, audit fees and borrowing costs. In general, the Program will pay to a Trading Advisor, out of the assets of the Program, a base fee of 1% of the allocated capital to such Trading Advisor and incentive fees of around 20% on the net profit realized and unrealized. Incentive fees are calculated for each Trading Advisor on a cumulative basis and, in case of losses, are not payable to such Trading Advisor until all prior net losses are recouped. In some instances, the return must exceed a certain benchmark before becoming payable. These fees and expenses will reduce the NAV per Unit and will therefore be reflected in the Index Value.

13. The Index Value will be reduced by a percentage per annum representing the Management Fee and the Service Fee at the end of each Calculation Period (the applicable rate will be prorated by the number of days in the Calculation Period). This reduction will reflect the Management Fee payable monthly that the Bank is entitled to receive to manage the Program and the Service Fee payable monthly by the Bank to investment advisors on record for their ongoing services to their clients. This Service Fee will be payable to each investment advisor on record on the last Business Day of the month for ongoing services to their clients equal to a percentage per annum of the average value of the Notes held by its clients (excluding Notes issued during that month) payable monthly on the 15th day of the following month. The Service Fee will not be payable on Notes redeemed during the month. The specific Management Fee and Service Fee payable will be set forth in the relevant Prospectus Supplement.

14. The issue price of each Offering, along with other information regarding each issue of Notes, including the aggregate principal amount of Notes being offered, the specified currency, the closing date, the issue price, the maturity date, the management fee, the service fee, the proceeds to the Bank and the Agent's remuneration will be set forth in the Prospectus Supplement that will accompany the Prospectus.

15. Since NBF is a wholly-owned subsidiary of the Issuer, the Issuer is a related issuer to NBF under the definition of "related issuer" under the Legislation.

16. In Québec, under decision 2003-C-0047 and in all other jurisdictions under National Instrument No. 33-105 ("NI 33-105"), subject to certain exceptions, a registrant may not act as an underwriter or agent in a distribution of securities of a related issuer unless, among other things, an independent underwriter receives a certain portion of the total agents' fees.

17. Because of the nature of the Notes, NBF will have no input in the pricing of the Notes. As indicated above, the Notes will be initially priced at the Index Value of the Notes on the first closing date. Thereafter, the price of issue of the Notes will be equal to the Index Value which will be calculated under a formula, as disclosed in the Prospectus.

18. An independent auditor has been retained on behalf of Note holders to audit, on a semi-annual basis, the financial statements of the Program, the NAV per Unit and the Index Value.

19. NBF as agent will not receive any benefit in connection with the Offerings other than the fee payable by the Issuer to NBF as agent.

20. The Prospectus contains the information specified in Appendix "C" of NI 33-105 on the basis that the Issuer is a "related issuer" of NBF, including disclosure concerning the nature of the relationship with the Issuer (the "Disclosure Requirements").

21. The Issuer is not and it is not expected that the Issuer could be in financial difficulty.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

AND WHEREAS 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 Issuer and NBF are exempt from the Independent Underwriter Requirements in connection with the Offerings, subject to compliance with the Disclosure Requirements.

June 17, 2003.

M[e] Guy Lemoine M[e] Mark M. Rosenstein