

# **2003 BCSECCOM 860**

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Application – amendment to previous order – previous order granted relief from independent underwriter requirement to permit registrant to underwrite 100% of notes issued by a related party, subject to conditions – representation concerning independent audit amended – financial statements not audited

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C.1996, c. 418, s. 171

National Instrument 33-105 *Underwriting Conflicts*

## **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.**

## **AMENDED 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”) to amend the Decision Document dated June 17, 2003 issued by the Decision Maker in the matter of the Filer pursuant to which 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

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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. All of the facts contained in the Decision Document dated June 17, 2003 are true and complete with the exception of Paragraph 18;
2. Since the inception of the Issuer’s External-Traders program (the “Program”), the financial statements of the Program have been prepared for internal purposes only and have never been remitted to Note holders. Note holders do not need to receive a copy of the financial statements, as they have no recourse against the assets of the Program. The Notes are a debt of the Issuer and do not entitle their holders to the underlying assets of the Program. The only relevant information to Note holders, in order for them to be able to determine the value of their Notes is the net asset value (“NAV”) per Unit and the corresponding index value (the “Index Value”).
3. The scope of the audit will not change with respect to the Index Value. As a result, the NAV per Unit and the Index Value will continue to be subject to a semi-annual audit by an independent auditor. Moreover, the auditors will issue a monthly review report of the Index Value.
4. Since the NAV per Unit and the Index Value will be subject to a semi-annual audit and since the Index Value will be subject to a monthly review by a firm of independent auditors, Note holders will be able to confirm the issuance price and the redemption price.

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: paragraph 18 of the Decision Document dated June 17, 2003 is amended and replaced by the following:

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“An independent auditor has been retained on behalf of Note holders to audit, on a semi-annual basis, the NAV per Unit, the management fees and the Index Value and to review, on a monthly basis, the Index Value.”

This 12<sup>th</sup> day of December, 2003.

Guy Lemoine

Jean-Marie Gagnon