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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief granted from prohibition against trading in portfolio securities by persons or companies having information concerning the trading programs of mutual funds – 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 determine, prior to the purchase and sale of the securities, that the terms and conditions (including the consideration to be paid) relating to the purchase and sale of the securities are reasonable and in the best interests of the mutual fund

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 130

IN THE MATTER OF THE SECURITIES LEGISLATION OF ONTARIO, BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, NEWFOUNDLAND AND LABRADOR, NOVA SCOTIA AND NEW BRUNSWICK

AND

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

AND

IN THE MATTER OF BMONT SPLIT CORP.

AND

IN THE MATTER OF SCOTIA CAPITAL INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Ontario, British Columbia, Alberta, Saskatchewan, Newfoundland and Labrador, Nova Scotia and New Brunswick (the “Jurisdictions”) has received an application from BMONT Split Corp. (the “Company”) and Scotia Capital Inc. (“Scotia Capital”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the prohibition contained in the Legislation prohibiting trading in portfolio shares by persons or companies having information concerning the trading programs of mutual funds

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(the “Principal Trading Prohibitions”) shall not apply to Scotia Capital in connection with its Principal Sales (as hereinafter defined) to, and Principal Purchases (as hereinafter defined) from, the Company;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions;

AND WHEREAS the Company and Scotia Capital have represented to the Decision Makers that:

The Company

1. The Company was incorporated on June 29, 2004 under the *Business Corporations Act* (Ontario).
2. The Company has filed a preliminary prospectus dated June 30, 2004 (the “Preliminary Prospectus” with the securities regulatory authority in each of the provinces of Canada in respect of the offerings (the “Offerings”) of class A capital shares (the “Capital Shares”) and class A preferred shares (the “Preferred Shares”) to the public.
3. The Company is a passive investment company whose principal undertaking will be to invest the net proceeds of the Offerings in a portfolio (the “Portfolio”) of common shares (the “BMO Shares”) of Bank of Montreal (“BMO”) 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 BMO Shares after payment of administrative and operating expenses of the Company. It will be the policy of the Board of Directors of the Company to pay dividends on the Capital Shares in an amount equal to the dividends received by the Company on the BMO Shares minus the distributions payable on the Preferred Shares and all administrative and operating expenses of the Company.
4. The Company is considered to be a mutual fund as defined in the Legislation, except in Québec. Since the Company does not operate as a conventional mutual fund, it has made application for a waiver from certain requirements of National Instrument 81-102 – Mutual Funds.

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5. The Capital Shares and Preferred Shares will be retractable at any time at the option of the holder and redeemable at the option of the Company in the manner described in the Preliminary Prospectus.
6. It will be the policy of the Company to hold the BMO Shares and to not engage in any trading of the BMO Shares, except:
 - (i) to fund retractions or redemptions of Capital Shares and Preferred Shares;
 - (ii) following receipt of stock dividends on the BMO Shares;
 - (iii) in the event of a take-over bid for any of the BMO shares;
 - (iv) if necessary, to fund any shortfall in distributions on the Preferred Shares;
 - (v) to meet obligations of the Company in respect of liabilities including extraordinary liabilities; or
 - (vi) certain other limited circumstances as described in the Preliminary Prospectus.
7. The Company intends to become a reporting issuer under the Legislation by filing a final prospectus (the "Final Prospectus") relating to the Offerings. Prior to the filing of the Final Prospectus, the Articles of Incorporation of the Company will be amended so that the authorized capital of the Company will consist of an unlimited number of Capital Shares, an unlimited number of Preferred Shares, an unlimited number of Class B, Class C, Class D and Class E capital shares, issuable in series, an unlimited number of Class B, Class C, Class D and Class E preferred shares, issuable in series, an unlimited number of Class J Shares and an unlimited number of Class S Shares, each having the attributes set forth under the headings "Description of Share Capital" and "Details of the Offerings" in the Preliminary Prospectus.
8. The Class J Shares are currently the only voting shares in the capital of the Company. At the time of filing the Final Prospectus, there will be 150 Class J Shares issued and outstanding. Multibanc Financial Holdings Limited ("Multibanc") will own all of the issued and outstanding Class J Shares of the Company. E. Duff Scott and John B. Newman each own 50% of the Class A common shares of Multibanc (the "Holdings Shares"). Scotia Capital owns all of the Class B non-voting common shares of Multibanc. Neither Mr. Scott nor Mr. Newman is an employee or director of Scotia Capital.

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9. All of the Class J Shares of the Company will be lodged in escrow with Computershare Trust Company of Canada (“Computershare”) pursuant to an agreement dated the closing date of the Offerings among Multibanc, Computershare and the Company and all of the Holdings Shares will be lodged in escrow with Computershare pursuant to an agreement to be dated the closing date of the Offerings among the holders thereof, Multibanc and Computershare (collectively, the “Escrow Agreements”). Under the Escrow Agreements, none of the Class J Shares or the Holdings Shares may be disposed of or dealt with in any manner until all of the Capital Shares and Preferred Shares have been retracted or redeemed, without the express consent, order or direction of the applicable securities regulatory authorities except that the Holdings Shares may be pledged to a Canadian chartered bank as collateral to secure a bona fide bank debt.
10. The Company has a Board of Directors which currently consists of three directors. All of the directors are employees of Scotia Capital. Also, the offices of President/Chief Executive Officer and Chief Financial Officer/Secretary of the Company are held by employees of Scotia Capital. At least two additional, independent directors will be appointed to the Board of Directors of the Company prior to the filing of the Final Prospectus.
11. The BMO Shares are listed and traded on the Toronto Stock Exchange (the “TSX”) and the New York Stock Exchange.
12. The Company is not, and will not upon the completion of the Offerings be, an insider of BMO within the meaning of the Legislation.

The Offerings

13. The net proceeds from the sale of the Capital Shares and Preferred Shares under the Final Prospectus, after payment of commissions to the Agents (as hereinafter defined), expenses of issue and carrying costs relating to the acquisition of the BMO Shares, will be used by the Company to: (i) pay the acquisition cost (including any related costs or expenses) of the BMO Shares; and (ii) pay the initial fee payable to Scotia Capital for its services under the Administration Agreement (as hereinafter defined).
14. The Final Prospectus will disclose the acquisition cost to the Company of the BMO Shares and selected financial information and dividend and trading history of the BMO Shares.
15. Application will be made to list the Capital Shares and Preferred Shares on the TSX.

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16. All Capital Shares and Preferred Shares outstanding on a date approximately five years from the closing of the Offerings, which date will be specified in the Final Prospectus, will be redeemed by the Company on such date (the “Redemption Date”).

Scotia Capital

17. Scotia Capital was incorporated under the laws of the Province of Ontario and is a direct, wholly-owned subsidiary of The Bank of Nova Scotia. Scotia Capital 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 the TSX.
18. Scotia Capital is the promoter of the Company and will be establishing a credit facility in favour of the Company in order to facilitate the acquisition of the BMO Shares by the Company.
19. Pursuant to an agreement (the “Agency Agreement”) to be made between the Company and Scotia Capital, BMO Nesbitt Burns Inc., National Bank Financial Inc., TD Securities Inc., HSBC Securities (Canada) Inc., Canaccord Capital Corporation, Desjardins Securities Inc. and Raymond James Ltd. (collectively, the “Agents” and individually, an “Agent”), the Company will appoint the Agents, as its agents, to offer the Capital Shares and Preferred Shares of the Company on a best efforts basis and the Final Prospectus qualifying the Offering will contain a certificate signed by each of the Agents in accordance with the Legislation.
20. Pursuant to an administration agreement (the “Administration Agreement”) to be entered into between Scotia Capital and the Company, the Company will retain Scotia Capital to administer the ongoing operations of the Company and will pay Scotia Capital a quarterly fee of 1/4 of 0.20 % of the market value of the BMO Shares held by the Company.
21. Scotia Capital’s economic interest in the Company and in the material transactions involving the Company are disclosed in 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 Offering;
 - (b) an administration fee under the Administration Agreement;

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- (c) commissions in respect of the acquisition of BMO Shares, the disposition of BMO Shares to fund a redemption, retraction or purchase for cancellation of the Capital Shares and Preferred Shares;
- (d) interest and reimbursement of expenses, in connection with the acquisition of BMO Shares; and
- (e) amounts in connection with Principal Sales and Principal Purchases (as described in paragraphs 22 and 27 below).

The Principal Trades

- 22. Pursuant to an agreement (the “Securities Purchase Agreement”) to be entered into between the Company and Scotia Capital, Scotia Capital will purchase, as agent for the benefit of the Company, BMO Shares in the market on commercial terms or from non-related parties with whom Scotia Capital and the Company deal at arm’s length. Subject to receipt of all necessary regulatory approvals, Scotia Capital may, as principal, sell BMO Shares to the Company (the “Principal Sales”). The aggregate purchase price to be paid by the Company for the BMO Shares (together with carrying costs and other expenses incurred in connection with the purchase of BMO Shares) will not exceed the net proceeds from the Offerings.
- 23. Under the Securities Purchase Agreement, Scotia Capital may receive commissions at normal market rates in respect of its purchase of BMO Shares, as agent on behalf of the Company, and the Company will pay any carrying costs or other expenses incurred by Scotia Capital, on behalf of the Company, in connection with its purchase of BMO Shares as agent on behalf of the Company. In respect of any Principal Sales made to the Company by Scotia Capital as principal, Scotia Capital may realize a financial benefit to the extent that the proceeds received from the Company exceed the aggregate cost to Scotia Capital of such BMO Shares. Similarly, the proceeds received from the Company may be less than the aggregate cost to Scotia Capital of the BMO Shares and Scotia Capital may realize a financial loss, all of which is disclosed in the Preliminary Prospectus and will be disclosed in the Final Prospectus.
- 24. 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 Scotia Capital (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 BMO

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Shares are listed and posted for trading at the time of the purchase from Scotia Capital.

25. Scotia Capital will not receive any commissions from the Company in connection with the Principal Sales and all Principal Sales will be approved by the independent directors of the Company. In carrying out the Principal Sales, Scotia Capital shall deal fairly, honestly and in good faith with the Company.
26. For the reasons set forth in paragraphs 22 and 23 above, and the fact that no commissions are payable to Scotia Capital in connection with the Principal Sales, in the case of the Principal Sales, the interests of the Company and the shareholders of the Company may be enhanced by insulating the Company from price increases in respect of the BMO Shares.
27. In connection with the services to be provided by Scotia Capital to the Company pursuant to the Administration Agreement, Scotia Capital may sell BMO Shares to fund retractions of Capital Shares and Preferred Shares prior to the Redemption Date and upon liquidation of the BMO Shares in connection with the final redemption of Capital Shares and Preferred Shares on the Redemption Date. These sales will be made by Scotia Capital as agent on behalf of the Company, but in certain circumstances, such as where a small number of Capital Shares and Preferred Shares have been surrendered for retraction, Scotia Capital may purchase BMO Shares as principal (the "Principal Purchases") subject to receipt of all regulatory approvals.
28. In connection with any Principal Purchases, Scotia Capital 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 the Final Prospectus will disclose that Scotia Capital may realize a gain or loss on the resale of such securities.
29. The Administration Agreement will provide that Scotia Capital must take reasonable steps, such as soliciting bids from other market participants or such other steps as Scotia Capital, in its discretion, considers appropriate after taking into account prevailing market conditions and other relevant factors, to enable the Company to obtain the best price reasonably available for the BMO Shares so long as the price obtained (net of all transaction costs, if any) by the Company from Scotia Capital is at least as advantageous to the Company 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.

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30. Scotia Capital will not receive any commissions from the Company in connection with Principal Purchases and all Principal Purchases will be approved by the independent directors of the Company. In carrying out the Principal Purchases, Scotia Capital shall deal fairly, honestly and in good faith with the Company.
31. At the time of making Principal Sales and/or Principal Purchases, Scotia Capital will not have any knowledge of a material fact or material change with respect to BMO that has not been generally disclosed.

AND WHEREAS under MRRS, 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 pursuant to the Legislation is that the Principal Trading Prohibitions shall not apply to Scotia Capital in connection with the Principal Sales and Principal Purchases.

DATED August 3, 2004.

Robert L. Shirriff

H. Lorne Morphy