

# **2003 BCSECCOM 779**

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – relief granted from certain mutual fund reporting requirements and self-dealing prohibitions to permit a Top Fund to invest in securities of Underlying Funds, subject to certain conditions

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 121(2)(b), 123, 126(a) and (d) and 130

## **IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, AND ONTARIO**

**AND**

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

**AND**

## **IN THE MATTER OF NATIONAL BANK SECURITIES INC. ("NBS" or the "Manager")**

**AND**

## **IN THE MATTER OF NATIONAL BANK MONTHLY INCOME FUND (The "Top Fund")**

## **MRRS DECISION DOCUMENT**

WHEREAS the securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan and Ontario (the "Jurisdictions") has received an application from NBS as manager of the Top Fund for a decision by each Decision Maker under the securities legislation of the Jurisdictions (the "Legislation") that the following provisions of the Legislation (the "Applicable Requirements ") shall not apply to the Top Fund or NBS, as the case may be, in respect of the Top Fund's investments in securities of National Bank High Yield Bond Fund or of other mutual funds, managed by NBS or any of its affiliates, in which the Top Fund may choose to invest (individually, the "Underlying Fund", collectively, the "Underlying Funds"):

1. the restrictions contained in the Legislation that prohibit a mutual fund from knowingly making or holding an investment in a person or company in which

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the mutual fund, alone or together with one or more related mutual funds, is a substantial securityholder; and

2. the requirements contained in the Legislation that a management company or, in British Columbia, a mutual fund manager, file a report of every transaction of purchase or sale of securities between a mutual fund it manages and any related person or company and any transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, a mutual fund is a joint participant with one or more of its related persons or companies.

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 Manager has represented to the Decision Makers that:

1. The Top Fund will be an open-end mutual fund trust established under the laws of the Province of Ontario, and will be a reporting issuer in each of the Jurisdictions. Units of the Top Fund will be qualified for distribution under a simplified prospectus and annual information form (the “Prospectus”) filed in each of the Jurisdictions. A preliminary prospectus has been filed in the Jurisdictions under SEDAR Project No. 577869.
2. The Underlying Funds are open-end mutual fund trusts established under the laws of the Province of Ontario, and are reporting issuers in each of the Jurisdictions. Securities of the Underlying Funds are qualified for distribution under a simplified prospectus and annual information form filed in each of the Jurisdictions .
3. The Manager is a corporation incorporated under the *Canada Business Corporations Act*. The Manager’s head office is located in Montreal, Quebec. The Manager is the manager of the Top Fund and the Underlying Funds.
4. The Prospectus will disclose the relationship of the Manager to the Top Fund and the Underlying Funds, the fact that the Top Fund may purchase securities of the Underlying Funds, the approximate percentage of net assets that may be dedicated to these purchases, and the criteria for selection of funds in which assets of the Top Fund may be invested.

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5. The Top Fund will be actively managed, and may seek to achieve its investment objective by investing a portion of its assets in National Bank High Yield Bond Fund. The remaining portion of the assets of the Top Fund will be invested primarily in bonds, debentures, mortgage-backed securities, money market instruments, preferred and common shares and income trust units issued by both Canadian and foreign companies. The Top Fund may choose to invest more than 10% of its assets in securities of National Bank High Yield Bond Fund in order to achieve its investment objective. The portfolio manager of the Top Fund will have the discretion to vary the Top Fund's asset mix in response to market conditions in order to achieve the best overall return. The portfolio manager of the Top Fund will also have the discretion to buy and sell securities of other Underlying Funds, selected in accordance with the Top Fund's investment objective, as well as alter its holdings in any of the Underlying Funds in which it invests.
6. Except to the extent evidenced by this Decision and specific approvals granted by the Decision Makers pursuant to National Instrument 81-102 – Mutual Funds ("NI 81-102"), the investments by the Top Fund in the Underlying Funds will comply with the investment restrictions of the Legislation and NI 81-102.
7. In the absence of this Decision, the Top Fund would be prohibited from knowingly making or holding an investment in Underlying Funds in which the Top Fund, alone or together with one or more related mutual funds, is a substantial security holder.
8. In the absence of this Decision, NBS would be required to file a report of every transaction of purchase or sale by the Top Fund of the securities of the Underlying Funds.
9. The Top Fund's investment in securities of the Underlying Funds will represent the business judgement of responsible persons uninfluenced by considerations other than the best interests of the Top Fund.

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 Applicable Requirements shall not apply so as to prevent the Top Fund from

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making and holding investments in securities of the Underlying Funds, or require NBS to file a report relating to the purchase or sale of such securities;

### **PROVIDED IN EACH CASE THAT:**

1. The Decision, as it relates to the jurisdiction of a Decision Maker, will terminate one year after the publication in final form of any legislation or rule of that Decision Maker dealing with matters in section 2.5 of NI 81-102.
2. The Decision shall only apply if, at the time the Top Fund makes or holds an investment in the Underlying Funds, the following conditions are satisfied:
  - (a) Each Underlying Fund is subject to NI 81-102 and National Instrument 81-101 – Mutual Fund Prospectus Disclosure;
  - (b) The securities of the Top Fund and the securities of an Underlying Fund are qualified for distribution in the local jurisdiction;
  - (c) At the time the Top Fund purchases securities of an Underlying Fund, the Underlying Fund does not hold more than 10% of the market value of its net assets in securities of other mutual funds. An Underlying Fund may however hold more than 10% of the market value of its net assets in securities of other mutual funds where the Underlying Fund (i) is an RSP clone fund, or (ii) purchases or holds securities of a money market fund or securities that are index participation units issued by a mutual fund;
  - (d) The Top Fund shall disclose in its simplified prospectus under the “Fees and Expenses” section, that there are fees and expenses payable by the Underlying Fund in addition to the fees and expenses payable by the Top Fund;
  - (e) No management fees or incentive fees are payable by the Top Fund that, to a reasonable person, would duplicate a fee payable by an Underlying Fund for the same service and this information is disclosed in the simplified prospectus of the Top Fund under the “Fees and Expenses” section;
  - (f) No sales fees or redemption fees are payable by the Top Fund in relation to its purchases or redemptions of the securities of an Underlying Fund and this information is disclosed in the simplified prospectus of the Top Fund under the “Fees and Expenses” section;

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- (g) No sales fees or redemption fees are payable by the Top Fund in relation to its purchases or redemptions of the securities of an Underlying Fund that, to a reasonable person, would duplicate a fee payable by an investor in the Top Fund and this information is disclosed in the simplified prospectus of the Top Fund under the “Fees and Expenses” section;
- (h) If the Top Fund holds securities of an Underlying Fund, the Top Fund,
  - (i) shall not vote any of those securities;
  - (ii) may, if the Manager so chooses, arrange for all of the securities it holds of the Underlying Fund to be voted by the beneficial holders of securities of the Top Fund; and
  - (iii) shall disclose the above information in the simplified prospectus of the Top Fund under the “Organization and Management Details” section;
- (i) The Top Fund and the Underlying Fund must have dates for the calculation of net asset value that are compatible;
- (j) The Top Fund shall disclose in its simplified prospectus under the “Investment Strategies” section:
  - (i) whether the Top Fund intends to purchase securities of, or enter into specified derivative transactions for which the underlying interest is based on securities of, one or more Underlying Funds;
  - (ii) that the Underlying Funds are managed by the Manager or an affiliate of the Manager;
  - (iii) what percentage of net assets of the Top Fund is dedicated to the investment in the securities of, or the entering into of specified derivative transactions for which the underlying interest is based on the securities of, Underlying Funds; and
  - (iv) the process or criteria used to select an Underlying Fund;
- (k) The Top Fund shall disclose in its simplified prospectus under the “Top Ten Holdings” section, a statement to the effect that the simplified prospectus and other information about the Underlying Funds are available on the internet at [www.sedar.com](http://www.sedar.com); and

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- (1) If more than 10% of the securities of an Underlying Fund is held by the Top Fund, the Underlying Fund must disclose under the “Risks” section of its simplified prospectus, the percentage of securities held by the Top Fund as at a date within 30 days of the date of the simplified prospectus of the Top Fund. The Underlying Fund must also disclose the risks associated with a possible redemption requested by the Top Fund.

DATED November 14, 2003

Robert W. Davis

Wendell S. Wigle