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October 22, 2008

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 manager wants relief from the requirement in section 126(c) of the Act to report any purchase or sale effected through a related person of the mutual fund - The portfolio advisers of the mutual funds have discretion to allocate brokerage business in any manner consistent with the fund's best interests; the allocation of brokerage business represents the business judgement of responsible persons uninfluenced by considerations other than the best interests of the mutual funds; the management report of fund performance for the funds will disclose the names of and fees paid to related persons; the fund's records of portfolio transactions will include information about purchases or sales effected through a related person on a per transaction basis

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,
New Brunswick, Nova Scotia and Newfoundland and Labrador
(the Jurisdictions)

and

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

and

In the Matter of
National Bank Securities Inc., Altamira Investment Services Inc.,
NBF Emissary Turnkey Solution LP, Natcan Investment Management Inc.,
ING Investment Management, Inc., Howson Tattersall Investment Counsel
Limited, National Bank Trust Inc. and National Bank Financial Inc.
(the Filers)

MRRS Decision Document

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Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filers for a decision, under the securities legislation of the Jurisdictions (the Legislation), that provisions of the Legislation requiring a management company, or in British Columbia and New Brunswick, a mutual fund manager, to file a report within thirty days after each month end in respect of each mutual fund to which it provides services, relating to every purchase or sale effected by such mutual fund through any related person or company with respect to which the related person or company received a fee either from the mutual fund or from the other party to the transaction or both (the Reporting Requirement) shall not apply to the Portfolio Advisors (as defined below) in respect of purchases and sales effected by the Funds (as defined below) through any Related Dealer (as defined below) (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications (MRRS):

- (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.

AISI means Altamira Investment Services Inc.

Funds means the National Bank Mutual Funds, Omega Funds, Altamira Funds, Meritage Portfolios, Emissary Funds, Diplomat Portfolios and any other future mutual fund managed by the Managers for which a Portfolio Advisor acts as a “management company” as such term is defined in the Legislation or, in British Columbia and New Brunswick, for which a Portfolio Advisor acts as a mutual fund manager.

Howson Tattersall means Howson Tattersall Investment Counsel Limited.

ING means ING Investment Management, Inc.

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Managers means AISI, NBSI and NBF Emissary.

MRFPs means management reports of fund performance.

NBF Emissary means NBF Emissary Turnkey Solution LP.

NBF Inc. means National Bank Financial Inc.

NB Related Dealers means National Bank Financial Ltd., NBF Inc., National Bank Discount Brokerage Inc., NBCN Inc., NBF International S.A., NBF Securities (USA) Corp., PI Financial Corp., Putnam Lovell NBF Securities Inc. and any other related broker or dealer that is a subsidiary of National Bank of Canada.

NBSI means National Bank Securities Inc.

NI 81-106 means National Instrument 81-106 *Investment Fund Continuous Disclosure*.

Natcan means Natcan Investment Management Inc.

Natcan Trust means Natcan Trust Company.

NBT means National Bank Trust Inc.

Portfolio Advisors means Natcan, NBF Inc., ING, Howson Tattersall and NBT and any other portfolio manager or sub-advisor to the Funds appointed by a Manager.

Related Dealers means the NB Related Dealers and any other broker or dealer that is an affiliate of a Portfolio Advisor.

Representations

This Decision is based on the following facts represented by the Filers:

1. NBSI is a corporation existing under the laws of Canada with its head office in Montreal and is the manager of the National Bank Mutual Funds and Omega Funds.
2. AISI is a corporation existing under the laws of Canada with its head office in Toronto and is the manager of the Altamira Funds and Meritage Portfolios.

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3. NBF Emissary is a limited partnership existing under the laws of Ontario with its head office in Toronto and is the manager of the Emissary Funds and Diplomat Portfolios.
4. The Funds are or will be mutual funds that are reporting issuers in each province and territory of Canada.
5. Natcan is a corporation existing under the laws of Quebec and is the portfolio manager for the National Bank Mutual Funds, certain Omega Funds, and certain Altamira Funds. It is registered as an investment counsel and portfolio manager (or equivalent) under the securities legislation of each province and territory of Canada, other than Prince Edward Island, Nunavut and the Yukon.
6. ING is a corporation existing under the laws of Canada and is the portfolio manager for certain Omega Funds. It is registered as an investment counsel and portfolio manager (or equivalent) under the securities legislation of Ontario, British Columbia and Quebec.
7. Howson Tattersall is a corporation existing under the laws of Canada and is the portfolio manager for certain Altamira Funds. It is registered as an investment counsel and portfolio manager (or equivalent) under the securities legislation of each province and territory of Canada.
8. NBT is a trust company existing under the laws of Quebec and is the portfolio manager for the Meritage Portfolios. It is registered as an investment counsel and portfolio manager (or equivalent) under the securities legislation of Quebec, Alberta, British Columbia, Ontario, Saskatchewan, Prince Edward Island and New Brunswick. Previously, Natcan Trust acted as the portfolio manager for the Meritage Portfolios.
9. NBF Inc. is a corporation existing under the laws of Ontario and is the portfolio manager for the Emissary and Diplomat Portfolios. It is registered as an investment dealer under the securities legislation of each province and territory of Canada.
10. Each of the Portfolio Advisors qualifies as a “management company” or equivalent under the Legislation.
11. National Bank Financial Ltd., NBF Inc., NBCN Inc. and National Bank Discount Brokerage Inc. are affiliates of the Managers who are permitted to act as dealers in various Canadian jurisdictions. National Bank Financial Ltd. is registered as an investment dealer under the securities legislation of all provinces and territories of Canada, other than Quebec and New Brunswick,

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and National Bank Discount Brokerage Inc. is registered as an investment dealer under the securities legislation of all provinces of Canada, other than Newfoundland and Labrador. NBCN Inc. is registered as an investment dealer under the securities legislation of all provinces and territories of Canada. NBF International S.A., NBF Securities (USA) Corp., PI Financial Corp. and Putnam Lovell NBF Securities Inc. are affiliates of the Managers who act as dealers in foreign jurisdictions.

12. Each of the NB Related Dealers, the Managers and certain of the Portfolio Advisors are subsidiaries of National Bank of Canada. The Related Dealers, other than the NB Related Dealers, are affiliates of the other Portfolio Advisors. As a result, the Related Dealers are "related persons or companies" to the Funds within the meaning of the Legislation.
13. As disclosed in the annual information forms or prospectuses of the Funds, the Portfolio Advisors may allocate brokerage business of the Funds to a Related Dealer, provided that such transactions are made on terms and conditions comparable to those offered by unrelated brokers and dealers.
14. The Portfolio Advisors of the Funds have discretion to allocate the brokerage transactions of each Fund in any manner that they believe to be in the Fund's best interests. The purchase or sale of securities effected through a Related Dealer represents the business judgement of the Portfolio Advisors uninfluenced by considerations other than the best interests of the Funds. In allocating brokerage transactions, consideration is given to commission rates and to research, execution and other services offered.
15. The introduction of NI 81-106 on June 1, 2005 has resulted in the Funds having to disclose in their interim and annual MRFPs any transactions involving Related Dealers. The Reporting Requirement, however, obligates the Portfolio Advisors to make essentially the same disclosure within 30 days of the end of any month in which such a transaction occurs in respect of the Funds.
16. Pursuant to NI 81-106 the Funds prepare and file interim and annual MRFPs that disclose any transactions involving the Related Dealers, including the identity of the Related Dealer, its relationship to the Fund, the purpose of the transaction, the measurement basis used to determine the recorded amount and any ongoing commitments to the Related Dealer. A discussion of portfolio transactions with a Related Dealer must include the dollar amount of commission, spread or any other fee that the Fund paid to any Related Dealer in connection with the transaction.

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17. Although the Meritage Portfolios and the Emissary Funds have filed MRFPs disclosing transactions involving the Related Dealers, NBT (and its predecessor Natcan Trust) has inadvertently failed to comply with the Reporting Requirement in respect of fund-of-fund trades made through Related Dealers on behalf of the Meritage Portfolios and NBF Inc. has inadvertently failed to comply with the Reporting Requirement in respect of trades made through Related Dealers on behalf of the Emissary Funds.
18. In the absence of the Requested Relief, the Reporting Requirement would obligate the Portfolio Advisors to prepare a report of any purchase or sale of securities by a Fund that is effected through a Related Dealer and file the report with the Decision Makers within 30 days of the end of the month in which the transaction occurs. This report would have to disclose the issuer of the securities purchased or sold, the class or designation of the securities, the amount or number of securities, the consideration, the name of the Related Dealer receiving a fee, the name of the person or company that paid the fee to the Related Dealer and the amount of the fee received by the Related Dealer.
19. It would be costly and time consuming for the Portfolio Advisors to provide the information required by the Reporting Requirement on a monthly and segregated basis for each Fund.

Decision

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 Requested Relief is granted provided that:

- (a) the annual and interim MRFP for each Fund disclose
 - (i) the name of the Related Dealer,
 - (ii) the amount of fees paid to each Related Dealer, and
 - (iii) the person or company who paid the fees, if they were not paid by the Fund; and
- (b) the records of portfolio transactions maintained by each Fund include, separately for every portfolio transaction effected by the Fund through a Related Dealer,

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- (i) the name of the Related Dealer,
- (ii) the amount of fees paid to the Related Dealer, and
- (iii) the person or company who paid the fees.

Carol S. Perry
Commissioner
Ontario Securities Commission

Paulette L. Kennedy
Commissioner
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