

2003 BCSECCOM 526

Headnote

Mutual Reliance Review System for Exemptive Relief Application – subdivided offering – issuer to invest in common shares of eight financial institutions, including five banks – each bank is a substantial security holder of an investment dealer subsidiary which is, or is likely to be, a distribution company of the issuer – the investment restriction prohibiting the issuer from making and holding investments in the common shares of companies that are substantial security holders of distribution companies of the issuer shall not apply.

The prohibitions contained in the Legislation prohibiting trading in portfolio securities by persons or companies having information concerning the trading programs of mutual funds shall not apply to the agent with respect to certain principal trades with the issuer in securities comprising the issuer's portfolio.

Applicable British Columbia Provisions

Securities Act, R.S.B.C.1996, c. 418, ss. 121(2)(c), 123, 128 and 130

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

AND

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

AND

IN THE MATTER OF BIG 8 SPLIT INC.

AND

IN THE MATTER OF TD SECURITIES INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Ontario, British Columbia, Alberta, Saskatchewan, Nova Scotia and Newfoundland and Labrador (the "Jurisdictions") has received an application from Big 8 Split Inc. (the "Issuer") and TD Securities Inc. ("TD Securities") for decisions under the securities legislation (the "Legislation") of the Jurisdictions that the following requirements contained in the Legislation shall not

2003 BCSECCOM 526

apply to the Issuer and/or TD Securities, as applicable, in connection with the initial public offering (the “Offering”) of class A preferred shares (the “Preferred Shares”) and class A capital shares (the “Capital Shares”) of the Issuer:

- (a) the prohibition against trading in portfolio shares by persons or companies having information concerning the trading programs of mutual funds (the “Principal Trading Prohibitions”); and
- (b) the investment restriction prohibiting the Issuer from making and holding investments in the common shares (collectively, the “Bank Shares”) of Bank of Montreal, The Bank of Nova Scotia, Canadian Imperial Bank of Commerce, Royal Bank of Canada and The Toronto-Dominion Bank (collectively, the “Banks”), each of which is a substantial security holder of an investment dealer subsidiary which is, or is likely to be, a distribution company of the Issuer (the “Investment Restrictions”);

subject to certain restrictions;

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 meanings set out in National Instrument 14-101 – *Definitions*;

AND WHEREAS the Issuer has represented to the Decision Makers that:

1. TD Securities was incorporated under the laws of the Province of Ontario and is a direct, wholly-owned subsidiary of The Toronto-Dominion Bank. TD Securities 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 Toronto Stock Exchange (the “TSX”).
2. TD Securities is the promoter of the Issuer and will be establishing a credit facility in favour of the Issuer in order to facilitate the acquisition of the Portfolio Shares (as defined below) by the Issuer.
3. The Issuer was incorporated on June 26, 2003 under the laws of the Province of Ontario and is authorized to issue an unlimited number of Class E Shares.
4. The Issuer has filed with the securities regulatory authorities of each Province of Canada a preliminary prospectus dated June 27, 2003 (the “Preliminary

2003 BCSECCOM 526

Prospectus”) in respect of the Offering of Capital Shares and Preferred Shares to the public.

5. The Issuer intends to become a reporting issuer under the Legislation by filing a final prospectus (the “Final Prospectus”) relating to the Offering. Prior to the filing of the Final Prospectus, the Articles of Incorporation of the Issuer will be amended so that the authorized capital of the Issuer will consist of an unlimited number of Capital Shares, an unlimited number of Preferred Shares, and an unlimited number of Class B, Class C, and Class D capital shares, issuable in series, and an unlimited number of Class E voting shares, having the attributes set forth under the headings “Description of Share Capital” and “Details of the Offerings” in the Preliminary Prospectus.
6. Application will be made to list the Capital Shares and Preferred Shares on the TSX.
7. The Class E Shares will be the only voting shares in the capital of the Issuer. At the time of filing the Final Prospectus, there will be 100 Class E Shares issued and outstanding. A trust established for the benefit of holders of the Preferred Shares and Capital Shares from time to time will own all of the issued and outstanding Class E Shares of the Issuer.
8. The Issuer has a board of directors which currently consists of five directors, three of whom are employees of TD Securities and two of whom are independent of TD Securities. The offices of President/Chief Executive Officer and Chief Financial Officer/Secretary of the Issuer are held by employees of TD Securities.
9. Pursuant to an agency agreement to be made between the Issuer and TD Securities, Scotia Capital Inc. and such other agents as may be appointed after the date of this application (collectively, the “Agents” and individually, an “Agent”), the Issuer will appoint the Agents, as its agents, to offer the Capital Shares and Preferred Shares of the Issuer on a best efforts basis. The Final Prospectus qualifying the Offering will contain a certificate signed by each of the Agents in accordance with the Legislation.
10. The Issuer is considered to be a mutual fund as defined in the Legislation. Since the Issuer 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*.
11. The Issuer is a passive investment company whose principal undertaking will be to invest in a portfolio of common shares (the “Portfolio Shares”) of Bank

2003 BCSECCOM 526

of Montreal, The Bank of Nova Scotia, Canadian Imperial Bank of Commerce, Royal Bank of Canada, The Toronto-Dominion Bank, Great-West Lifeco Inc., Manulife Financial Corporation and Sun Life Financial Services of Canada Inc. (collectively, the “Financial Institutions”) in order to generate fixed cumulative preferential dividends for the holders of the Preferred Shares and to enable the holders of the Capital Shares to participate in any capital appreciation in the Portfolio Shares and to benefit from any increase in the dividends on the Portfolio Shares. The purpose of the Issuer is to provide a vehicle through which different investment objectives with respect to participation in the Portfolio Shares may be satisfied.

12. The Final Prospectus will disclose the acquisition cost to the Issuer of the Portfolio Shares and dividend and trading history of the Portfolio Shares.
13. The Portfolio Shares are listed and traded on the TSX.
14. The Issuer is not, and will not upon the completion of the Offering, be an insider of any of the issuers of the Portfolio Shares within the meaning of the Legislation.
15. TD Securities does not have knowledge of a material fact or material change with respect to any of the Financial Institutions that has not been generally disclosed.
16. TD Securities’ economic interest in the Issuer and in the material transactions involving the Issuer 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 (as defined below);
 - (c) commissions in respect of the acquisition of Portfolio Shares, the disposition of Portfolio Shares to fund a redemption or retraction, or the purchase for cancellation, of the Capital Shares and Preferred Shares or if necessary, to fund a portion of the fixed dividends on the Preferred Shares;
 - (d) interest and reimbursement of expenses, in connection with the acquisition of Portfolio Shares; and

2003 BCSECCOM 526

- (e) amounts in connection with Principal Sales and Principal Purchases (as defined in paragraphs 19 and 27 below).
17. The net proceeds from the sale of the Capital Shares and Preferred Shares under the Final Prospectus, after payment of commissions to the Agents, expenses of issue and carrying costs relating to the acquisition of the Portfolio Shares, will be used by the Issuer to:
- (a) pay the acquisition cost (including any related costs or expenses) of the Portfolio Shares; and
 - (b) pay the initial fee payable to TD Securities for its services under the Administration Agreement (as defined below).
18. All Capital Shares and Preferred Shares outstanding on a date approximately five years from the closing of the Offering will be redeemed by the Issuer on such date (the “Redemption Date”). Capital Shares and Preferred Shares will be retractable at the option of the holder and redeemable at the option of the Issuer as described in the Preliminary Prospectus.
19. Pursuant to an agreement (the “Securities Purchase Agreement”) to be entered into between the Issuer and TD Securities, TD Securities will purchase, as agent for the benefit of the Issuer, Portfolio Shares in the market on commercial terms or from non-related parties with whom TD Securities and the Issuer deal at arm’s length. Subject to receipt of all necessary regulatory approvals, TD Securities may, as principal, sell Portfolio Shares to the Issuer (the “Principal Sales”). The aggregate purchase price to be paid by the Issuer for the Portfolio Shares (together with carrying costs and other expenses incurred in connection with the purchase of Portfolio Shares) will not exceed the net proceeds from the Offering.
20. Under the Securities Purchase Agreement, TD Securities may receive commissions at normal market rates in respect of its purchase of Portfolio Shares, as agent on behalf of the Issuer, and the Issuer will pay any carrying costs or other expenses incurred by TD Securities, on behalf of the Issuer, in connection with its purchase of Portfolio Shares as agent on behalf of the Issuer. In respect of any Principal Sales made to the Issuer by TD Securities as principal, TD Securities may realize a financial benefit to the extent that the proceeds received from the Issuer exceed the aggregate cost to TD Securities of such Portfolio Shares. Similarly, the proceeds received from the Issuer may be less than the aggregate cost to TD Securities of the Portfolio Shares and TD Securities may realize a financial loss, all of which is described in the Preliminary Prospectus and will be described in the Final Prospectus.

2003 BCSECCOM 526

21. 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 TD Securities (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 Portfolio Shares are listed and posted for trading at the time of the purchase from TD Securities.
22. TD Securities will not receive any commissions from the Issuer in connection with the Principal Sales and all Principal Sales will be approved by the independent directors of the Issuer.
23. For the reasons set forth in paragraphs 19 and 20 above, and the fact that no commissions are payable to TD Securities in connection with the Principal Sales, in the case of the Principal Sales, the interests of the Issuer and the shareholders of the Issuer may be enhanced by insulating the Issuer from price increases in respect of the Portfolio Shares.
24. None of the Portfolio Shares to be sold by TD Securities as principal to the Issuer have been acquired, nor has TD Securities agreed to acquire, any Portfolio Shares while TD Securities had access to information concerning the investment program of the Issuer, although certain of the Portfolio Shares to be held by the Issuer may be acquired or TD Securities may agree to acquire such Portfolio Shares on or after the date of this Decision Document.
25. It will be the policy of the Issuer to hold the Portfolio Shares and to not engage in any trading of the Portfolio Shares, except:
 - (a) to fund retractions or redemptions of Capital Shares and Preferred Shares;
 - (b) to fund the payment of the fixed dividends on the Preferred Shares; or
 - (c) in certain other limited circumstances as described in the Preliminary Prospectus.
26. Pursuant to an administration agreement (the "Administration Agreement") to be entered into, the Issuer will retain TD Securities to administer the ongoing operations of the Issuer and will pay TD Securities (i) a monthly fee of 1/12 of 0.15% of the market value of the Portfolio Shares held in the Portfolio, and (ii) any interest income earned by the Issuer from time to time.

2003 BCSECCOM 526

27. In connection with the services to be provided by TD Securities to the Issuer pursuant to the Administration Agreement, TD Securities may sell Portfolio Shares to fund retractions of Capital Shares and Preferred Shares prior to the Redemption Date, to fund the fixed dividends on the Preferred Shares, and upon liquidation of the Portfolio Shares in connection with the final redemption of Capital Shares and Preferred Shares on the Redemption Date. These sales will be made by TD Securities as agent on behalf of the Issuer, but in certain circumstances, such as where a small number of Capital Shares and Preferred Shares have been surrendered for retraction, TD Securities may purchase Portfolio Shares as principal (the "Principal Purchases") subject to receipt of all regulatory approvals.
28. In connection with any Principal Purchases, TD Securities 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 TD Securities may realize a gain or loss on the resale of such securities.
29. The Administration Agreement will provide that TD Securities must take reasonable steps, such as soliciting bids from other market participants or such other steps as TD Securities, in its discretion, considers appropriate after taking into account prevailing market conditions and other relevant factors, to enable the Issuer to obtain the best price reasonably available for the Portfolio Shares so long as the price obtained (net of all transaction costs, if any) by the Issuer from TD Securities is at least as advantageous to the Issuer 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.
30. TD Securities will not receive any commissions from the Issuer in connection with Principal Purchases and, in carrying out the Principal Purchases, TD Securities shall deal fairly, honestly and in good faith with the Issuer.
31. Each of the Banks is a substantial security holder of an investment dealer subsidiary, which is or is likely to be a distribution company of the Issuer.

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;

2003 BCSECCOM 526

THE DECISION of the Decision Makers pursuant to the Legislation is that:

- A. The Principal Trading Prohibitions shall not apply to TD Securities in connection with the Principal Sales and Principal Purchases; and
- B. The Investment Restrictions shall not apply to the Issuer in connection with the making and holding of investments in the Bank Shares for the purposes of the Offering as described in the Preliminary Prospectus.

DATED July 25, 2003

Harold P. Hands

Wendell S. Wigle, Q.C.