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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, and independent directors of the mutual fund will determine, prior to the purchase of the securities, that the terms and conditions (including the consideration to be paid) relating to the purchase 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, ss. 128 and 130

### **IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, ONTARIO, 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 R SPLIT II CORP. AND SCOTIA CAPITAL INC.**

### **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland and Labrador (the “Jurisdictions”) has received an application (the “Application”) from R Split II Corp. (the “Company”) and Scotia Capital Inc. (“Scotia Capital”) (collectively, the “Filer”) for decisions under the securities legislation of the Jurisdictions (the “Legislation”) that the prohibitions contained therein prohibiting trading in portfolio shares by persons or companies having information concerning investment programs of mutual funds (the “Principal Trading Prohibitions”) shall not apply to the Company and Scotia Capital in connection with the Principal Sales and Principal Purchases (both as hereinafter defined) in connection with the initial public offering (the “Offering”) of Class A capital shares (the “Capital Shares”) and class A preferred shares (the

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“Preferred Shares”) of the Company by Scotia Capital and such other agents as may be appointed (collectively, the “Agents”).

AND WHEREAS pursuant to 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 on in Québec Commission Notice 14-101;

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

1. The Company was incorporated on March 8, 2004 and has its principal office at 40 King Street West, Scotia Plaza, 26<sup>th</sup> Floor, Box 4085, Station A, Toronto, Ontario, M5W 2X6.
2. The Company is a passive investment company whose principal undertaking will be to invest the net proceeds of the Offerings in a portfolio of common shares (the “Royal Bank Shares”) of Royal Bank of Canada in order to generate fixed cumulative preferential distributions for the holders of the Company’s Preferred Shares and to enable the holders of the Company’s Capital Shares to participate in any capital appreciation in the Royal Bank Shares. The Royal Bank Shares will be the only material assets of the Company. The Royal Bank Shares are listed and traded on the TSX.
3. The Company is considered to be a mutual fund as defined in subsection 1(1) of the Act. 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.
4. The Company has a Board of Directors which currently consists of three directors. All of the directors are employees of Scotia Capital or one of its affiliates. Also, the offices of the President/Chief Executive Officer and Chief Financial Officer/Secretary of the Company are held by employees of Scotia Capital or one of its affiliates. Prior to filing a final prospectus (the “Final Prospectus”), it is contemplated that at least three additional directors, independent of Scotia Capital, will be appointed to the Board of Directors of the Company.
5. Application has been made to list the Capital Shares and Preferred Shares on the Toronto Stock Exchange (“TSX”).

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6. Scotia Capital is registered under the Act 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.
7. 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 Royal Bank Shares (as defined below) by the Company.
8. Pursuant to an administration agreement (the “Administration Agreement”) to be entered into, the Company will retain Scotia Capital to administer the ongoing operations of the Company and will pay Scotia Capital a quarterly administration fee equal to  $\frac{1}{4}$  of 0.20% of the market value of the Royal Bank Shares.
9. Scotia Capital’s economic interest in the Company and in the material transactions involving the Company are disclosed in the preliminary prospectus (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:
  - (i) agency fees with respect to the Offerings;
  - (ii) an administration fee under the Administration Agreement;
  - (iii) commissions in respect of the disposition of Royal Bank Shares to fund a redemption or retraction, or the purchase for cancellation, of the Capital Shares and Preferred Shares or to fund a portion of the fixed distribution on the Preferred Shares;
  - (iv) interest and reimbursement of expenses, in connection with the acquisition of the Royal Bank Shares; and
  - (v) in connection with Principal Sales and Principal Purchases (as described in paragraphs 19 and 25 below).
10. It will be the policy of the Company to hold the Royal Bank Shares and to not engage in any trading of the Royal Bank Shares, except:
  - (i) to fund retractions or redemptions of Capital Shares and Preferred Shares;
  - (ii) to fund a portion of the fixed distribution on the Preferred Shares;  
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- (iii) following receipt of stock dividends on the Royal Bank Shares; or
- (iv) in certain other limited circumstances described in the Preliminary Prospectus.

### Issuance of Capital Shares and Preferred Shares

11. The Company intends to become a reporting issuer under the Act by filing the Final Prospectus relating to the Offerings. Prior to the filing of the Final Prospectus, the Articles 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, none of which are issued and outstanding, an unlimited number of Class B, Class C, Class D and Class E preferred shares, issuable in series, none of which are issued and outstanding, and an unlimited number of Class J Shares and Class S Shares issuable in series, of which 150 Class J Shares and 100 Class S Shares are issued and outstanding.
12. The Class J Shares will be the only voting shares in the capital of the Company. There will be at the time of filing the Final Prospectus 150 Class J Shares issued and outstanding, all of which will be owned by a newly incorporated company ("Holdco"). The independent directors will each own an equal number of the issued and outstanding common shares of Holdco.
13. The Capital Shares and Preferred Shares may be surrendered for retraction at any time in the manner described in the Preliminary Prospectus.
14. All Capital Shares and Preferred Shares outstanding on a date approximately five years from the closing of the Offering (the "Redemption Date") will be redeemed by the Company on such date and Preferred Shares will be redeemable at the option of the Company on any Annual Retraction Payment Date (as described in the Preliminary Prospectus).

### Principal Trades

15. The Company has filed with the securities regulatory authorities of each province and territory of Canada a Preliminary prospectus dated March 9, 2004 in respect of the Offerings of Capital Shares and Preferred Shares to the public.

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16. Scotia Capital will be a significant maker of markets for Capital Shares and Preferred Shares, although it is anticipated that Scotia Capital will be appointed the registered pro-trader by the TSX with respect to the Company. As a result, Scotia Capital will, from time to time, purchase and sell Capital Shares and Preferred Shares as principal and trade in such securities as agent on behalf of its clients, the primary purpose of such trades (the “Market Making Trades”) being to provide liquidity to the holders of Capital Shares and Preferred Shares. All trades made by Scotia Capital as principal will be recorded daily by the TSX.
17. Pursuant to an agreement (the “Agency Agreement”) to be made between the Company and Scotia Capital and such other agents as may be appointed after the date of this application (collectively, the “Agents” and individually, an “Agent”), the Company will appoint the Agent(s) as its agent(s) 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 Agent(s) in accordance with section 59 of the Act.
18. It is not known at this time what proportions of the Offerings will be sold by additional agents other than Scotia Capital.
19. 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, Royal Bank 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, also sell Royal Bank Shares to the Company (the “Principal Sales”). The aggregate purchase to be paid by the Company for the Royal Bank Shares (together with carrying costs and other expenses incurred in connection with the purchase of the Royal Bank Shares) will not exceed the net proceeds from the Offerings.
20. The Preliminary Prospectus discloses and the Final Prospectus will disclose, that if the Principal Sales are made by Scotia Capital, as principal, to the Company, that any Royal Bank Shares acquired by the Company from Scotia Capital, as principal, will be purchased in accordance with the rules of the applicable stock exchange and the price paid (inclusive of all transaction costs, if any) to Scotia Capital 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 Royal Bank Shares are listed and posted for trading at the time of purchase from Scotia Capital. No commissions will be paid to Scotia Capital in respect of any Principal Sales.

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21. For the reasons set forth in paragraph 19 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 Royal Bank Shares.
22. None of the Royal Bank Shares to be sold by Scotia Capital as principal to the Company have been acquired, nor has Scotia Capital agreed to acquire, any Royal Bank Shares while Scotia Capital had access to information concerning the investment program of the Company, although certain of the Royal Bank Shares to be held by the Company may be acquired or Scotia Capital may agree to acquire such Royal Bank Shares on or after the date of this MRRS Decision Document.
23. Under the Securities Purchase Agreement, Scotia Capital may receive commissions at normal market rates in respect of its purchase of Royal Bank 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 Royal Bank Shares as agent on behalf of the Company. In respect of 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 Royal Bank Shares. Similarly, the proceeds received from the Company may be less than the aggregate cost to Scotia Capital of the Royal Bank Shares and Scotia Capital may realize a financial loss, all of which is described in the Preliminary Prospectus and will be described in the Final Prospectus.
24. The net proceeds from the offering of the Capital Shares and the Preferred Shares (after deducting the Agent(s)' fees, expenses of the issue and the Company's interest and other expenses relating to the acquisition of the Royal Bank Shares) will be used by the Company to fund the purchase of the Royal Bank Shares.
25. In connection with the services to be provided by Scotia Capital to the Company pursuant to the Administration Agreement, Scotia Capital may sell Royal Bank Shares to fund retractions of Capital Shares and Preferred Shares prior to the Redemption Date, to fund a portion of the fixed distribution on the Preferred Shares and upon liquidation of the Royal Bank Shares prior to the Redemption Date. These sales will be made by Scotia Capital as agent on behalf of the Company. Subject to the receipt of all necessary regulatory approval, in certain circumstances such as where a small number of Capital

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Shares and Preferred Shares have been surrendered for retraction, Scotia Capital may also purchase Royal Bank Shares as principal (the “Principal Purchases”).

26. 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.
27. 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 Royal Bank Shares so long as the price obtained (net of all transaction costs, if any) by the Company from Scotia Capital is more or 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.
28. Scotia Capital will not receive any commissions from the Company in connection with Principal Purchases and, in carrying out the Principal Purchases, Scotia Capital shall deal fairly, honestly and in good faith with the Company.

### Pricing of Royal Bank Shares

29. The Final Prospectus will disclose the acquisition cost of the Royal Bank Shares and selected information with respect to the dividend history and trading history of the Royal Bank Shares.

### Transparency

30. Scotia Capital does not have any knowledge of a material fact or material change with respect to the issuer of the Royal Bank Shares which has not been disclosed to the public.

### Review by Independent Directors

31. All Principal Sales will be approved by at least two of the three independent directors of the Company. Scotia Capital will undertake to the Company to reverse any such transactions if such approval is not received.

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32. The Company is not, and will not upon the completion of the Offerings, be an insider of the issuer of the Royal Bank Shares within the meaning of subsection 1(1) of the Act.
33. The acquisition of Royal Bank Shares represents the business judgment of the Board, uninfluenced by considerations other than the best interests of the Company.
34. In the absence of this decision (the "Decision"), Scotia Capital is prohibited from selling Royal Bank Shares to the Company.

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 pursuant to the Legislation is that the Principal Trading Prohibitions shall not apply to R Split II Corp. or Scotia Capital in connection with the Principal Sales and Principal Purchases.

DATED May 7, 2004.

Paul M. Moore

Susan Wolburgh-Jenah