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January 29, 2007

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 - Investment restrictions - A mutual fund wants relief from s. 121(2)(a) of the Act so that it can make or hold an investment in a person or company which is a substantial security holder of the mutual fund, its mutual fund manager or its mutual fund distributor - Principal trading restrictions - A mutual fund wants relief from the principal trading prohibitions in s. 128 of the Act to enable persons having access to information concerning the investment program of the fund to purchase or sell securities comprising the portfolio of the mutual fund - 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 approve all principal purchases and sales

Applicable British Columbia Provisions

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

In the Matter of
the Securities Legislation of
Ontario, British Columbia, Alberta, Saskatchewan,
Newfoundland and Labrador, Nova Scotia and New Brunswick
(the Jurisdictions)

and

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

and

In the Matter of
NB Split Corp.

and

In the Matter of
National Bank Financial Inc.
(Collectively, the Filers)

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MRRS Decision Document

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filers for decisions under the securities legislation (the Legislation) of the Jurisdictions that the following requirements contained in the applicable Legislation shall not apply to NB Split Corp. (the Issuer) and/or National Bank Financial Inc. (NBF), as applicable, in connection with the initial public offerings (the Offerings) of class A capital shares (the Capital Shares) and class A preferred shares (the Preferred Shares) of the Issuer:

- (a) The prohibitions contained in the Legislation prohibiting trading in portfolio shares by persons or companies having information concerning the trading programs of mutual funds (the Principal Trading Prohibitions) shall not apply to NBF in connection with the Principal Sales and Principal Purchases (both hereinafter defined); and
- (b) The restrictions contained in the Legislation prohibiting the Issuer from making and holding investments in the common shares (the NB Shares) of the National Bank of Canada (NB), which bank is a substantial security holder of NBF, a distribution company of the Issuer (the Investment Restrictions), shall not apply to the Issuer in connection with the Offering.

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (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.

Representations

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

The Issuer

1. The Issuer was incorporated on December 15, 2006 under the *Business Corporations Act* (Ontario).

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2. The Issuer has filed the Preliminary Prospectus with each of the Decision Makers in respect of the Offerings of Capital Shares and Preferred Shares to the public.
3. The Issuer is a passive investment company whose principal undertaking will be to invest the net proceeds of the Offerings in a portfolio (the Portfolio) of NB Shares in order to generate quarterly fixed cumulative preferential distributions for the holders of the Preferred Shares and to enable the holders of the Capital Shares to participate in any capital appreciation in the NB Shares after payment of administrative and operating expenses of the Issuer. It will be the policy of the Board of Directors of the Issuer to pay dividends on the Capital Shares in an amount equal to the dividends received by the Issuer on the NB Shares minus the distributions payable on the Preferred Shares and all accruals for administrative and operating expenses of the Issuer.
4. 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.
5. The Capital Shares and Preferred Shares may be surrendered for retraction at any time in the manner described in the Preliminary Prospectus.
6. It will be the policy of the Issuer to hold the NB Shares and to not engage in any trading of the NB Shares, except:
 - (i) to fund retractions or redemptions of Capital Shares and Preferred Shares;
 - (ii) following receipt of stock dividends on the NB Shares;
 - (iii) if necessary, to fund any shortfall in distributions on the Capital Shares and Preferred Shares;
 - (iv) to meet obligations of the Issuer in respect of liabilities including extraordinary liabilities; or
 - (v) in other limited circumstances disclosed in the Preliminary Prospectus.
7. The Issuer 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 Issuer will

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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, 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, and an unlimited number of Class J Shares, each having the attributes set forth under the headings “Description of Share Capital” and “Details of the Offerings” commencing on page 17 and 18 of the Preliminary Prospectus.

8. The Class J Shares are currently the only voting shares in the capital of the Issuer. At the date of the Preliminary Prospectus there were 150 issued and outstanding Class J Shares that were owned by NB Split Holdings Corp. (Holdings). The three independent directors of the Issuer will each own $33\frac{1}{3}\%$ of the common shares of Holdings at the time of filing the Final Prospectus. All of the Class J Shares will be lodged in escrow with Computershare Trust Company of Canada, as described in the Preliminary Prospectus. NBF will not own any Class J Shares.
9. The Issuer has a Board of Directors which currently consists of three directors. All of the directors are employees of NBF or its affiliates. Also, the offices of Chief Executive Officer and Chief Financial Officer of the Issuer are held by employees of NBF. Three additional, independent directors will be appointed to the Board of Directors of the Issuer prior to the filing of the Final Prospectus.
10. The NB Shares will be listed and traded on the Toronto Stock Exchange (the TSX).
11. The Issuer is not, and will not upon the completion of the Offerings be, an insider of NB within the meaning of the Legislation.

The Offering

12. 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 defined in Section 19), and expenses of issue will be used by the Issuer to pay the acquisition cost (including any related costs or expenses) of the NB Shares.
13. The Final Prospectus will disclose the selected financial information and dividend and trading history of the NB Shares.

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14. Application has been made to list the Capital Shares and Preferred Shares on the TSX.
15. All Capital Shares and Preferred Shares outstanding on February 15, 2012 will be redeemed by the Issuer on such date.

NBF

16. NBF was incorporated under the laws of the Province of Quebec and is an indirect, wholly-owned subsidiary of NB. NBF is registered under the Legislation as a dealer in the categories of “investment dealer” and “futures commission merchant” and is a member of the Investment Dealers Association of Canada and a participant in the TSX.
17. NB is a substantial security holder of NBF, which is a distribution company of the Issuer. NBF is also the promoter of the Issuer.
18. Pursuant to an agreement (the Agency Agreement) to be made between the Issuer and NBF, Scotia Capital Inc., BMO Nesbitt Burns Inc., CIBC World Markets Inc., RBC Dominion Securities Inc., TD Securities Inc., HSBC Securities (Canada) Inc., Canaccord Capital Corp., Raymond James Ltd., Desjardins Securities Inc., Blackmont Capital Inc. and Wellington West Capital Inc. (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 and the Final Prospectus qualifying the Offering will contain a certificate signed by each of the Agents in accordance with the Legislation.
19. NBF’s 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 and include the following:
 - (a) agency fees with respect to the Offering;
 - (b) fees at normal market rates for the purchase and sale of the NB Shares or the purchase for cancellation of Capital Shares and Preferred Shares;
 - (c) reimbursement of expenses, in connection with the establishment of the Issuer and the offerings of the Capital Shares and Preferred Shares; and
 - (d) amounts in connection with the Principal Purchases (as described in paragraphs 20 and 21 below).

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The Principal Trades

20. Subject to the receipt of all necessary regulatory approvals, NBF may, as principal, sell NB Shares to the Issuer (the Principal Sales).
21. In respect of any Principal Sales made to the Issuer by NBF as principal, NBF may realize a financial benefit to the extent that the proceeds received from the Issuer exceed the aggregate cost to NBF of such NB Shares. Similarly, the proceeds received from the Issuer may be less than the aggregate cost to NBF of the NB Shares and NBF may realize a financial loss.
22. 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 the Issuer (inclusive of all transaction costs, if any) will not be greater than the price that would have been paid (inclusive of all transaction costs, if any) if the acquisition had been made through the facilities of a principal stock exchange on which the NB Shares are listed and posted for trading, at the time of purchase from NBF.
23. NBF will not receive any commissions from the Issuer in connection with the Principal Sales and all Principal Sales will be approved by a majority of the independent directors of the Issuer. In carrying out the Principal Sales, NBF will deal fairly, honestly and in good faith with the Issuer.
24. Further, the Issuer expects to sell NB Shares to fund the retraction or redemption of any Capital Shares or Preferred Shares, following the receipt of any stock dividends, or to meet obligations of the Issuer in respect of liability including extraordinary liabilities. Subject to the receipt of regulatory approvals, NBF may purchase some or all of the NB Shares as principal (the Principal Purchases).
25. In connection with any Principal Purchases, NBF 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.
26. NBF must take reasonable steps, such as soliciting bids from other market participants or such other steps as in its discretion it 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 NB Shares so long as the price obtained (net of all transaction costs, if any) by the Issuer from NBF is at least as advantageous to the Issuer as the price which

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available (net of all transaction costs, if any) through the facilities of the applicable stock exchange at the time of the trade.

27. All such Principal Purchases will be approved by a majority of the independent directors of the Issuer and no commissions will be paid to NBF in respect of any such Principal Purchases. In carrying out the Principal Purchases, NBF shall deal fairly, honestly and in good faith with the Issuer.
28. NBF may receive certain fees at normal market rates for the purchase and sale of the NB Shares or the purchase for cancellation of Capital Shares and Preferred Shares.
29. At the time of making Principal Sales and/or Principal Purchases, NBF will not have any knowledge of a material fact or material change with respect to NB that has not been generally disclosed.

Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the authority to make the decision has been met.

The decision of the Decision Makers is that:

- A. The Principal Trading Prohibitions shall not apply to NBF in connection with the Principal Sales and Principal Purchases; and
- B. The Investment Restrictions shall not apply to the Issuer in connection with the Investments in NB Shares for the purposes of the Offering.

Robert L. Sherriff
Commissioner
Ontario Securities Commission

Paul K. Bates
Commissioner
Ontario Securities Commission