

*Translation*

IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA,  
ONTARIO, QUÉBEC, 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 OF CANADA AND  
NBC ASSET TRUST

MRRS DECISION DOCUMENT

**Background**

The local securities regulatory authority or regulator (the "Decision Maker") in each of the Jurisdictions has received an application from National Bank of Canada (the "Bank") and NBC Asset Trust (the "Trust") for a decision, pursuant to the securities legislation of the Jurisdictions (the "Legislation"), that the requirements contained in the Legislation to:

(a)

(i) file interim financial statements and audited annual financial statements and deliver same to the security holders of the Trust, pursuant to Sections 4.1, 4.3 and 4.6 of National Instrument 51-102 – Continuous Disclosure Obligations ("NI 51-102");

(ii) file interim and annual management's discussion and analysis ("MD&A") of the financial condition and results of operations and deliver same to the security holders of the Trust pursuant to Sections 5.1 and 5.6 of NI 51-102;

(iii) file an annual information form pursuant to Section 6.1 of NI 51-102;

(collectively defined as the "Continuous Disclosure Obligations");

(b) file interim and annual certificates (collectively the "Officers Certificates") contained in Parts 2 and 3 of Multilateral Instrument 52-109 – *Certification of Disclosure in Issuer's Annual and Interim Filings* (the "Certification Obligations");

shall not apply to the Trust, subject to certain conditions.

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

1. the Autorité des marchés financiers is the principal regulator for this application;
2. 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.

"Administrative Action" means any judicial decision, official administrative pronouncement, published or private ruling, regulatory procedure, notice or announcement (including any notice or announcement of an intention to adopt such procedures or regulations) by any legislative body, court, governmental authority or regulatory body having appropriate jurisdiction.

"Automatic Exchange" means the automatic exchange of each NBC CapS II – Series 1 for 40 Bank Preferred Shares Series 19 upon the occurrence of a Loss Absorption Event.

"Bank Act" means the *Bank Act* (Canada), as amended from time to time.

"Bankers' Acceptance Rate" means, for any Distribution Period, or other period, the average bid rate of interest (expressed as an annual percentage rate) rounded to the nearest one hundred-thousandth of one percent (with 0.000005 percent being rounded up) for Canadian dollar bankers' acceptances with maturities of six months which appears on the Reuters Screen CDOR Page as of 10:00 a.m. (Eastern Standard time) on the first day on which the Bank is open for business in the City of Montréal, other than a Saturday, Sunday or any statutory holiday in Québec (a "Business Day") of such period, provided that if such rate does not appear on the Reuters Screen CDOR Page on such day, the Bankers' Acceptance Rate for such period will be the average of the bid rates of interest (expressed and rounded as set forth above) for Canadian dollar bankers' acceptances with maturities of six months for same day settlement as quoted by such of the Schedule 1 Canadian chartered banks as may quote such a rate as of 10:00 a.m. (Eastern Standard time) on the first Business Day of such period.

"Capital Disqualification Event" means a Tier 1 Capital Disqualification Event or a Total Capital Disqualification Event.

"Capital Guidelines" means the Canadian bank regulatory guidelines issued by the Superintendent or other governmental authority in Canada concerning the maintenance of adequate capital reserves by Canadian chartered banks, including the Bank, from time to time.

"Declaration of Trust" means the declaration of trust dated December 17, 2007 establishing the Trust and the rights, privileges, restrictions and conditions attached to the Trust Securities, as amended, supplemented and restated from time to time.

"Distribution Date" means the last day in June and December of each year commencing June 30, 2008.

"Distribution Period" means the periods from and including January 22, 2008, being the date of closing of the Offering, to but excluding June 30, 2008 and thereafter from and including each Distribution Date to but excluding the next following Distribution Date.

"Dividend Declaration Months" means the months in which the Bank ordinarily declares dividends from time to time on its preferred shares, or, if no such shares are then outstanding, on the Bank Common Shares, in accordance with the Bank's ordinary dividend practice in effect from time to time, before giving effect to any stoppage of the declaration of dividends pursuant to the Dividend Stopper Undertakings described below.

"Eligible Investment" means money and any debt obligation that is a qualified investment under the *Income Tax Act* (Canada) by registered retirement savings plans, registered retirement income funds, deferred profit sharing plans and registered education savings plans, except where the qualification of such property contains conditions regarding the annuitant, the beneficiary, the employer or the subscriber under the plan unless the Trust is satisfied that such conditions are satisfied.

"Loss Absorption Event" means the occurrence of any one of the following events: (i) an application for a winding-up order in respect of the Bank pursuant to the Winding-Up and Restructuring Act (Canada) (the "Winding-Up Act") is filed by the Attorney General of Canada or a winding-up order in respect of the Bank pursuant to the Winding-Up Act is granted by a court; (ii) the Superintendent advises the Bank in writing that the Superintendent has taken control of the Bank or its assets pursuant to the Bank Act; (iii) the Superintendent advises the Bank in writing that the Superintendent is of the opinion that the Bank has a risk-based Tier 1 Capital Ratio of less than 5.0% or a risk-based Total Capital Ratio of less than 8.0%; (iv) the board of directors of the Bank advises the Superintendent in writing that the Bank has a risk-based Tier 1 Capital Ratio of less than 5.0% or a risk-based Total Capital Ratio of less than 8.0%; or (v) the Superintendent directs the Bank, pursuant to the Bank Act, to increase its capital or provide additional liquidity and the Bank elects to cause the Automatic Exchange as a consequence of the issuance of such direction or the Bank does not comply with such direction to the satisfaction of the Superintendent within the time specified.

"NBC CapS II – Series 1" means the Trust Capital Securities - Series 1 issued by the Trust to investors in Canada pursuant to the Offering (as defined below), being transferable trust units representing undivided beneficial ownership interests in the Trust Assets.

"Reference Dividend Declaration Month" means, in respect of any Distribution Date (other than June 30, 2008), the most recent Dividend Declaration Month occurring prior to the commencement of the Distribution Period ended on the day preceding such Distribution Date, such months currently being June and December under existing Bank dividend declaration practice and, in respect of the June 30, 2008 Distribution Date, the month of December 2007.

"Residential Mortgages" means (i) Canada Mortgage and Housing Corporation-insured first mortgages on residential property situated in Canada such as single family dwellings, semi-detached dwelling units, duplexes, townhouses, condominium units or multiple-unit family dwellings; and (ii) such other first mortgages on residential property situated in Canada (or interests therein whether on a pooled basis or otherwise) including, without limitation, first mortgages on residential property situated in Canada that are insured by an insurance company, including Genworth Financial-insured mortgages, and other first mortgages on residential property situated in Canada or lines of credit secured by first mortgages on residential property situated in Canada so long as, in all cases, they are Eligible Investments.

"Special Event" means a Tax Event or a Capital Disqualification Event, as the case may be.

"Superintendent" means the Superintendent of Financial Institutions (Canada).

"Tax Event" means the receipt by the Bank of an opinion of a nationally recognized law firm in Canada experienced in such matters (who may be counsel to the Bank or the Trust) to the effect that, as a result of: (i) any amendment to, clarification of, or change (including any announced prospective change) in, the laws, or any regulations thereunder, of Canada or any political subdivision or taxing authority thereof or therein, affecting taxation; (ii) any Administrative Action; or (iii) any amendment to, clarification of, or change in, the official position or the interpretation of any Administrative Action or any interpretation or pronouncement that provides for a position with respect to such Administrative Action that differs from the theretofore generally accepted position, in each case, by any legislative body, court, governmental authority or regulatory body, irrespective of the manner in which such amendment, clarification or change is made known, which amendment, clarification or change is effective or such pronouncement or decision is announced on or after the date of issue of the NBC CapS II – Series 1, there is more than an insubstantial risk that: (x) the treatment of any of the Bank's or the Trust's items of income or expense (including the treatment by the Bank or the Trust of distributions made on the Trust Securities) as reflected in the tax returns filed (or to be filed) will not be respected by a taxing authority, which subjects the Bank or the Trust to more than a de minimus amount of additional taxes, duties or other governmental charges or civil liabilities; or (y) the Bank or the Trust is, or will be, subject to more than a de minimus amount of taxes, duties or other governmental charges or civil liabilities.

"Tier 1 Capital Disqualification Event" means the determination by the Bank, after consultation with the Superintendent, that, as a result of a change after the date hereof in the Capital Guidelines, the NBC CapS II – Series 1 are no longer eligible to be included as risk-based Tier 1 Capital on a consolidated basis under the Capital Guidelines.

"Total Capital Disqualification Event" means the determination by the Bank, after consultation with the Superintendent, that, as a result of a change after the date hereof in the Capital Guidelines, the NBC CapS II – Series 1 are no longer eligible to be included as risk-based Total Capital on a consolidated basis under the Capital Guidelines.

"Trust Assets" means residential mortgages, mortgage co-ownership interests, mortgage-backed securities, eligible investments and contractual rights of the Trust in respect of the activities and operations of the Trust.

## **Representations**

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

1. The Trust is a closed-end trust established on December 17, 2007 by Natcan Trust Company (the "Natcan Trustee") under the laws of Ontario pursuant to a declaration of trust. The Trust's head office is located in Montréal, Québec.
2. The Trust has issued NBC CapS II – Series 1 to investors in several provinces of Canada (the "Offering"). Following the issuance of a final MRRS Decision Document evidencing receipt for the final prospectus dated January 16, 2008 (the "Prospectus") in respect of the Offering, the Trust became a reporting issuer or its equivalent in each of the Jurisdictions.
3. The capital of the Trust consists of special trust securities issued or to be issued by the Trust to the Bank (the "Special Trust Securities") and the NBC CapS II – Series 1 (together with the Special Trust Securities, the "Trust Securities"). The NBC CapS II – Series 1 distributed pursuant to the Prospectus are held by the public and all outstanding Special Trust Securities are held by the Bank. The Trust may, from time to time, issue further series of securities having terms substantially similar to the NBC CapS II – Series 1. Neither the Special Trust Securities nor the NBC CapS II – Series 1 are listed and posted for trading on any stock exchange.
4. The Trust was established solely for the purpose of effecting the Offering and other offerings of securities in order to provide the Bank with a cost effective means of raising capital for regulatory purposes under the *Bank Act* (Canada) (the "Bank Act"). The Bank is the administrative agent of the Trust pursuant to an Administrative and Advisory Agreement (the "Administrative and Advisory Agreement") between the Natcan Trustee and the Bank and as such advises the Trust and administers the affairs of the Trust.
5. The Trust is not in default of any requirement under the Legislation as a reporting issuer, other than the requirement to file the documents required to be filed under its Continuous Disclosure Obligations for the financial year ended December 31, 2007 and the related Officers Certificates (collectively, the "2007 Annual Documents"). The Trust acknowledges that any right of action, remedy, penalty or sanction available to any person or company or to a securities regulatory authority against the Trust from the date by which the 2007 Annual Documents were due to be filed under the Legislation until the date of this decision document are not terminated or altered as a result of this decision.
6. The NBC CapS II – Series 1 have the attributes described in paragraph 13 below. The Special Trust Securities are voting securities of the Trust.
7. The objective of the Trust is to acquire (with the proceeds of offerings of its securities) and hold the Trust Assets primarily from the Bank or its affiliates, generally on a fully-serviced basis.

8. The Bank and its affiliates are responsible for the servicing of the Trust Assets, including reporting on the performance of the Trust Assets and investment of the proceeds of the Trust Assets. The Trust Assets will generate income for distribution to holders of Trust Securities. The Trust does not, and will not, carry on any operating activity other than in connection with offerings of Trust Securities.

9. The Bank is a chartered bank subject to the provisions of the Bank Act. The authorized capital of the Bank consists of (i) an unlimited number of common shares without par value (the "Bank Common Shares"); (ii) an unlimited number of first preferred shares without par value (the "Bank Preferred Shares"), which may be issuable for a maximum aggregate consideration of \$5,000,000,000 or the equivalent thereof in foreign currencies, issuable in series; and (iii) a limited number of second preferred shares without par value. On January 31, 2008, 158,141,407 Bank Common Shares and 16,000,000 Bank Preferred Shares were issued and outstanding.

10. The Bank Common Shares and the first preferred shares, series 15 and 16 of the Bank are listed on the Toronto Stock Exchange. The Bank has undertaken, pursuant to a Bank Share Exchange Agreement (the "Bank Share Exchange Agreement") entered into among the Bank, the Trust and Computershare Trust Company of Canada acting as exchange trustee, to take all such actions as are necessary to permit the non-cumulative first preferred shares series 19 of the Bank (the "Bank Preferred Shares Series 19") delivered pursuant to the Automatic Exchange to be listed, quoted or posted for trading on a Canadian stock exchange or quotation system and to take such reasonable steps as may be necessary to ensure that such Bank Preferred Shares Series 19 remain so listed, quoted or posted for trading.

11. The Bank is a reporting issuer in each of the Jurisdictions and is not in default of any requirement under the Legislation.

12. The NBC CapS II – Series 1 qualify as Tier 1 Capital of the Bank under the Capital Guidelines.

3. The terms of the NBC CapS II – Series 1 include the following:

- The NBC CapS II – Series 1 will pay a fixed non-cumulative distribution (the "Indicated Distribution") on the last day of June and December in each year commencing June 30, 2008. Each Distribution Date will be either a "Regular Distribution Date" or a "Distribution Diversion Date". A Distribution Date will be a Distribution Diversion Date with the result that the Indicated Distribution will not be paid in respect of the NBC CapS II – Series 1 but, instead, the Trust will pay the net distributable funds of the Trust to the Bank as holder of the Special Trust Securities if: (i) the Bank has failed in the Reference Dividend Declaration Month to declare regular dividends on the Bank Preferred Shares of any series; or (ii) if no Bank Preferred Shares are then outstanding, the Bank has failed in the Reference Dividend Declaration Month to declare regular dividends on the Bank Common Shares. In all other cases, a Distribution Date will be a Regular Distribution Date, in which case holders of NBC CapS II – Series 1 will be entitled to receive the Indicated Distribution and the Bank, as holder of the

Special Trust Securities, will be entitled to receive the net distributable income, if any, of the Trust remaining after payment of the Indicated Distribution.

- The Indicated Distribution will be in the amount of: (i) in the case of any Regular Distribution Date on or before June 30, 2018, other than June 30, 2008, \$36.175 per NBC CapS II – Series 1; and (ii) in the case of any Regular Distribution Date after June 30, 2018, an amount per NBC CapS II – Series 1 determined by multiplying \$1,000 by one half of the sum of the Bankers' Acceptance Rate for the Distribution Period immediately preceding such Distribution Date plus 379 basis points, except in the case of the Regular Distribution Date for the NBC CapS II – Series 1 occurring on June 30, 2008, on which the Indicated Distribution payable by the Trust will be \$31.715.

- Under the Bank Share Exchange Agreement, the Bank has agreed, for the benefit of the holders of NBC CapS II – Series 1, that in the event that the Trust fails on any Regular Distribution Date to pay the Indicated Distribution on the NBC CapS II – Series 1 in full, the Bank will not pay dividends on any preferred shares of the Bank nor on the Bank Common Shares, until the month that commences immediately after the third Dividend Declaration Month following the Trust's failure to pay the Indicated Distribution in full on the NBC CapS II – Series 1, unless the Trust first pays such Indicated Distribution (or the unpaid portion thereof) to holders of NBC CapS II – Series 1 (the "Dividend Stopper Undertakings"). Accordingly, it is in the interest of the Bank to ensure, to the extent within its control, that the Trust complies with the obligation to pay the Indicated Distribution on each Regular Distribution Date in order to avoid the triggering of the Dividend Stopper Undertakings.

- Pursuant to the Automatic Exchange, the NBC CapS II – Series 1 will be automatically exchanged, without the consent of the holder, for 40 newly issued Bank Preferred Shares Series 19 upon the occurrence of a Loss Absorption Event.

- The Trust may, subject to regulatory approval, on June 30, 2013 and on each Distribution Date thereafter, redeem the NBC CapS II – Series 1. The price payable in respect of any such redemption will include an early redemption compensation component (such price being the "Early Redemption Price") in the event of a redemption prior to June 30, 2018 (the "Early Redemption Date"). The price payable in all other cases (the "Redemption Price") will be \$1,000 per NBC CapS II – Series 1 together with any unpaid Indicated Distribution thereon.

- Upon the occurrence of a Special Event, in each case prior to the Early Redemption Date, the Trust may, subject to regulatory approval, redeem all but not less than all of the NBC CapS II – Series 1 at the Early Redemption Price.

- The Bank has covenanted that all of the outstanding Special Trust Securities will be held by it at all times.

- As long as any NBC CapS II – Series 1 are outstanding and are held by any person other than the Bank, the Trust may only be terminated with the approval of the Bank as the holder of the Special Trust Securities and with the approval of the Superintendent: (i) upon the occurrence of a Special Event prior to June 30, 2013; or (ii) for any reason on June 30, 2013 or any Distribution Date thereafter. Holders of each series of outstanding Trust Securities will rank pari passu in the distribution of the property of the Trust in the event of a termination of the Trust after the discharge of any creditor claims. As long as any NBC CapS II – Series 1 are outstanding and held by any person other than the Bank, the Bank will not approve the termination of the Trust unless the Trust has sufficient funds to pay the Early Redemption Price in the case of a termination prior to the Early Redemption Date, or the Redemption Price in the case of a termination at any other time.
- The NBC CapS II – Series 1 are non-voting except in limited circumstances set forth in the Declaration of Trust involving changes to the terms and conditions of the NBC CapS II – Series 1.
- Except to the extent that the Indicated Distribution is payable to holders of NBC CapS II – Series 1, and other than in the event of a termination of the Trust, the NBC CapS II – Series 1 holders have no claim or entitlement to the income of the Trust or the Trust Assets.
- Pursuant to the Administrative and Advisory Agreement, the Natcan Trustee has delegated to the Bank certain of its obligations in relation to the administration of the Trust. The Bank, as advisor and administrative agent, provides advice and counsel with respect to the management of the Trust Assets and administers the day-to-day operations of the Trust and provides other advice or counsel as may be requested by the Natcan Trustee from time to time.

14. Because of the nature of the Trust, the terms of the NBC CapS II – Series 1, the Automatic Exchange and the various covenants of the Bank given in connection with the Offering, information about the affairs and financial performance of the Bank, as opposed to that of the Trust, is meaningful to holders of NBC CapS II – Series 1. The Bank's continuous disclosure filings will provide holders of NBC CapS II – Series 1 and the general investing public with all information required in order to make an informed decision relating to an investment in NBC CapS II – Series 1. Information regarding the Bank is relevant both to an investor's expectation of being paid the Indicated Distribution as well as the return of the investor's capital.

## **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 Trust be exempted from the Continuous Disclosure Obligations provided that:



1. the Bank remains a reporting issuer under the Legislation that has filed all documents it is required to file by the Legislation;
2. the Bank files with the Decision Makers, in electronic format under the Trust's SEDAR profile, the documents listed in paragraph (a) above of this Decision, at the same time as they are required under the Legislation to be filed by the Bank;
3. the Trust pays all filing fees that would otherwise be payable by the Trust in connection with the filing of the documents referred to in paragraph (a) above of this Decision;
4. the Trust sends or causes the Bank to send its interim and audited annual financial statements and interim and annual MD&A, as applicable, to holders of Trust Securities, at the same time and in the same manner as if the holders of Trust Securities were holders of Bank Common Shares;
5. all outstanding securities of the Trust are either NBC CapS II – Series 1, additional series of trust units having terms substantially similar to the NBC CapS II – Series 1 or Special Trust Securities;
6. the rights and obligations of holders of additional series of trust units are the same in all material respects as the rights and obligations of the holders of the NBC CapS II – Series 1, with the exception of economic terms such as the cash distributions payable by the Trust and redemption dates and prices;
7. the Bank is the beneficial owner of all issued and outstanding voting securities of the Trust, including the Special Trust Securities;
8. the Trust does not carry on any operating activity other than in connection with offerings of its securities.

The decision of the Decision Makers under the Legislation is that the Trust be exempted from the Certification Obligations provided that:

1. the Trust is and continues to be exempted from the Continuous Disclosure Obligations;
2. the Bank files with the Decision Makers, in electronic format under the Trust's SEDAR profile, the Officers Certificates of the Bank at the same time as such documents are required under the Legislation to be filed by the Bank.

The decision of the Decision Makers under the Legislation is that the exemptive reliefs granted hereabove are granted and are effective from the date of this decision.

This decision shall expire 30 days after the date a material adverse change occurs in the affairs of the Trust.

Montréal, May 29, 2008

Louis Morisset  
Superintendent, Securities Markets  
Autorité des marchés financiers