

IN THE MATTER OF THE SECURITIES LEGISLATION
OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO,
NOVA SCOTIA, NEWFOUNDLAND AND LABRADOR, PRINCE EDWARD ISLAND,
YUKON TERRITORY, NORTHWEST TERRITORIES AND NUNAVUT TERRITORIES

AND

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

AND

IN THE MATTER OF NATIONAL BANK FINANCIAL INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, Yukon Territory, Northwest Territories and Nunavut Territories (the "Jurisdictions") has received an application from National Bank Financial Ltd. ("National Bank") for a decision under the securities legislation of the Jurisdictions (the "Legislation"), that:

(a) except in Ontario, the requirement contained in the Legislation to be registered as an adviser (the "Registration Requirement") does not apply to certain portfolio managers (the "Advisers") who provide portfolio management services for the benefit of National Bank's clients (the "clients") participating in wrap account programs created by National Bank, including its Ambassador Portfolio Service (collectively, the "Programs"); and

(b) the requirement contained in the Legislation that a registered dealer send a written confirmation of the trade setting out certain information specified in the Legislation (the "Confirmation Requirement"), not apply to National Bank for confirmation to clients with respect to transactions conducted under the Programs;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the British Columbia 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 or in Quebec Securities Commission Notice 14-101;

AND WHEREAS National Bank has represented to the Decision Makers that:

1. it is an investment dealer registered under the Legislation, and is a member of the Investment Dealers Association;

2. it offers its clients a discretionary asset management service through which clients (such participating clients of National Bank, "clients") may invest in a portfolio of securities based on the investment advice of and management by Advisers through arrangements National Bank has made with those Advisers;

3. a client must:

(a) open an account (an "Account") that is separate from any other accounts with National Bank;

(b) enter into a written portfolio service management agreement or a similar agreement with National Bank (a "PSMA"); and

(c) provide National Bank with information regarding the client's investment objectives, preferences and restrictions so that National Bank can develop, along with the client, a written investment policy statement and investor profile;

4. it will assist the client in selecting one or more Advisers to manage all or a portion of the assets in the Account according to:

(a) the client's investor profile; and

(b) the investment style, expertise and track record of the Adviser;

5. under the PSMA:

(a) the client will grant full discretionary authority to National Bank over the assets in the Account, including the right to delegate management over all or a portion of the assets in the Account to an Adviser;

(b) the client will acknowledge and agree that securities transactions in the Account by National Bank or the Advisers will generally be executed through National Bank or one of its affiliates;

(c) an affiliate of National Bank or another recognized securities custodian will act as custodian of the securities and other assets in the Account;

(d) the client will agree to pay a fee to National Bank based on the market value of the Account at the end of each quarterly period, which fees will include all custodial, transaction and brokerage fees and commissions and professional or other fees of the Advisers; and

(e) unless otherwise requested, the client will waive receipt of trade confirmations as required under applicable Legislation;

6. it will provide the client with a statement of account with information required under the applicable Legislation, including a list of all transactions during the period and a statement of portfolio at the end of such period;

7. it will provide trade confirmations as required under the applicable Legislation to the Adviser, unless waived by the client;

8. with respect to any Adviser which is not appropriately registered as a portfolio manager in the Applicable Jurisdiction to provide the services contemplated under the Programs to a client, National Bank will agree under the PSMA to be responsible for any loss that arises out of the failure of an Adviser:

(a) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of National Bank and the client of National Bank for whose benefit the investment advice is or portfolio management services are to be provided, or

(b) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances,

and acknowledges that it cannot be relieved by its clients from this responsibility (collectively, the "Assumed Obligations");

9. it will enter into a written master portfolio management services agreement or similar agreement (the "MPMSA") with each Adviser, setting out the terms and conditions governing the relationship between National Bank, the Adviser and the client and the rights, obligations and duties of the parties;

10. under the MPMSA,:

(a) the Adviser will assist National Bank by managing the client's assets that are designated to that Adviser, based on the client's investor profile and investment policy statement;

(b) the Adviser will communicate appropriate trading instructions to National Bank (including explaining the rationale for the transactions in the Account), maintain records in respect of each Account and otherwise participate or assist National Bank in providing periodic performance reports or other related information to the clients;

11. a client must obtain all advice and information and give all instructions and directions through National Bank;

12. if there is any direct contact between the client and the Adviser, the registered representative of National Bank responsible for the client's account will at all times be present, either in person or by telephone;

13. each Adviser will be licensed, qualified or registered as a portfolio manager or investment counsel in either the United States, the United Kingdom, one of the Jurisdictions or elsewhere to provide discretionary investment counselling and portfolio management services for clients or accounts such as those contemplated under the Programs; and

14. Advisers who are not otherwise registered in Ontario will not be required to register as advisers under the *Securities Act* (Ontario) as they can rely on the exemption from registration in section 7.3 of Ontario Rule 35-502 *Non-Resident Advisers*.

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 under the Legislation is that:

(a) except in Ontario, the Registration Requirement does not apply to the Advisers who provide investment counselling and portfolio management services for the benefit of clients in connection with the Programs, provided that:

- (i) the obligations and duties of each of the Advisers is set out in a written agreement with National Bank;
- (ii) National Bank contractually agrees with each client that it will be responsible for the Assumed Obligations;
- (iii) National Bank is not relieved of the Assumed Obligations by clients;
- (iv) National Bank is registered under the Legislation as an investment dealer in the Jurisdictions in which clients are resident; and
- (v) in Manitoba, the relief is available only to Advisers who are not registered in any Canadian jurisdiction; and

(b) the Confirmation Requirement shall not apply to National Bank in respect of a client's Account in which National Bank acts as principal or agent in connection with the associated trade.

DATED June 11, 2003

Brenda Leong
Director

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief granted from the requirement to be registered as an adviser for portfolio managers acting as sub-advisers of, and providing portfolio management services to, clients of a Canadian adviser, subject to conditions

Applicable British Columbia Provisions

Securities Act, R.S.B.C 1996, c. 418, ss. 34 (1)(c), 48