

IN THE MATTER OF  
THE SECURITIES LEGISLATION  
OF ALBERTA, BRITISH COLUMBIA, SASKATCHEWAN,  
MANITOBA, ONTARIO, Québec, NOVA SCOTIA, NEWFOUNDLAND,  
NEW BRUNSWICK AND PRINCE EDWARD ISLAND

AND

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

AND

IN THE MATTER OF SNP SPLIT CORP.

AND

IN THE MATTER OF SCOTIA CAPITAL INC.

MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, Newfoundland, New Brunswick and Prince Edward Island (the "Jurisdictions") has received an application from SNP Split Corp. (the "Issuer") and Scotia Capital Inc. ("Scotia Capital") for a decision under the securities legislation (the "Legislation") of the Jurisdictions that:

1.1 the restrictions contained in the Legislation, except for the legislation of Saskatchewan, Manitoba, Ontario and Nova Scotia, restricting registrants from acting as underwriters in connection with the distribution of securities of a related or connected issuer, or the equivalent, (the "Underwriting Restrictions") shall not apply to Scotia Capital in connection with the initial public offering (the "Offering") of class A capital shares (the "Capital Shares") and class A preferred shares (the "Preferred Shares") of the Issuer; and

1.2 the requirements contained in the Legislation, except for the legislation of Quebec, of each of the Jurisdictions to file and obtain a receipt for a preliminary prospectus and final prospectus (the "Prospectus Requirements") shall not apply to Market Making Trades (as hereinafter defined) by Scotia Capital in Capital Shares and Preferred Shares of the Issuer;

2. AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System") the Alberta Securities Commission is the principal regulator for this application;

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

3.1 Scotia Capital is a direct, wholly-owned subsidiary of The Bank of Nova Scotia and 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 Inc. (the "TSE");

3.2 the Issuer was incorporated on April 23, 2001 under the laws of the Province of Ontario;

3.3 the Issuer has filed with the securities regulatory authorities or regulators of each Jurisdiction a preliminary prospectus dated April 24, 2001 (the "Preliminary Prospectus") in respect of the Offering;

3.4 the Issuer intends to become a reporting issuer, or the equivalent, under the Legislation by filing a final prospectus (the "Final Prospectus") relating to the Offering;

3.5 prior to the filing of the Final Prospectus, the Articles 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, 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 F, preferred shares, issuable in series and an unlimited number of Class J shares ("Class J Shares"), having the attributes set forth under the headings "Description of Share Capital" and "Details of the Offerings" commencing on page 23 of the Preliminary Prospectus;

3.6 the Capital Shares and Preferred Shares may be surrendered for retraction at any time in the manner described in the Preliminary Prospectus;

3.7 Application will be made to list the Capital Shares and Preferred Shares on the TSE;

3.8 Class J Shares will be the only voting shares in the capital of the Issuer;

3.9 there are currently, and will be at the time of filing the Final Prospectus, 100 Class J Shares issued and outstanding;

3.10 Scotia Capital owns 50 of the issued and outstanding Class J Shares and SNP Split Holdings Corp. ("Holdco") owns the remaining 50 issued and outstanding Class J Shares;

3.11 two employees of Scotia Capital each own 50% of the issued and outstanding common shares of Holdco;

3.12 the Issuer has a board of directors which Currently consists of three directors all of whom are employees of Scotia Capital;

3.13 prior to filing the Final Prospectus, it is contemplated that at least two additional directors, independent of Scotia Capital, will be appointed to the board of directors of the Issuer;

3.14 the offices of President/Chief Executive Officer and Chief Financial Officer/Secretary of the Issuer are held by employees of Scotia Capital;

3.15 pursuant to an agreement (the "Agency Agreement") to be made between the Issuer 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 Issuer will appoint the Agents, as its agents, to offer the Capital Shares and Preferred Shares 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;

3.16 although Scotia Capital will be lead underwriter of the Offering, it is not known at this time what proportions of the Offering will be sold by additional agents other than Scotia Capital;

3.17 by virtue of Scotia Capital's relationship with the Issuer, the Issuer -is a connected issuer, or the equivalent and a related issuer of Scotia Capital under the Legislation;

3.18 the Issuer is considered to be a mutual fund as defined in the Legislation, except under the legislation of Quebec, but 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 in the relevant Jurisdictions;

3.19 the Issuer is a passive investment company whose principal undertaking will be to invest the net proceeds of the Offering in a portfolio (the "Portfolio") of publicly listed common shares (the "Portfolio Shares") of the issuers that make up the S&P 100 Index (the "Portfolio Share Issuers") in order to generate dividend income for the holders of Preferred Shares and to enable the holders of the Capital Shares to participate in capital appreciation in the Portfolio Shares after payment of operating expenses and a portion of the fixed distribution on the Preferred Shares;

3.20 the fixed distributions on the Preferred Shares will be funded from the dividends received on the Portfolio Shares together with premiums from writing covered call options on the Portfolio Shares and where appropriate premiums from writing cash covered put options, and where call option premiums and put option premiums are insufficient, from draws on the revolving credit facility;

3.21 the Final Prospectus will disclose selected information with respect to the dividend and trading history of the Portfolio Shares;

3.22 the Portfolio Shares are listed and traded on either the New York Stock Exchange or the Nasdaq Stock Market;

3.23 the Issuer is not, and will not upon the completion of the Offering, be an insider of the Portfolio Shares Issuers within the meaning of the Legislation;

3.24 Scotia Capital's economic interest in the Issuer and in the material transactions involving the Issuer include the following:

3.24.1 agency fees with respect to the Offering;

3.24.2 an administration fee under the Administration Agreement;

3.24.3 interest and reimbursement of expenses, in connection with the acquisition of Portfolio Shares;

and 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";

3.25 the net proceeds from the sale of the Capital Shares and Preferred Shares under the Final Prospectus, after payment of commissions to the Agents and expenses of issue will be used by the Issuer to:

3.25.1 pay the acquisition cost (including any related costs or expenses) of the Portfolio Shares; and

3.25.2 pay the initial fee payable to Scotia Capital for its services under the Administration Agreement (as defined below);

3.26 all Capital Shares and Preferred Shares outstanding on a date approximately 5 years from the closing of the Offering will be redeemed by the Issuer on such date and Preferred Shares will be redeemable at the option of the Issuer on any Annual Retraction Payment Date (as described in the Preliminary Prospectus);

3.27 pursuant to an agreement (the "Securities Purchase Agreement") to be entered into between the Issuer and Scotia Capital, Scotia Capital 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 Scotia Capital and the Issuer deal at arm's length;

3.28 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;

3.29 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:

3.29.1 to fund retractions or redemptions of Capital Shares and Preferred Shares;

3.29.2 upon the exercise of a call option Written by the Issuer or to meet obligations of the Issuer; and

3.29.3 in certain limited circumstances as described in the Preliminary Prospectus, including to track changes to the constituent companies in the S&P 100 Index;

3.30 pursuant to an investment management agreement to be entered into the Issuer will retain CC&L Capital Markets Inc. to manage the Portfolio so that the Portfolio tracks the weightings of the constituent companies of the S&P 100 Index and will write covered call options and where appropriate cash covered put options, on a portion of the Portfolio Shares;

3.31 pursuant to an administration agreement (the "Administration Agreement") to be entered into, the Issuer will retain Scotia Capital to administer the ongoing operations of the Issuer and will pay Scotia Capital a fee equal to:

3.31.1 a monthly fee determined with reference to the market value of the Portfolio Shares held in the Portfolio; and

3.31.2 any interest income earned by the Issuer during the term of the Administration Agreement excluding interest earned on any investment of surplus dividends received on the Portfolio Shares and interest earned on any cash or cash equivalents held to cover put options;

3.32 Scotia Capital will be a significant maker of markets for the Capital Shares and Preferred Shares, although it is not anticipated that Scotia Capital will be appointed the registered pro-trader by the TSE with respect to the Issuer, and, as such, Scotia Capital will, from time to time, purchase and sell Capital Shares and Preferred Shares 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;

3.33 all trades made by Scotia Capital as principal will be recorded daily by the TSE;

3.34 As Scotia Capital owns 50% of the Class J Shares of the Issuer, Scotia Capital will be deemed to be in a position to effect materially the control of the Issuer and consequently, each Market Making Trade will be a "distribution" or a "primary distribution to the public" within the meaning of the Legislation, except under the legislation of Quebec;

4. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

5. 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;

6. THE DECISION of the Decision Makers under the Legislation is that:

6.1 the Underwriting Restrictions shall not apply to Scotia Capital in connection with the Offering;

6.2 the Prospectus Requirements shall not apply to the Market Making Trades by Scotia Capital in the Capital Shares and Preferred Shares provided that at the time of each Market Making Trade, Scotia Capital and its affiliates do not beneficially own or have the power to exercise control or direction over a sufficient number of voting securities of a Portfolio Share Issuer, securities convertible into voting securities of a Portfolio Share Issuer, options to acquire voting securities of a Portfolio Share Issuer, or any other securities which provide the holder with the right to exercise control or direction over voting securities of a Portfolio Share Issuer which, in the aggregate, permit Scotia Capital to affect materially the control of the Portfolio Share Issuer and without limiting the generality of the foregoing, the beneficial ownership of or the power to exercise control or direction over securities representing in the aggregate, 20% or more of the votes attaching to all the then issued and outstanding voting securities of a Portfolio Share Issuer shall, in the absence of evidence to the contrary, be deemed to affect materially the control of the Portfolio Share Issuer.

DATED this "29<sup>th</sup>" day of "May", 2001.

Wendy E. Best, Q.C., Member

Glenda A. Campbell, Vice-Chair

#### Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief from the requirements of s. 6.2.6 of *Alberta Securities Commission Policy 7.1* in connection with a proposed offering of capital shares and preferred shares; relief from the prospectus requirements in connection with market making trades by the lead agent.

Applicable Alberta Statutory Provisions

Securities Act, S.A., 1981, c.S-6.1, as amended, ss. 1(f)(iii), 112, 81(l) and 116(l)

*Alberta Securities Commission Policy 7.1*, ss. 4.1 and 6.2.6