

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

**AND**

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

**AND**

**IN THE MATTER OF SNP HEALTH SPLIT CORP.**

**AND**

**IN THE MATTER OF SCOTIA CAPITAL INC.**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia, Newfoundland and Labrador, New Brunswick, and Prince Edward Island (the "Jurisdictions") has received an application from SNP Health Split Corp. (the "Company") and Scotia Capital Inc. ("Scotia Capital") for a decision under the securities legislation (the "Legislation") of the Jurisdictions that the requirements contained in the Legislation 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 class A Preferred Shares (the "Preferred Shares") and class A Capital Shares (the "Capital Shares") of the Company, subject to certain restrictions;

**AND WHEREAS** under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for this application;

**AND WHEREAS** the Company has represented to the Decision Makers that:

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 (the "TSE").
2. The Company was incorporated on November 29, 2001 under the laws of the Province of Ontario and is authorized to issue an unlimited number of Class J Shares.

3. The Company has filed with the securities regulatory authorities of each province of Canada a preliminary prospectus dated November 29, 2001 (the "Preliminary Prospectus") in respect of the proposed offering (the "Offering") of Capital Shares and Preferred Shares to the public.

4. The Company intends to become a reporting issuer under the Legislation by filing a final prospectus (the "Final Prospectus") relating to the Offering. 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, 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, having the attributes set forth under the headings "Description of Share Capital" and "Details of the Offerings" in the Preliminary Prospectus.

5. The Capital Shares and Preferred Shares may be surrendered for retraction at any time in the manner described in the Preliminary Prospectus.

6. Application will be made to list the Capital Shares and Preferred Shares on the TSE.

7. The Class J Shares will be the only voting shares in the capital of the Company. There are currently, and will be at the time of filing the Final Prospectus, 100 Class J Shares issued and outstanding. Scotia Capital owns 50 of the issued and outstanding Class J Shares of the Company and SNP Health Split Holdings Corp. owns the remaining 50 issued and outstanding Class J Shares of the Company. Two employees of Scotia Capital each own 50% of the issued and outstanding common shares of SNP Health Split Holdings Corp.

8. The Company has a board of directors which currently consists of three directors. All of the directors are employees of Scotia Capital. Also, the offices of President/Chief Executive Officer and Chief Financial Officer/Secretary of the Company are held by employees of Scotia Capital. 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 Company.

9. Pursuant to an 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"), the Company will appoint the Agents, as its agents, 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 Agents in accordance with the Legislation.

10. The Company is considered to be a mutual fund as defined in the Legislation. 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 Mutual Funds.

11. The Company 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 companies that make up the *S&P Health Care Sector* of the *S&P*

500 Index (the "Health Care Index") in order to generate dividend income for the holders of Preferred Shares and to enable the holders of Capital Shares to participate in any capital appreciation in the Portfolio Shares after payment of operating expenses and a portion of the fixed distribution on the Preferred Shares.

12. The fixed distributions on the Preferred Shares will be funded from the dividends received on the Portfolio Shares together with premiums earned from writing covered call options on a portion of the Portfolio Shares and where appropriate, cash covered put options. To the extent that premiums generated from option writing are in any quarter insufficient to pay the quarterly Preferred Share distributions, the Company may fund the payment of a portion of the fixed distributions on the Preferred Shares on a temporary basis from borrowings under the Company's revolving credit facility to be established with a Canadian chartered bank.

13. The Portfolio Shares are listed and traded on either the New York Stock Exchange or the Nasdaq Stock Market.

14. The Company is not, and will not upon the completion of the Offering, be an insider of any of the issuers of the Portfolio Shares within the meaning of the Legislation.

15. Scotia Capital's economic interest in the issuer and in the material transactions involving the Company 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".

16. 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 Company to:

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

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

17. All Capital Shares and Preferred Shares outstanding on a date approximately seven years from the closing of the Offering will be redeemed by the Company on such date, as will be specified in the Final Prospectus, and Preferred Shares will be redeemable at the option of the Company on any Annual Retraction Payment Date, as described in the Preliminary Prospectus.

18. Pursuant to a 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, Portfolio Shares in the market on commercial terms or from non-related parties with whom Scotia Capital and the Company deal at arm's length. The aggregate purchase price to be paid by the Company 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.

19. It will be the policy of the Company to hold the Portfolio Shares and to not engage in any

trading of the Portfolio Shares, except for the purposes described in the Preliminary Prospectus, including:

- (a) to give effect to any change in the composition or weighting of the constituent companies in the Health Care Index;
- (b) to fund retractions and redemptions of the Capital Shares and Preferred Shares; or
- (c) upon the exercise of a call option written by the Company or to meet obligations of the Company in respect of liabilities.

20. Pursuant to an investment management agreement to be entered into, the Company will retain Connor, Clark & Lunn Capital Markets Inc. to manage the Portfolio so that the Portfolio tracks the weightings of the constituent companies of the Health Care Index and will write covered call options and where appropriate cash covered put options, on a portion of the Portfolio Shares.

21. 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 fee equal to:

- (a) a monthly fee of 1/12 of 0.20 percent of the market value of the Portfolio Shares held in the Portfolio; and
- (b) any interest income earned by the Company 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 by the Company to cover put options written by the Company).

22. 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 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 TSE.

23. As Scotia Capital owns 50% of the Class J Shares of the Company, Scotia Capital will be deemed to be in a position to affect materially the control of the Company and consequently, each Market Making Trade will be a "distribution" or "distribution to the public" within the meaning of the Legislation.

**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 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 the issuers of the Portfolio Shares, securities convertible into voting securities of the issuers of the Portfolio Shares, options to acquire voting securities of the issuers of the Portfolio Shares, or any other securities which provide the holder with the right to exercise control or direction over voting securities of the issuers of the Portfolio Shares which in the aggregate, permit Scotia Capital to affect materially the control of the issuers of the Portfolio Shares 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 percent or more of the votes attaching to all the then issued and outstanding voting securities of the issuers of the Portfolio Shares shall, in the absence of evidence to the contrary, be deemed to affect materially the control of the issuers of the Portfolio Shares.

**DATED** January 4, 2002.

Paul Moore

Robert W. Korthals

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Subdivided offering - Market making trades by promoter/agent shall not be subject to requirements to file and obtain a receipt for a preliminary and final prospectus provided that the promoter/agent and its affiliates do not beneficially own or have the power to exercise control of a sufficient number of voting securities of an issuer of the securities comprising the issuer's portfolio to permit the promoter/agent to affect materially the control of such issuer.

Applicable Ontario Provisions

*Securities Act*, R.S.O, 1990 , c.S.5, as amended, ss. 1(1), 53(1), 74(1).