

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

AND

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

AND

IN THE MATTER OF BMO NESBITT BURNS INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Québec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland (the "Jurisdictions") has received an application from BMO Nesbitt Burns Inc. ("NBI") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirements contained in the Legislation to be registered to trade in a security (the "Registration Requirement") and to file a preliminary prospectus and a prospectus (the "Prospectus Requirement") shall not apply to the proposed offering (the "Offering") of limited partnership interests (the "Interests") by a limited partnership (the "Fund"), the general partner (the "General Partner") of which will be an indirect wholly-owned subsidiary of the Bank of Montreal ("BMO"), to eligible employees of BMO and its affiliates;

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 NBI has represented to the Decision Makers that:

1. BMO is a Canadian chartered bank under Schedule I of the *Bank Act* (Canada);
2. NBI is an indirect wholly owned subsidiary of BMO;
3. NBI is a full service broker-investment dealer registered with the securities regulatory authorities in the Jurisdictions;
4. the General Partner will be incorporated under the *Business Corporations Act* (Ontario) as an indirect wholly-owned subsidiary of BMO;
5. the Fund will be established as a limited partnership under the *Limited Partnerships Act* (Ontario) under a limited partnership agreement (the "Partnership Agreement"); the Fund will

not be a reporting issuer in any province in Canada; the principal place of business of the Fund and the registered office of the General Partner will be in Toronto, Ontario;

6. the Interests will be offered under a confidential offering memorandum which will provide Participants with statutory and/or contractual rights of rescission or rights to damages (or both);

7. the Fund will be investing in private equity funds and in two internally-managed funds;

8. only certain employees in Canada of BMO and its affiliates will be offered Interests, and of those employees only those who have (i) individual cash compensation in excess of Cdn.\$200,000 in each of 1999 and 2000 and have a reasonable expectation of reaching the same cash compensation level in 2001, or (ii) an individual net worth or net worth with their spouse that exceeds Cdn.\$1 million will be eligible to purchase Interests; each eligible employee will also be required to sign a "qualified investor" statement to acknowledge his or her understanding that the investment is at risk and that such employee can afford to lose the money that he or she invests in the Fund;

9. an eligible employee who is invited and agrees to participate (a "Participant") must invest a minimum of Cdn.\$20,000 in the Fund with additional increments of Cdn.\$10,000, up to a maximum of 25% of such Participant's average annual cash compensation for the most recent two years of employment; participation amounts must be approved by senior management of NBI and may be adjusted to appropriate levels;

10. a Participant will have an option to receive a loan (the "Loan") from the BMO entity that employs such Participant in order to finance a portion of his or her initial investment amount; the amount of the Loan received by a Participant is based upon the Participant's equity commitment to the Fund; a portion of the financing offered to Participants will be non-recourse; the Loans made to Participants will be secured by the Participant's interest in the Fund; Participants may also borrow additional amounts (the "Interest Loans") under certain circumstances for payment of interest on the Loans;

11. full drawdown on the commitments of Participants is expected to occur by December 31, 2001, with a vesting of 25% in each of years one to four of the Fund on the portion financed by Loans; interest on the Loans and Interest Loans will be at a rate equal to the greater of (i) the long-term applicable federal rate, compounded semi-annually, as determined in accordance with Section 7872 of the *Internal Revenue Code of 1986, as amended* (United States), and (ii) the prescribed rate from time to time under the *Income Tax Act* (Canada);

12. distributions from the Fund will be made, first, to permit a Participant to pay taxes relating to his or her income from the Fund for the year or previous years; second, to pay interest and principal on the Loans and Interest Loans, and thereafter to the Participant for his or her own use; the Fund will pay a management fee and a carried interest to the principals of the internally managed portion of the investments;

13. the Interests will represent an equal, undivided interest in the net assets of the Fund and will be subject to the restrictions on transfer contained in the Partnership Agreement; such restrictions

require that a limited partner of the Fund (a "Limited Partner") may only transfer their Interests with the express consent of the General Partner and then only to BMO, an affiliate of BMO, a new Participant who meets the eligibility requirements of an eligible employee, an investment vehicle established for the benefit of such Limited Partner or to another Limited Partner;

14. it is expected that approximately 80% of the Participants in Canada will be residents of Ontario and no more than approximately 10% will be residents of any other province of Canada;

15. the Offering in the Province of Ontario will be made under the exemption from the prospectus and registration requirements of the *Securities Act* (Ontario) for securities of a "private issuer" provided for in Section 2.17 of OSC Rule 45-501;

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:

1. a trade in Interests from the Fund to a Participant under the Offering shall not be subject to the Registration Requirement and the Prospectus Requirement provided that:

(a) the Fund is not a reporting issuer in anywhere in Canada at the time of the trade;

(b) the Interests of the Fund are subject to restrictions on transfer contained in the Partnership Agreement, as described in paragraph 13 above, and any trade in Interests is made in compliance with such restrictions;

(c) following the trade, the total number of holders of Interests is not more than 50 persons, exclusive of persons employed by BMO or an affiliate of BMO; and

(d) the Fund has not, at the time of the trade, distributed any securities (including Interests) to the public;

(the "Exemption Conditions")

2. any trade in Interests that have been acquired under this Decision shall not be subject to the Registration Requirement provided that the Exemption Conditions are satisfied; and

3. any trade in Interests that have been acquired under this Decision shall be deemed to be a distribution or, where applicable, a primary distribution to the public, unless the Exemption Conditions are satisfied.

DATED December 14, 2000.

Brenda Leong
Director

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from the prospectus and registration requirements to permit a Partnership to issue Interests in the Partnership provided that: (a) the Partnership is not a reporting issuer or the equivalent; (b) the Interests are subject to restrictions on transfer; (c) the total number of holders of Interests is not more than 50 persons exclusive of employees of the parent of the General Partner of the Partnership and employees of affiliates of the parent; and (d) the Partnership has not distribute any securities to the public.

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss 48 and 76