

IN THE MATTER OF  
THE SECURITIES LEGISLATION  
OF BRITISH COLUMBIA, SASKATCHEWAN  
MANITOBA, ONTARIO, NOVA SCOTIA AND NEWFOUNDLAND

AND

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

AND

IN THE MATTER OF  
NESBITT BURNS INC.

MRRS DECISION DOCUMENT

WHEREAS the Canadian securities regulatory authority or regulator (the "Decision Makers") in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia and Newfoundland (the "Jurisdictions") have received an application from Nesbitt Burns Inc. ("NBI") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the reporting requirements contained in the Legislation triggered by the acquisition of 10% or more of the outstanding securities of a reporting issuer (the "Early Warning Requirements") and the corresponding restrictions on further acquisitions (the "Moratorium Requirements") shall not apply to NBI in respect of investments by NBI in units or securities of Linked Funds (as defined below) where:

(a) NBI enters into forward or other derivative contracts either directly with BPI American Equity RSP Fund, BPI Global Equity RSP Fund or any similar fund that is a fully qualified investment for registered plans such as RRSPs (each such fund hereinafter referred to as an "RSP Fund" and collectively as the "RSP Funds") or with a counterparty that has entered into an equivalent forward contract with an RSP Fund (a "back to back forward contract structure");

(b) the respective underlying interest of each forward contract is units or securities of a related linked fund, such as, in the case of the aforementioned RSP Funds, BPI American Equity Value Fund, BPI Global Equity Value Fund or any similar linked fund that is not an eligible investment for registered plans such as RRSPs (each such fund, with respect to the corresponding RSP Fund having the same investment objective, is hereinafter referred to as a "Linked Fund" and collectively as the "Linked Funds");

(c) NBI purchases units or securities of a Linked Fund pursuant to a prospectus for which a receipt has been issued in order to hedge its obligations under the corresponding forward contract;

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

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

1. NBI is a registered investment dealer incorporated under the federal laws of Canada.
2. The RSP Funds and Linked Funds are or will be mutual fund trusts or corporations established under the laws of Canada or a province thereof
3. Each of the Linked Funds and RSP Funds are or will be reporting issuers under the Securities laws of each of the provinces and territories of Canada. The units or securities of such funds will be qualified for sale pursuant to a simplified prospectus and annual information form.
4. Specific descriptions of the investment objectives of the RSP Funds and the Linked Funds will be contained in the applicable annual information form and simplified prospectus, which will also disclose that a counterparty may hedge its obligations under forward contracts with RSP Funds by purchasing units or securities of Linked Funds.
5. Each RSP Fund will invest in derivative contracts, including forward contracts, that are linked to the returns earned by investors in a related Linked Fund.
6. Whether each RSP Fund enters into forward contracts with NBI directly or with another counterparty through a back to back forward contract structure, NBI is expected to hedge its obligations under the forward contracts by investing an amount equal to its exposure to the net assets of each RSP Fund in units or securities of the related Linked Fund (in either case, such hedging activity is hereinafter referred to as the "Hedging Program").
7. It is expected that each of the forward contracts will be entered into and settled on a monthly basis and will be adjusted daily to reflect net cash received by the applicable RSP Fund in connection with the purchase of units of such RSP Fund, the cost of the forward contract and the expenses paid by such RSP Fund. All payments under the forward contracts are to be made only in cash and no RSP Fund will have any entitlement or right to units or securities of the related Linked Fund. Each forward contract, or back to back forward contract structure, creates economic exposure to the related Linked Fund by delivering to the related RSP Fund a cash payment from the counterparty to the forward contract with the RSP Fund substantially equal to the investment return, if any, in such related Linked Fund, less the cost of the forward contract and the operating expenses of the RSP Fund. Any investment loss in a Linked Fund results in a cash payment by the related RSP Fund to the counterparty to the forward contract with such RSP Fund.
8. The extent of the obligations of NBI to an RSP Fund under such forward contracts will determine the size of the hedge that NBI may want in respect of those obligations and, accordingly, the number of units or securities of a Linked Fund that NBI may want to acquire pursuant to the Hedging Program.

9. As the net assets of each RSP Fund increases, it is likely that NBI's investment in the related Linked Fund will reach, and in all likelihood exceed, the disclosure threshold of 10% of a class of securities of a reporting issuer set out in the Legislation with the result that the Early Warning Requirements and the Moratorium Requirements will be applicable.

**AND WHEREAS** pursuant to 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 Early Warning Requirements and Moratorium Requirements contained in the Legislation shall not apply to NBI in respect of acquisitions by NBI, for the purposes of its Hedging Program, of units or securities of any Linked Fund in order to hedge NBI's obligations under forward contracts it has entered into with an RSP Fund or a counterparty provided that:

(a) NBI shall file a report:

(i) within 10 days after the end of the month in which the securityholding percentage of NBI (exclusive of any securities held by NBI as a pledgee or otherwise as a secured party or in the capacity of underwriter during the underwriting period) in a class of units or securities (the "Reportable Securityholding Percentage") in a Linked Fund at the end of the month increased to 10 per cent or more of the outstanding units or securities of the class as at the month end;

(ii) within 10 days after the end of the month in which the Reportable Securityholding Percentage of NBI in a Linked Fund, as at the end of the month, increased or decreased past thresholds represented by whole multiples of 2.5 per cent of the outstanding units or securities in the class of the Linked Fund in excess of 10 per cent of the outstanding units or securities of the class as at the month end; and

(iii) within 10 days after the end of the month in which the Reportable Securityholding Percentage of NBI in a Linked Fund, as at the end of the month, decreased to less than 10 per cent of the outstanding units or securities of the class as at the month end;

except that no such reports shall be required with respect to:

(A) an increase in the Reportable Securityholding Percentage in a Linked Fund that arises solely from

a reduction in outstanding units or securities in a Linked Fund that occurs as a result of redemptions, retractions or other repurchases by the Linked Fund, or

(B) a decrease in the Reportable Securityholding Percentage in a Linked Fund that arises without any action being taken by NBI (in respect of units or securities that would comprise part of the Reportable Securityholding Percentage) and solely from an increase in the outstanding units or securities in the Linked Fund that occurs as a result of treasury issuance of units or securities by the Linked Fund;

(b) NBI shall file a report within 10 days after the end of the month in which there has been a change in a material fact contained in the report of NBI most recently filed pursuant to this Decision;

(c) a report filed under items (i) or (ii) of paragraph (a) above shall contain the following information:

(i) the name and address of NBI;

(ii) as at the month end, the net increase or decrease in the number of units or securities in the Linked Fund held, and in NBI's Reportable Securityholding Percentage in the Linked Fund, since the last report filed by NBI under this Decision (provided that the Reportable Securityholding Percentage may be omitted from the report if the change is less than 1 percent of the number of units or securities outstanding at the end of the month);

(iii) the designation and number of units or securities in the Linked Fund held, and NBI's Reportable Securityholding Percentage in the Linked Fund, at the end of the month for which the report is made;

(iv) the designation and number of units or securities in the Linked Fund and the percentage of outstanding securities referred to in subparagraph (iii) over which

(A) NBI, either alone or together with any joint actors, has ownership and control

(B) NBI, either alone or together with any joint actors, has ownership but control is held by other

persons or companies other than NBI or any joint actor; and

(C) NBI, either alone or together with any joint actors, has exclusive or shared control but does not have ownership;

(v) the purposes of NBI and any joint actors in acquiring or disposing of ownership of, or control over, the units or securities in the Linked Fund, including any future intention to acquire ownership of, or control over, additional units or securities in the Linked Fund;

(vi) the general nature and the material terms of any agreement, other than lending arrangements and forward contracts, with respect to units or securities in the Linked Fund entered into by NBI, or any joint actor, and the Linked Fund or any other person or company in connection with any transaction or occurrence resulting in the change in ownership or control giving rise to the report, including agreements with respect to the acquisition, holding, disposition or voting of any of the securities;

(vii) the names of any joint actors in connection with the disclosure required by the report;

(viii) if applicable, a description of any change in any material fact set out in a previous report by NBI under the Early Warning Requirements or this Decision in respect of the units or securities of the Linked Fund; and

(ix) a statement that NBI is relying upon this Decision in filing the report;

(d) the report filed pursuant to paragraph (c) may also include:

(i) information in addition to that required by this Decision; and

(ii) a declaration that the filing of the report is not an admission that a person or company named in the report owns or controls any described securities or is a joint actor with another named person or company;

(e) a report filed under item (iii) of paragraph (a) above shall contain the following information:

(i) the name and address of NBI;

(ii) the designation and number of units or securities of the Linked Fund in respect of which the report is being filed and the Reportable Securityholding Percentage; and

(iii) a statement that NBI is relying upon this Decision in filing the report;

(f) for purposes of this Decision, if NBI (or an affiliate or an associate of NBI) conducts business or investment activities through business units it may treat units or securities in a Linked Fund that are owned or controlled through a business unit separately from securities owned or controlled through any other of its business units if

(i) decisions on the acquisition, disposition, holding and voting of the securities owned or controlled by a business unit are made in all circumstances by that business unit;

(ii) the business unit is not a joint actor with any other business unit with respect to the securities, determined without regard to the presumption in securities legislation that an associate or affiliate of an offeror is presumed to be acting jointly or in concert with the offeror;

(iii) no business unit, person or company that makes, advises on, participates in the formulation of or exercises influence over, decisions for the acquisition, disposition, holding or voting of securities of specific reporting issuers for, by or on behalf of a business unit also makes, advises on, participates in the formulation of or exercises influence over, decisions with respect to the acquisition, disposition, holding or voting of securities of specific reporting issuers for, by or on behalf of any other business unit, except for the purposes of preparing research reports or monitoring or ensuring compliance with regulatory requirements or general investment policies, guidelines, objectives or restrictions;

(iv) NBI (or an affiliate or associate of NBI) had reasonable grounds for believing that each business unit complies with the applicable provisions of the Legislation in connection with the securities that the business unit owns or controls;

(v) NBI (or an affiliate or associate of NBI) has taken reasonable steps to ensure that each business unit complies with the requirements of this Decision; and

(vi) NBI (or an affiliate or associate) complies with paragraphs (h) and (i) below;

(g) for purposes of this Decision, NBI (or an affiliate or associate of NBI) may treat units or securities in a Linked Fund owned or controlled by an investment

fund over which NBI (or an affiliate or associate of NBI) exercises or shares control, or securities convertible, exercisable or exchangeable for such units or securities in a Linked Fund, separately from other units or securities in a Linked Fund owned or controlled by NBI (or an affiliate or associate of NBI) if

(i) the investment fund is not a private mutual fund;

(ii) a portfolio adviser manages the investment fund on behalf of NBI (or an affiliate or associate of NBI) under a written agreement;

(iii) the portfolio adviser has been identified as managing the investment fund in a prospectus, or in offering materials used in the private placement of securities, of the investment fund;

(iv) none of NBI (or an affiliate or associate of NBI), or a director, officer, partner, employee or agent of any of NBI or its affiliates or associates, makes, advises on, participates in the formulation of, or exercises influence over, decisions with respect to the acquisition, disposition, holding or voting of securities of specific reporting issuers made by the portfolio adviser, except for the purposes of preparing research reports or monitoring or ensuring compliance with regulatory requirements or general investment policies, guidelines, objectives or restrictions;

(v) NBI (or an affiliate or associate of NBI) has reasonable grounds for believing that the units or securities in its Linked Fund are included by the portfolio adviser in its compliance with the applicable provisions and applicable definitions of the Legislation;

(vi) the portfolio adviser neither controls nor is controlled by any of NBI (or an affiliate or associate of NBI); and

(vii) NBI (or an affiliate or associate of NBI) complies with the reporting and record keeping provisions of paragraphs (h) and (i) below;

(h) in order to rely on paragraphs (f) and (g) above, NBI (or an affiliate or associate of NBI) shall indicate in any document released or filed under this Decision:

(i) its reliance on either paragraph (f) or (g) above;

(ii) the identity of the business units or investment funds for which ownership and control of the securities has been disclosed; and

(iii) the fact that units or securities owned or controlled by other business units or investment funds have not been, or may not have been, disclosed;

(i) NBI (or an affiliate or associate of NBI) shall maintain records of the details concerning:

(i) business units of the person or company that are treated separately, by reason of paragraph (f) above, for the purposes of compliance with this Decision; and

(ii) investment funds whose ownership of, or control over, securities are treated separately, by reason of paragraph (g) above, for the purposes of compliance with this Decision.

**PROVIDED** that this Decision shall cease to be operative 30 days following the entry into force of a rule or policy of the Decision Makers relating to alternative early warning reporting and related matters (the 30th day being the "Lapse Date"), without prejudice to NBI's ability to treat reports made pursuant to this Decision prior to such Lapse Date as having being made under that rule or policy.

DATED at Toronto, Ontario, on this "14th" day of "October", 1999