

Headnote

National Policy 11-203 – *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Exemptive relief granted to exchange-traded fund from mutual fund concentration restriction – Relief required because fund did not fit within “fixed portfolio ETF” exception – Split share corporation – Investors will generally buy and sell the shares of the fund through the TSX – Concentration disclosure – Relief not prejudicial to investors – Relief from National Instrument 81-102 *Investment Funds*.

Applicable Legislative Provisions

National Instrument 81-102 *Investment Funds*, subsections 2.1(1) and 19.1(1); paragraph 2.1(2)(e)

Citation: Re E Split Corp., 2018 ABASC 97

Date: 20180618

In the Matter of
the Securities Legislation of
Alberta and Ontario (the **Jurisdictions**)

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
E Split Corp. (the **Filer**)

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that exempts the Filer from the requirement of subsection 2.1(1) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) which prohibits a mutual fund from purchasing a security of an issuer if, immediately after the transaction, more than 10 percent of the net assets of the mutual fund, taken at market value at the time of the transaction, would be invested in securities of the issuer (the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (a) the Alberta Securities Commission is the principal regulator for this application;

- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System (MI 11-102)* is intended to be relied upon in each province of Canada, other than Ontario; and
- (c) this decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* or MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filer:

The Filer

1. The Filer is a mutual fund corporation established under the laws of Ontario. The Filer's manager is Middlefield Limited (the **Manager**).

The Offering

2. The Filer will make an offering (the **Offering**) to the public of Class A shares (the **Class A Shares**) and preferred shares (the **Preferred Shares**) (collectively, the **Shares**) in each of the provinces of Canada.
3. The Filer will not continuously distribute the Shares.
4. A preliminary prospectus dated May 17, 2018 (the **Preliminary Prospectus**) has been filed with the securities regulatory authorities in each of the provinces of Canada.
5. The Shares are expected to be listed and posted for trading on the Toronto Stock Exchange (the **TSX**). An application for conditional listing approval has been made by the Filer to the TSX.
6. The net proceeds of the Offering will be invested a portfolio comprised of at least 90% (excluding cash and cash equivalents) of common shares of Enbridge Inc. (the **Enbridge Shares**).
7. The Filer's current intention is that its investment portfolio will generally be comprised predominantly of Enbridge Shares throughout the life of the Filer, including in the period following completion of the Offering. The Filer may, however, reduce its holdings of Enbridge Shares to no less than 90% of the portfolio (excluding cash and cash equivalents) in order to address market conditions that arise from time to time, including purchasing put options. The portion of the portfolio not invested in Enbridge Shares will be invested in accordance with the Filer's investment objectives, strategy and restrictions and applicable securities legislation.

The Shares

8. As disclosed in the Preliminary Prospectus, the Filer's investment objectives for the Preferred Shares are to provide holders with fixed cumulative preferential quarterly cash distributions and to return the original issue price of \$10.00 to holders on June 30, 2023 (the **Maturity Date**), subject to extension for successive terms of up to five years as determined by the Company's board of directors. The quarterly cash distribution will be \$0.13125 per Preferred Share (\$0.525 per annum), representing a yield of 5.25% per annum on the issue price of \$10.00 per Preferred Share until June 30, 2023.
9. As disclosed in the Preliminary Prospectus, the Filer's investment objectives for the Class A Shares are to provide holders with non-cumulative monthly cash distributions and to provide holders with the opportunity for capital appreciation through exposure to the Portfolio. The monthly cash distribution is targeted to be \$0.10 per Class A Share (\$1.20 per annum), representing a yield of 8.0% per annum on the issue price of \$15.00 per Class A Share.
10. The Shares will be retractable at the option of the holder on a monthly and annual basis at a price computed by reference to the value of a proportionate interest in the net assets of the Filer. As a result, the Filer will be a "mutual fund" under applicable securities legislation.
11. To supplement the dividends earned on the Filer's portfolio and to reduce risk, the Filer will from time to time write covered call options in respect of all or part of the Enbridge Shares.
12. The Preferred Shares and the Class A Shares (one Preferred Share and one Class A Share being a **Unit**) may be surrendered for retraction at any time and will be retracted on a monthly basis on the second last business day of each month (a **Retraction Date**), provided such shares are surrendered for retraction not less than 20 business days prior to the Retraction Date. The Filer will make payment for any Shares retracted prior to the last business day of the month following the Retraction Date.
13. Holders of Preferred Shares whose Preferred Shares are surrendered for retraction on a monthly basis will be entitled to receive a retraction price per Preferred Share equal to 96% of the lesser of: (i) the net asset value per Unit determined as of such Retraction Date, less the cost to the Company of the purchase of a Class A Share for cancellation; and (ii) \$10.00.
14. Holders of Class A Shares whose Class A Shares are surrendered for retraction on a monthly basis will be entitled to receive a retraction price per Class A Share equal to 96% of the difference between: (i) the net asset value per Unit determined as of such Retraction Date; and (ii) the cost to the Company of the purchase of a Preferred Share for cancellation.

15. Holders of Preferred Shares and Class A Shares may concurrently retract an equal number of Preferred Shares and Class A Shares on the second last business day of January of each year commencing in 2020, other than in a year when the last business day of January is the Maturity Date (an **Annual Retraction Date**), provided such shares are surrendered for retraction not less than 20 business days prior to the Annual Retraction Date.
16. Holders of Units whose Units are surrendered for retraction on an Annual Retraction Date will be entitled to receive a retraction price equal to the net asset value per Unit on the Annual Retraction Date, less any costs associated with the retraction, including commissions and other such costs, if any, related to the liquidation of any portion of the portfolio required to fund such retraction.

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted provided that:

- (a) the Filer's investment of its assets is in accordance with its investment objectives, strategy and restrictions; and
- (b) the prospectus of the Filer will disclose the fact that the Filer has obtained the Exemption Sought on the terms described in this decision.

"original signed by" _____

Tom Graham
Director
Corporate Finance