



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

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Citation: National Bank Financial Inc. (Re), 2018 ONSEC 4

Date: 2018-01-26

File No. 2017-82

**IN THE MATTER OF  
NATIONAL BANK FINANCIAL INC.  
(in respect of its predecessors NATIONAL BANK FINANCIAL LTD.  
and NBCN INC.)**

**ORAL REASONS FOR APPROVAL OF SETTLEMENT  
(Sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5)**

**Hearing:** January 26, 2018

**Decision:** January 26, 2018

**Panel:** Mark Sandler Commissioner and Chair of the Panel  
Robert Hutchison Commissioner  
Frances Kordyback Commissioner

**Appearances:** Cullen Price For Staff of the Commission  
Lawrence E. Ritchie For National Bank Financial Inc.  
Vanessa Cotric

## ORAL REASONS FOR APPROVAL OF SETTLEMENT

*The following reasons have been prepared for publication in the Ontario Securities Commission Bulletin, based on the reasons delivered orally in the hearing as edited and approved by the panel, to provide a public record of the oral reasons.*

- [1] The respondent has entered into a settlement agreement with Staff of the Commission. In this hearing, the parties submit jointly that it would be in the public interest for us to approve the settlement agreement and to issue the requested order. That order imposes terms, including but not limited to a \$700,000 administrative penalty, on the respondent. After considering the evidence and the submissions presented to us, as well as existing precedents, we agree that the requested order is in the public interest. I will briefly explain why.
- [2] The facts are fully set out in the settlement agreement, which is publicly available. Accordingly, it is unnecessary to set out in detail the relevant conduct. In essence, the respondent admits that its predecessor companies engaged in conduct contrary to the public interest and contrary to their obligations as registered firms by failing to take necessary steps to provide for timely delivery of summary disclosure documents to investors who purchased exchange traded fund (ETF) securities. The respondent's predecessors failed to act in accordance with the terms of the applicable exemptive relief decisions. In the settlement agreement, this conduct is characterized as the "Delivery Issues".
- [3] As mitigating factors, the settlement agreement notes that there is no allegation and no evidence that the respondent or its predecessors engaged in any abusive, willful or otherwise intentional misconduct. The Delivery Issues were inadvertent and rooted in a software programming error. After the Delivery Issues were identified, steps were taken to ensure that the required summary disclosure documents were provided to investors. The respondent fully cooperated with Staff of the Commission. There is no evidence that the Delivery Issues (that is the delayed disclosure of these documents) resulted in any investor losses. Nor is there any evidence that the respondent or its predecessor companies derived any financial benefit from the failure to make timely disclosure of these documents.
- [4] Nonetheless, it is important that registered firms comply with their disclosure requirements and ensure, through adequate and ongoing processes, that those requirements are fulfilled in a timely way. That did not occur here due to identified deficiencies which we understand have since been addressed. As well, we are mindful of the fact that the non-compliance was not momentary, but extended over a period of time, and that a large number of investors, both here and in Québec, did not receive timely disclosure to which they were entitled as a result.
- [5] The jurisprudence establishes that parties should be encouraged to reach settlements. Settlements save valuable resources, including but not limited to hearing time, and promote timely dispositions. Staff of the Commission and counsel for respondents are well placed to arrive at a settlement agreement that addresses the interests of both the public and the respondents. Accordingly, a hearing panel should not reject a settlement agreement lightly.

- [6] In our view, the proposed agreed-upon disposition takes into consideration the appropriate aggravating and mitigating factors, most of which I have already identified in these brief reasons. As well, we take into consideration the existence of parallel proceedings in Québec involving the respondent and substantially the same facts. The settlement of that proceeding, which has been commenced before the Autorité des marchés financiers (AMF), is the subject of a separate application being heard today in Québec. We have taken into consideration the proposed disposition in that proceeding as well, most particularly the proposed administrative penalty in that proceeding, which cumulatively promotes, among other things, general deterrence.
- [7] For these reasons, we approve the settlement agreement, including the terms contained in the proposed order. Those terms are as follows:
- a. National Bank Financial Inc. ("**NBF**") will conduct final testing and review of the Enhanced Control and Supervision Procedures and will implement any additional changes, if necessary, within 90 days of the date this Order (the "**Review Period**");
  - b. NBF will submit a letter (the "**Attestation Letter**") to Staff, signed by the Ultimate Designated Person and the Chief Compliance Officer responsible for the ETF sales business, expressing their opinion as to whether the Enhanced Control and Supervision Procedures were adequately followed, administered and enforced by NBF for the one-year period commencing from the date of implementation of the Enhanced Control and Supervision Procedures upon completion of the Review Period, and for a further one-year period commencing from the date that is one year after the implementation date;
  - c. if applicable, the Attestation Letter will be accompanied by a report which provides a description of the testing performed to support the conclusions contained in the Attestation Letter; and
  - d. NBF will submit such additional reports as may be reasonably requested by Staff for the purpose of satisfying Staff that the opinion expressed in the Attestation Letter described in subparagraphs (b) and (c) above is valid.
- [8] In addition, we agree with the proposed costs award in the amount of \$35,000.
- [9] We are grateful to counsel for their assistance in this matter.

Dated at Toronto this 26th day of January, 2018.

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"Mark Sandler"  
Mark Sandler

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"Robert Hutchison"  
Robert Hutchison

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"Frances Kordyback"  
Frances Kordyback