

2007 BCSECCOM 172

March 30, 2007

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – National Instrument 51-102, s. 13.1 - Continuous Disclosure Obligations - AIF - An issuer wants relief from the requirement to file an annual information form - The issuer is a trust; the trust is undergoing a major reorganization; the relevant information about the reorganization required in an AIF was filed; the issuer's successor company will assume all of the issuer's liabilities and obligations under its outstanding securities; the securityholders will receive continuous disclosure of the successor company as required under securities legislation

Applicable British Columbia Provisions

National Instrument 51-102, Part 6 and s. 13.1

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New
Brunswick, Nova Scotia and Newfoundland and Labrador
(the Jurisdictions)

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of
Summit Real Estate Investment Trust
(the Filer)

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) exempting the Filer from the requirement to file an annual information form (AIF) for its financial year ended December 31, 2006 required by National Instrument 51-102 – Continuous Disclosure Obligations (the Requested Relief).

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Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Ontario Securities Commission is the principal regulator for this application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 - Definitions have the same meaning in this decision unless they are defined in this decision.

Representations

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

1. The Filer is a trust formed pursuant to the laws of the Province of Ontario and governed by an amended and restated declaration of trust dated as of January 15, 2007.
2. The head office of the Filer located at 6285 Northam Drive, Mississauga, Ontario L4V 1X5.
3. The Filer has one unitholder.
4. The Filer does not have securities listed or posted on any stock exchange.
5. The Filer is a “venture issuer” within the meaning of National Instrument 51-102, and is a reporting issuer in each of the Jurisdictions. However, because the Filer was not a venture issuer on December 31, 2006, the requirement to file an AIF for the 2006 financial year applies to the Filer.
6. The Filer is not in default of its obligations as a reporting issuer under the legislation of any jurisdiction in which it is a reporting issuer or its equivalent.
7. In the fall of 2006, with the support of the Filer’s board of trustees, ING Real Estate Canada Trust (INGREC) made a formal take-over bid (the Offer) for all of the issued and outstanding units of the Filer (the Units), at a substantial premium. In January 2007, INGREC successfully completed the acquisition of 100% of the Units by way of a subsequent acquisition transaction involving the redemption of all remaining Units not then owned by INGREC, resulting in INGREC being the sole unitholder of the Filer. The Units were

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subsequently delisted from the Toronto Stock Exchange (the TSX) effective January 26, 2007.

8. Prior to the completion of the Offer, the 6.25% convertible debentures due March 31, 2014 of the Filer were also listed on the TSX. However, all of such convertible debentures were converted into Units or redeemed in January, 2007 in connection with the completion of the acquisition of 100% of the Units. As a result, the Filer no longer has any securities listed on the TSX, a U.S. marketplace, or a marketplace outside of Canada and the U.S.
9. ING Groep N.V. owns indirectly 50% of INGREC. ING Groep N.V. is one of the world's largest financial services companies with securities listed on several stock exchanges, including the New York Stock Exchange. ING Industrial Fund indirectly holds the remaining 50% interest in INGREC. ING Industrial Fund is a substantial property trust listed on the Australian Stock Exchange.
10. The Filer remains a reporting issuer, or its equivalent, in each of the Jurisdictions solely by virtue of its currently outstanding 5.70% Series A senior unsecured debentures due November 10, 2011 and 5.38% Series B senior unsecured debentures due March 1, 2012 (collectively, the Debentures), which are not (and have never been) listed on any exchange or marketplace.
11. Dominion Bond Rating Service Limited (DBRS) has provided the Filer with an investment grade credit rating relating to the Debentures, most recently confirmed on October 19, 2006 after the expiry of the Offer.
12. The Filer intends to undergo a major reorganization, effective on or about April 2, 2007 (the Reorganization), which will result in it no longer having any material assets and which will, therefore, make any AIF filed in respect of the 2006 financial year irrelevant.
13. Pursuant to the Reorganization, ING Summit Industrial Fund LP (Industrial LP) will assume all of the Filer's liabilities and obligations under the Debentures and the Filer will be left with no material assets (other than certain rights of indemnity provided by Industrial LP). The Filer agrees to continue to be bound to make payments under the Debentures as a co-borrower and will have only nominal assets.
14. Details regarding the planned Reorganization, and its impact on holders of the Debentures, have been fully communicated to the trustee under the indentures, who has received drafts of the supplemental indentures providing for the

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transfer of obligations from the Filer to Industrial LP, as well as the related opinions of counsel. Additionally, holders of the Debenture received notice of the planned Reorganization in the Filer's MD&A for the year ended December 31, 2006.

15. Following the Reorganization, it is expected that Industrial LP will be the successor reporting issuer to the Filer in the Jurisdictions.
16. The holders of the Debentures will obtain adequate financial information concerning the Filer or Industrial LP from the continued filing of interim and annual financial statements and the related MD&A.
17. Upon the occurrence of any material change to the Filer or Industrial LP, the holders of the Debentures shall receive all relevant information from the material change reports required to be filed with the Decision Makers.

Decision

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 the Requested Relief is granted provided that:

1. the Filer, or a successor entity, is a reporting issuer and a venture issuer under the Legislation; and
2. the Reorganization is completed by April 2, 2007.

Cameron McInnis
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Ontario Securities Commission