

# 2006 BCSECCOM 228

April 11, 2006

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-102, s. 13.1 - Continuous Disclosure Obligations - An issuer wants relief from the requirement to include prospectus-level disclosure in an information circular to be circulated in connection with an arrangement, reorganization, acquisition or amalgamation - The securities that are being issued will only be outstanding for a short period of time before they are redeemed for other securities; the original securities are being issued for tax reasons only, not so the shareholders continue to have an interest in the issuer; the securityholders will not retain any securities of the issuer following the arrangement or reorganization

## **Applicable British Columbia Provisions**

National Instrument 51-102, s. 13.1

Form 51-102F5, s. 14.2

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  
InnVest 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 of the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the Filer be exempt from the requirements of section 14.2 of Form 51-102F5 *Information Circular* of National Instrument 51-102 - *Continuous Disclosure Obligations* to include the following financial statements in the Filer's management information circular (the Circular) prepared in connection with the annual general and special meeting (the

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Meeting) of the Filer's unitholders (Unitholders) to consider and approve, among other things, the Reorganization (as defined below):

- (a) audited financial statements of Newco (as defined below), and
- (b) audited financial statements in respect of a probable significant acquisition of the Business (as defined below) by Newco

(the Requested Relief).

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 an unincorporated open-ended real estate investment trust that owns and operates a portfolio of hotels across Canada. The REIT was created by its amended and restated declaration of trust dated July 18, 2002 and governed by the laws of the province of Ontario. The Filer is authorized to issue an unlimited number of units ("Units"). As of December 31, 2005, 47,961,163 Units were issued and outstanding.
2. The Filer directly or indirectly holds all of the units issued by InnVest Hotels LP (Operator LP), an Ontario limited partnership, that directly and through subsidiary limited partnerships carries on the hotel businesses at substantially all of the hotels in the Filer's portfolio (the Business). The Filer also owns all of the issued and outstanding shares of InnVest Hotels GP Ltd., the general partner of Operator LP with a 0.1% interest therein.
3. The Filer directly or indirectly holds all of the shares in the capital, and certain indebtedness, of InnVest Properties Corp. (InnVest Properties), a Nova Scotia unlimited company that owns, directly or through subsidiaries, 68 of the hotels in the Filer's portfolio.

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4. The Filer completed its initial public offering on July 26, 2002 pursuant to a long form prospectus dated July 18, 2002 (the Prospectus).
5. The Filer is a reporting issuer in each of the Jurisdictions and is not in default of any of its obligations under applicable securities legislation (the Legislation).
6. It is proposed that the Filer's present organizational structure undergo an internal reorganization (the Reorganization) to effectively wind up InnVest Properties into the REIT and then consolidate ownership and operation of the hotels in the Filer's portfolio under Operator LP.
7. The Reorganization is intended to reorganize the REIT and its subsidiaries in order to achieve a more efficient and integrated operational structure that will position the REIT to pursue additional hotel acquisitions in accordance with its long-term business plan. The existing ownership structure of the REIT is complex with a significant number of subsidiaries. It is anticipated that the Filer will achieve significant operating and other cost reductions by virtue of the Reorganization. The Reorganization also will result in a more tax-efficient structure whereby all hotel operating income is taxed at the unitholder level, which should improve the Filer's ability to access the capital markets to raise cash to fund future acquisitions.
8. The Filer has scheduled the Meeting for May 17, 2006 to, among other things, approve the Reorganization.
9. The Reorganization should occur on a tax-deferred basis for the Filer and its Unitholders resident in Canada and the REIT has applied to the Canada Revenue Agency for and advance income tax ruling to confirm that this should be the case.
10. After giving effect to the Reorganization, the direct and indirect interest of the Filer in the hotels comprising the portfolio and in the Business will be the same as the interests that the Filer held in such hotels and in the Business immediately prior to the Reorganization.
11. As part of the Reorganization:
  - (a) the Filer's indirect interest in InnVest Properties will be reorganized so that it directly holds all of the issued and outstanding shares and certain existing indebtedness of InnVest Properties;

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- (b) InnVest Properties will transfer its directly held real estate assets to Operator LP for consideration that includes limited partnership units of Operator LP (Operator LP will also assume any related liabilities);
  - (c) the Filer will incorporate a wholly-owned subsidiary corporation (Newco) in connection with, and for the purpose of effecting, the Reorganization and will subscribe for a number of Class A shares (Class A Shares) of Newco equal to the number of Units then outstanding;
  - (d) the Filer will distribute the Class A Shares to Unitholders on a *pro rata* basis, as a return of capital on the date of the Reorganization;
  - (e) the Filer will transfer its interest in InnVest Properties to Newco in exchange for Class B shares (Class B Shares) of Newco;
  - (f) Newco will amalgamate with InnVest Properties following which the Filer will acquire the assets of the amalgamated entity (hereinafter referred to as Amalco), including the limited partnership Units of Operator LP and its interest in various other subsidiaries in exchange for Units;
  - (g) the Class A Shares distributed to Unitholders and the Class B Shares distributed to the Filer will be redeemed by Amalco on the date of the Reorganization in exchange for the Units it received in the preceding step and the Units distributed to the Filer on the redemption of the Class B Shares will be cancelled upon receipt;
  - (h) the Units received by Unitholders upon the redemption of the Class A Shares in the preceding step will be automatically consolidated on the same date as the Reorganization such that the total number of Units outstanding upon completion of the Reorganization will be equal to the total number of Units outstanding immediately prior to the Reorganization; and
  - (i) to the extent possible, the REIT will transfer its directly held real estate assets to Operator LP.
12. Neither the number of issued and outstanding Units nor the relative holdings of Units by any Unitholder will be altered as a result of the completion of the Reorganization.
13. The Class A Shares and additional Units distributed to Unitholders will be outstanding for an instant in time on the date of the Reorganization prior to their automatic redemption and consolidation, respectively.

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14. Among other benefits described in paragraph 7 above, the Reorganization is being undertaken in order to structure the flow of revenues created by the Business and distributed to the Filer by its operating subsidiary on an efficient basis. The rights of Unitholders in respect of the Filer and their relative indirect interests in and to the revenues of the Business will not be affected by the Reorganization.
15. The distribution of the Class A Shares and additional Units are, in each case, done solely to allow the Reorganization to be effected in such a manner as to ensure that Unitholders, the Filer and the Filer's subsidiaries will be able to make use of available roll-overs under applicable tax legislation, thus preserving the tax-deferred status of the Reorganization.
16. Prior to the mailing of the Circular, the audited consolidated annual financial statements of the Filer for the financial year ended December 31, 2005 (the 2005 Financial Statements) (which include the financial results for InnVest Properties and Operator LP on a consolidated basis for the same period) will be filed on SEDAR and will be incorporated by reference into the Circular. The Filer has prepared and filed on SEDAR audited annual financial statements for the financial years ended December 31, 2003 and 2004 (collectively, together with the 2005 Financial Statements, the InnVest Financial Statements). The InnVest Financial Statements will be incorporated by reference in the Circular.

### **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:

- (a) the Filer complies with all other requirements of the Legislation applicable to the Circular; and
- (b) the InnVest Financial Statements are incorporated by reference into the Circular.

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