

2002 BCSECCOM 598

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from requirements to file and send to securityholders first and third quarter interim financial statements, subject to conditions.

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 91

Securities Rule, B.C. Reg. 194/97, ss. 144, 149

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

AND

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

AND

IN THE MATTER OF BOREALIS INFRASTRUCTURE TRUST AND BOREALIS INFRASTRUCTURE TRUST MANAGEMENT INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador (collectively, the "Jurisdictions") has received an application from Borealis Infrastructure Trust (the "Issuer") and Borealis Infrastructure Trust Management Inc. (the "Issuer Trustee"), the trustee of the Issuer, for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the requirement contained in the Legislation to file with the Decision Makers interim financial statements for each of the Issuer's financial years shall not apply to the Issuer with respect to the first and third quarters of each of its financial years;

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

AND WHEREAS the Issuer and the Issuer Trustee, on behalf of the Issuer, have represented to the Decision Makers that:

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1. The Issuer is a special purpose trust established by the Issuer Trustee pursuant to a declaration of trust dated April 29, 1999 governed by the laws of the province of Ontario (the "Declaration of Trust"). The Issuer's principal office is located at the Canada Trust Tower, BCE Place, 161 Bay Street, Suite 3100, P.O. Box 207, Toronto, Ontario, M5J 2S1.
2. Pursuant to the Declaration of Trust, the business activities of the Issuer are specifically limited to the financing, acquisition and administration of interests in infrastructure projects and related programs, for the purpose of producing income therefrom, and the funding of such activities through the issuance of bonds evidencing indebtedness of the Issuer pursuant to the terms of a trust indenture (the "Trust Indenture") between the Issuer and the Trust Company of Bank of Montreal and supplemental indentures thereto. The Issuer does not carry on any activities other than those permitted under the Declaration of Trust.
3. On June 2, 1999, the Issuer became a "reporting issuer" or the equivalent thereof in each of the Jurisdictions under the Legislation by filing and obtaining a receipt for a prospectus in respect of an initial offering of 6.35% Borealis-Nova Scotia Learning Centres Secured Bonds, Series NS99-1 (the "NS Bonds"). An aggregate principal amount of CAD\$162,000,000 NS Bonds were issued.
4. On May 3, 2001, the Issuer issued an aggregate principal amount of CAD\$290,000,000 of 6.27% Borealis – Enersource Series Bonds (the "Enersource Bonds"). A material change report in respect of this issuance was filed with the Decision Makers on May 3, 2001. The Enersource Bonds were qualified for distribution under a prospectus dated April 25, 2001 and a prospectus supplement dated April 26, 2001.
5. The Issuer has no other issued or outstanding securities other than the NS Bonds and the Enersource Bonds, and the securities of the Issuer are not listed on any stock exchange.
6. Holders of the NS Bonds and the Enersource Bonds will only have recourse to a specific and segregated pool of assets and the undertaking of the Issuer identified in supplemental indentures and will not have any further recourse to the Issuer.
7. The market value of each series of bonds issued by the Issuer or the assets secured in favour of the bondholders will not depend on the value or financial performance of the Issuer, but rather on factors relating to the specific infrastructure project being funded by the bonds, such as: (i) the fixed rate of interest on the bonds in comparison to the prevailing Canadian interest rate, (ii) the contractual arrangements in place to fund payments in respect of the bonds,

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(iii) the bondholders' security and the remedies available to the bondholders for non-performance of the Issuer's obligations in respect of the bonds, and (iv) the rating assigned to the bonds by an approved credit rating agency.

8. There is no requirement under the Trust Indenture for the preparation, filing or delivery of interim financial statements to bondholders.

9. The Trust Indenture contains extensive covenants of the Issuer and, in the event of default by the Issuer in respect thereof, the bondholders are entitled to enforce a range of remedies under the Trust Indenture.

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 under the Legislation is that the requirement contained in the Legislation to file with the Decision Makers interim financial statements for each of the Issuer's financial years shall not apply to the Issuer with respect to the first and third quarters of each of its financial years provided that this Decision shall terminate on the date that is 30 days after the issuance by the Issuer of a class of securities if any of the representations in paragraphs 6 to 9, inclusive, of this Decision made in respect of the NS Bonds and the Enersource Bonds could not also be made in respect of such additional class of securities.

DATED May 23rd 2002.

R.L. Shirriff

H.Lorne Morphy