

2006 BCSECCOM 662

November 10, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-102, s. 13.1 - Continuous Disclosure Obligations - BAR – An issuer requires relief from the requirement to include certain financial statements in a business acquisition report – The issuer made a significant acquisition of properties owned by a private company; the issuer needs access to the private company's records in order to prepare the balance sheets required to be included in the BAR; the private company has refused access; the issuer has provided copies of legal correspondence evidencing its attempts to gain access; the BAR will contain sufficient alternative information about the acquisition

Applicable British Columbia Provisions

National Instrument 51-102, s. 13.1

In the Matter of
the Securities Legislation of
British Columbia and Alberta
(the Jurisdictions)

and

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

and

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

MRRS Decision Document

Background

- ¶ 1 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) that the Filer is

2006 BCSECCOM 662

exempt from the requirement to include balance sheets of an acquired business in a business acquisition report required to be filed under Part 8 of National Instrument 51-102 (“NI 51-102”) in connection with InStorage’s acquisition of six revenue generating real estate properties from Access Self Storage Inc. (Access) completed on September 1, 2006

(the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications

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

Interpretation

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

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer :
- 1. the Filer is a real estate investment trust established under the laws of Ontario pursuant to a declaration of trust;
 - 2. the Filer’s head office is in Toronto, Ontario;
 - 3. the Filer, through subsidiary entities, owns and operates rental storage facilities in Canada;
 - 4. the Filer is a reporting issuer in each of the Jurisdictions and its trust units are listed and posted for trading on the TSX Venture Exchange;
 - 5. the Filer is in compliance with the securities legislation of each of the Provinces;
 - 6. SCOSS Capital Corporation (“SCOSS”) is an indirect subsidiary of the Filer;
 - 7. under an agreement of purchase and sale dated June 30, 2006, SCOSS agreed to purchase from Access six storage properties in the greater Toronto area for a purchase price of \$59 million, payable partly in cash and partly in exchangeable units of InStorage Limited Partnership, an indirect subsidiary of

2006 BCSECCOM 662

the Filer; the transaction closed on September 1, 2006; under Part 8 of NI 51-102, the Filer will be required to file a business acquisition report relating to the acquisition (the BAR) by November 15, 2006 (75 days following closing) on the basis that the assets acquired from Access will exceed 40% of the consolidated assets of the Filer;

8. section 8.4 of NI 51-102 prescribes the financial statements that the Filer is required to include in the BAR, which include an audited year end balance sheet and income statement for Access, unaudited interim financial statements and a pro forma income statement;
9. access is a privately owned company and does not have audited financial statements prepared for the six properties that the Filer purchased; accordingly, the Filer sought to prepare carve-out financial statements as contemplated by section 8.6 of the companion policy to NI 51-102;
10. the agreement of purchase and sale contains a covenant from Access that it will, in certain circumstances, allow the Filer to conduct an audit of certain financial information in the possession of Access;
11. a dispute has arisen between the Filer and Access and Access has refused to allow the Filer to review the financial information and other documents that would be necessary to prepare the financial statements required for the BAR, unless the Filer agrees not to publicly disclose the private and confidential balance sheet of Access;
12. the Filer has demanded permission to review the necessary materials at Access for the preparation of the financial statements, but Access has refused unless its condition as to the privacy of its balance sheet is respected;
13. the Filer has provided copies of legal correspondence evidencing its attempts to obtain permission from Access to review the necessary materials and Access's refusal;
14. section 8.6(5) of the companion policy to NI 51-102 acknowledges that, where it is impracticable to prepare carve-out financial statements of an acquired business, the reporting issuer may be required to include in its business acquisition report an audited statement of assets acquired and liabilities assumed instead of the usual balance sheet prepared in accordance with generally accepted accounting principles;

2006 BCSECCOM 662

15. the Filer will prepare a statement of assets acquired and liabilities assumed as contemplated by section 8.6(5) of the companion policy and such statement will be audited by its auditors, KPMG LLP;
16. Access has advised the Filer that it will prepare all of the financial statements required by section 8.4 of NI 51-102, except the year end balance sheet and the interim period balance sheet, and will permit Clarke Henning LLP access to its books and records so they may conduct an audit of the relevant statements;
17. the Filer will publish its September 30, 2006 interim financial statements on or about November 10, 2006, which statements will include a balance sheet that consolidates the assets and liabilities that the Filer acquired from Access;

Decision

- ¶ 4 Each of the Decision Makers is satisfied that the test contained in securities legislation that provides the Decision Maker with the jurisdiction to make this decision has been met.

The decision of the Decision Makers is that the Requested Relief is granted provided that the Filer:

- (a) includes in the BAR an audited statement of assets acquired and liabilities assumed from Access; and
- (b) explains in the BAR why the Filer is unable to provide balance sheets for the acquired business.

Martin Eady, C.A.
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British Columbia Securities Commission