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November 15, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications

National Instrument 51-102 *Continuous Disclosure Obligations*, s. 13.1 - General
- An issuer wants an exemption from having to file continuous disclosure documents to permit it to rely on the continuous disclosure documents of its parent issuer - The issuer is an exchangeable share issuer that complies with all of the conditions for continuous disclosure relief in section 13.3 except that it has issued certain securities other than designated exchangeable securities, securities issued to its parent company, or debt securities to certain investors; the additional securities are non-voting exchangeable securities issued to vendors as part of negotiated transactions to acquire assets.

Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*, s. 4.5 - An issuer wants relief from the requirement in parts 2 and 3 of MI 52-109 to file annual and interim certificates - The issuer has applied for and received an exemption from filing interim and annual financial statements.

Securities Act s. 91 – insider reporting requirements - An issuer wants relief from the requirement to file insider reports for its insiders - The issuer is an exchangeable security issuer that cannot rely on the exemption in National Instrument 51-102 *Continuous Disclosure Obligations* because it does not comply with all of the conditions for continuous disclosure relief in NI 51-102; as a result, its insiders cannot rely on the insider reporting exemptions in NI 51-102; the issuer has been granted discretionary relief from NI 51-102 requirements

Applicable British Columbia Provisions

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

National Instrument 51-102, s. 13.1

Multilateral Instrument 52-109, s. 4.5

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

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and

In the Matter of
InStorage Limited Partnership
(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:
- (a) the requirements in National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) and any comparable continuous disclosure requirements under the Legislation that have not yet been repealed or otherwise rendered ineffective as a result of adopting NI 51-102 (the Continuous Disclosure Requirements) do not apply to the Filer (the Continuous Disclosure Relief);
 - (b) the requirements in Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (MI 52-109) do not apply to the Filer (the Certification Relief); and
 - (c) the insider reporting requirement under the Legislation and the requirements in National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)* (NI 55-102) do not apply with respect to the Class A LP Units and Exchangeable LP Units (each as defined herein) of the Filer (the Insider Reporting 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:

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1. InStorage Real Estate Investment Trust (the REIT) is an open-ended, limited purpose trust established under the laws of Ontario pursuant to a Declaration of Trust dated June 20, 2006; prior to the completion of the court approved plan of arrangement (the Arrangement) that effectively converted SCOSS Capital Corp. (SCOSS) into the REIT on August 4, 2006, the REIT was not a reporting issuer in any of the Jurisdictions; following completion of the Arrangement, the REIT is a continuing issuer following an exchange of securities in connection with an arrangement and is included in the definition of a reporting issuer in the Jurisdictions ; the REIT intends to apply to become a reporting issuer in the other provinces of Canada in the near future;
2. the REIT's head office is located at Suite 1000, 350 Bay Street, Toronto, Ontario, Canada;
3. the authorized capital of the REIT consists of an unlimited number of trust units (REIT Units) and an unlimited number of special voting units (Special Voting Units); as at September 27, 2006, there were 83,720, 348 REIT Units issued and outstanding; the REIT Units commenced trading on the TSX Venture Exchange (the TSXV) under the symbol IS.UN on August 11, 2006; as of September 27, 2006, there were 13,024,096 Special Voting Units issued and outstanding;
4. the Filer is a limited partnership formed under the laws of Manitoba pursuant to a limited partnership agreement (the LP Agreement) dated June 21, 2006 between InStorage GP Trust (the General Partner), IS Operating Trust (the Trust) and each person who is admitted to the partnership in accordance with the terms of the LP Agreement; prior to completion of the Arrangement, the Filer was not a reporting issuer in any jurisdiction in Canada; following completion of the Arrangement on August 4, 2006, the Filer is a continuing issuer following an exchange of securities in connection with an arrangement and is included in the definition of a reporting issuer in the Jurisdictions;
5. the Filer's head office is located at Suite 1000, 350 Bay Street, Toronto, Ontario, Canada;
6. the authorized capital of the Filer consists of an unlimited number of each of general partnership interests, Class A ordinary voting limited partnership units (Class A LP Units), Class B exchangeable non-voting limited partnership units (Class B LP Units), Class C exchangeable non-voting limited partnership units (Class C LP Units), and an unlimited number of limited partnership units of such other class as the General Partner may create from time to time (Other LP Units); Class B LP Units, Class C LP Units and any Other LP Units that are or

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may be exchangeable for REIT Units are collectively referred to as Exchangeable LP Units;

7. other than in respect of an exchange described in paragraph (9) below, Class B LP Units and Class C LP Units are non-transferable; under the terms of the LP Agreement, any Other LP Units issued from time to time will also be non-transferable;
8. as at September 27, 2006, the issued and outstanding capital of the Filer consisted of:
 - (a) a 0.01% general partnership interest, which is owned by the General Partner;
 - (b) 83,475,904 Class A LP Units, all of which are owned by the Trust;
 - (c) 13,024,096 Class B LP Units, all of which are owned by former shareholders of SCOSS who elected to receive such units under the Arrangement; and
 - (d) 9,400,000 Class C LP Units, which are owned, in the aggregate, by persons that directly or indirectly sold self-storage properties to the Filer under acquisition transactions that closed on September 1, 2006 and September 6, 2006, respectively.
9. Class B LP Units and Class C LP Units are, at the request of a holder, exchangeable for REIT Units on a one-for-one basis in accordance with the terms of the LP Agreement and (i) the exchange agreement dated August 4, 2006 in the case of the Class B LP Units (the Class B Exchange Agreement), and (ii) the exchange agreement dated September 1, 2006 in the case of the Class C LP Units;
10. Class B LP Units and Class C LP Units are intended to be, to the greatest extent possible, the economic equivalent of the REIT Units; holders of Class B LP Units and holders of Class C LP Units are entitled to receive distributions paid by the Filer that are equal to distributions paid by the REIT on REIT Units; under the Arrangement, holders of Class B LP Units also hold Special Voting Units of the REIT and, as a result, are entitled to vote at meetings of unitholders of the REIT;
11. upon completion of the Arrangement, each of the REIT and the Filer became a reporting issuer in each of the Jurisdictions and, as such, is required to comply with the requirements of NI 51-102, MI 52-109 and NI 55-102; in addition,

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the insiders of each of the REIT and the Filer are also required to comply with NI 55-102;

12. following completion of the Arrangement, the REIT is the indirect beneficial owner of all of the issued and outstanding Class A LP Units, being the only class of limited partnership units of the Filer that give the holders the right to vote on all matters to be decided by limited partners of the Filer;
13. based on the preceding paragraph, the financial results of the REIT will wholly reflect the financial performance of the Filer and the REIT will comply with all the requirements of MI 52-109;
14. Exchangeable LP Units carry no voting rights with respect to matters to be voted upon by the limited partners of the Filer (other than fundamental matters that affect such classes in a manner that is different than other classes of limited partnership units) and, as a result, holders of Exchangeable LP Units exercise no control or direction over the affairs of the Filer by virtue solely of their ownership of Exchangeable LP Units;
15. as a result of the economic equivalency between Exchangeable LP Units and REIT Units (without taking into account tax effects), holders of Exchangeable LP Units in effect have a non-voting equity interest in the REIT, rather than the Filer, since, as such units are non-transferable, the key economic attribute and value driver of Exchangeable LP Units, being their distribution entitlement, is determined by reference to the financial performance and business of the REIT, not the Filer; accordingly, it is the information relating to the REIT, not the Filer, that is relevant to holders of Exchangeable LP Units; because the value of the Exchangeable LP Units is directly determined by reference to the consolidated financial performance and business of the REIT, and not the Filer, information respecting the Filer (other than as included in filings respecting the REIT) is not relevant (and could arguably be misleading) to holders of Exchangeable LP Units;
16. every holder of an Exchangeable LP Unit will receive all disclosure material furnished to a holder of a REIT Unit under the Legislation, and the only financial information relevant to a holder of Exchangeable LP Units is financial information of the REIT; it is therefore unnecessary for the Filer to comply with the Continuous Disclosure Requirements;
17. the Filer is an indirect subsidiary of the REIT that is controlled by the REIT and its affiliates through the ownership by the Trust of all of the issued and outstanding Class A LP Units of the Filer;

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18. consistent with the spirit of the conditions to the insider reporting relief contained in s. 13.3(3) of NI 51-102, the REIT is and will remain the beneficial owner of all of the issued and outstanding voting securities of the Filer (being all of the issued and outstanding Class A LP Units); and
19. holders of Exchangeable LP Units will file insider reports concerning their ownership of such securities under the SEDI profile of the REIT, where it is most relevant to investors in REIT Units and to investors in Exchangeable LP Units;

Decision

- ¶ 4 Each of the Decision Makers is satisfied that the tests contained in the Legislation that provided such Decision Maker with the jurisdiction to make the decision has been met.

The decision of the Decision Makers is that the Continuous Disclosure Relief is granted for so long as:

- (a) the REIT is the beneficial owner of all of the issued and outstanding voting securities of the Filer;
- (b) the REIT is a reporting issuer in a designated Canadian jurisdiction (as defined in NI 51-102) that has filed all documents it is required to file under NI 51-102;
- (c) the Filer does not issue any securities, and does not have any securities outstanding, other than
 - (i) designated exchangeable securities (as defined in NI 51-102);
 - (ii) securities issued to and held by the parent issuer or an affiliate of the parent issuer;
 - (iii) Class C LP Units, and securities of any other class of Exchangeable LP Units with economic rights that are equivalent to the economic rights associated with Class C LP Units, issued to direct or indirect vendors of assets or shares to the Filer or one of its affiliates (collectively, Acquisition Units) in connection with the acquisition of assets and/or shares by the Filer or one of its affiliates;
 - (iv) debt securities issued to and held by banks, loan corporations, loan and investment corporations, savings companies, trust corporations,

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treasury branches, savings or credit unions, financial services cooperatives, insurance companies or other financial institutions; and

- (v) securities issued under exemptions from the registration requirement and prospectus requirement in section 2.35 of National Instrument 45-106 *Prospectus and Registration Exemptions*;
- (d) the Filer files in electronic format,
 - (i) a notice indicating that the Filer is relying on the continuous disclosure documents filed by the REIT and setting out where those documents can be found in electronic format; or
 - (ii) copies of all documents the REIT is required to file under the Legislation, other than in connection with a distribution, at the same time the REIT files those documents with a Decision Maker;
- (e) the REIT concurrently sends to all holders of Exchangeable LP Units all disclosure materials that are sent to holders of REIT Units in the manner and at the time required by the Legislation;
- (f) the REIT complies with the Legislation with respect to making public disclosure of material information on a timely basis and immediately issues in Canada and files any news release that discloses a material change in its affairs;
- (g) the Filer issues in Canada a news release and files a material change report in accordance with Part 7 of NI 51-102 for all material changes in respect of the affairs of the Filer that are not also material changes in the affairs of the REIT;
- (h) the REIT includes in all mailings of proxy solicitation materials to holders of Exchangeable LP Units a clear and concise statement that:
 - (i) explains the reason the mailed material relates solely to the REIT;
 - (ii) indicates that the Exchangeable LP Units are the economic equivalent to the REIT Units; and
 - (iii) describes the voting rights associated with the Exchangeable LP Units; and

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- (i) the REIT files with the Decision Makers an undertaking in the form expected by the Decision Makers under section 3.1 of National Policy 41-201 – *Income Trusts and Other Indirect Offerings* (NP 41-201) and certifies compliance with such undertaking on an annual basis as provided in NP 41-201.

The decision of the Decision Makers is that the Certification Relief is granted for so long as:

- (a) the Filer is not required to, and does not, file its own interim filings and annual filings (as those terms are defined in MI 52-109); and
- (b) the Filer is exempt from or otherwise not subject to the Continuous Disclosure Requirements.

The decision of the decision makers is that the Insider Reporting Relief is granted and shall continue in effect so long as:

- (a) the REIT is the beneficial owner of all of the issued and outstanding voting securities of the Filer;
- (b) if the insider of the Filer is the REIT, it does not beneficially own any designated exchangeable securities (as defined in NI 51-102) or other Exchangeable LP Units, other than securities acquired through the exercise of the exchange right and not subsequently traded by it;
- (c) the REIT is an SEC issuer (as defined in NI 51-102) or a reporting issuer in a designated Canadian jurisdiction (as defined in NI 51-102);
- (d) the Filer does not issue any securities, and does not have any securities outstanding, other than
 - (i) designated exchangeable securities (as defined in NI 51-102);
 - (ii) securities issued to and held by the parent issuer or an affiliate of the parent issuer;
 - (iii) Acquisition Units issued in connection with an acquisition of assets and/or shares by the Filer or one of its affiliates;
 - (iv) debt securities issued to and held by banks, loan corporations, loan and investment corporations, savings companies, trust corporations,

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treasury branches, savings or credit unions, financial services cooperatives, insurance companies or other financial institutions; and

- (v) securities issued under exemptions from the registration requirement and prospectus requirement in section 2.35 of National Instrument 45-106 *Prospectus and Registration Exemptions*; and
- (e) the REIT files with the Decision Makers an undertaking in the form expected by the Decision Makers under section 3.4 of NP 41-201 and certifies compliance with such undertaking on an annual basis as provided in NP 41-201 .

Martin Eady, CA
Director, Corporate Finance
British Columbia Securities Commission