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January 23, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 48,76 Other - Exemption from s. 34(1)(a) requirement to be registered as a dealer for a trade and s. 61 requirement to file a prospectus for a distribution other than in connection with a corporate acquisition or reorganization; business associates; debt settlements; or employee investment plans and consultants - An issuer wants to issue securities relying on exemptions in MI 45-103, which has been repealed - The issuer structured its offering to rely on the exemptions in MI 45-103 before MI 45-103 was repealed; the issuer received subscriptions for securities before the transition period during which the issuer could continue to rely on MI 45-103 ended; due to circumstances beyond the issuer's control, the issuer was not able to close its offering before the transition period ended; the issuer will comply with the conditions in MI 45-103 as though MI 45-103 were still in force; the issuer will close its offering within a limited period of time

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61, and 76

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

and

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

and

In the Matter of
Genesis Limited Partnership #5
(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)

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that the Filer be exempted from the dealer registration and prospectus requirements (the Requested Relief) for the completion of a distribution.

2. Under the Mutual Reliance Review System for Exemptive Relief Applications
 - 2.1 Alberta is the principal regulator for this application; and
 - 2.2 this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

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

Representations

4. The decision is based on the following facts represented by the Filer:
 - 4.1 The Filer is a limited partnership formed on March 28, 2005 under the *Partnership Act* (Alberta).
 - 4.2 The Filer is not a reporting issuer or the equivalent in any jurisdiction in Canada.
 - 4.3 The Filer has one wholly owned subsidiary, GLP5 NE Calgary Development Inc. (the Subsidiary), which was incorporated on March 28, 2005 under the *Business Corporations Act* (Alberta) (the ABCA).
 - 4.4 The general partner of the Filer is GLP5 GP Inc. (the General Partner) and was incorporated on March 22, 2005 under the ABCA. The head offices of the Filer and the General Partner are located in Calgary, Alberta.
 - 4.5 The Filer prepared an offering memorandum dated March 29, 2005 (the Offering Memorandum) to raise up to \$9,000,000 through the issuance of Partnership Units (the Units) at \$5,000 per Unit (the Offering). The Offering was done concurrently with an offering from Genesis Limited Partnership#4 (GLP#4) for a land development project.
 - 4.6 The Filer was formed to raise funds for the Offering solely from registered retirement savings plans (the RRSPs).
 - 4.7 Under the Offering, each purchaser is required to sign and submit a subscription agreement to the Filer. For funds raised from RRSPs, the

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Filer submits a transfer form to the financial institutions that manage each purchaser's RRSP accounts. The financial institutions then process the documents and deliver the requisite funds to the Filer.

- 4.8 Financial institutions typically take approximately 6 to 8 weeks to process the documents and deliver the RRSP funds to the Filer.
- 4.9 The Filer stopped accepting subscriptions in mid-October but it still has subscriptions from fifteen purchasers (9 from Alberta and 6 from British Columbia) (the Purchasers) for a total of \$470,000 that, although received approximately 8 weeks previously, have not been completed because the RRSP institutions have not delivered the required funds in a timely manner.
- 4.10 Due to the time required by the financial institutions to process documents, the Filer was unable to complete the Offering before November 30, 2005, which was the final date for use of the offering memorandum exemption in Multilateral Instrument 45-103 *Capital Raising Exemptions*.
- 4.11 In the absence of the relief requested, in order to rely on a registration and prospectus exemption, the Filer would be required to prepare new documentation in accordance with National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) and resubmit such documentation to the financial institutions.
- 4.12 Preparing new documentation under NI 45-106 and resubmitting such documents to the financial institutions will cause a significant delay to closing the Offering.

Decision

5. 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.
6. The decision of the Decision Makers under the Legislation is that the dealer registration and prospectus requirements do not apply to the Filer's distribution of Units to the Purchasers under the Offering provided that the following conditions are satisfied:
 - 6.1 the Filer complies with sections 4.1 and 5.1 of MI 45-103 as they read immediately prior to the repeal of MI 45-103;

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- 6.2 the distribution is completed by January 27, 2006;
- 6.3 the Filer files a 45-106F1 *Report of Exempt Distribution* in connection with the distribution within 10 days of completion of the distribution;
and
- 6.4 the first trade of securities acquired under this decision is subject to section 2.5 of National Instrument 45-102 *Resale of Securities*.

Glenda A. Campbell, Q.C., Vice-Chair
Alberta Securities Commission

Stephen R. Murison, Vice-Chair
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