

2003 BCSECCOM 605

Headnote

Mutual Reliance Review System for Exemptive Relief Application – open-end investment trust – trades of trust units to existing unit holders under a distribution reinvestment plan exempt from prospectus and registration requirements – relief subject to conditions

Applicable British Columbia Provisions

Securities Act, R.S.B.C.1996, c. 418, ss. 48 and 76

Multilateral Instrument 45-102 *Resale of Securities*

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, SASKATCHEWAN, MANITOBA, ONTARIO, QUÉBEC, NEW BRUNSWICK, NOVA SCOTIA, PRINCE EDWARD ISLAND AND NEWFOUNDLAND AND LABRADOR

AND

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

AND

IN THE MATTER OF DUNDEE REAL ESTATE INVESTMENT TRUST

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island (“PEI”) and Newfoundland and Labrador (the “Jurisdictions”) has received an application (the “Application”) from Dundee Real Estate Investment Trust (“Dundee REIT”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirement contained in the Legislation to be registered to trade in a security (the “Registration Requirement”) and to file and obtain a receipt for a preliminary prospectus and a prospectus (the “Prospectus Requirement”) shall not apply to the distribution of REIT Units, Series A of Dundee REIT (“REIT Units, Series A”) pursuant to Dundee REIT’s distribution reinvestment and unit purchase plan (the “Plan”);

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal regulator for the Application;

2003 BCSECCOM 605

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or in Québec Commission Notice 14-101;

AND WHEREAS Dundee REIT has represented to the Decision Makers that:

1. Dundee REIT is an unincorporated, open-ended real estate investment trust established under the laws of Province of Ontario pursuant to an amended and restated declaration of trust made as of June 30, 2003. The head office of Dundee REIT is located in Toronto, Ontario.
2. On June 30, 2003, Dundee REIT indirectly acquired substantially all of the commercial revenue producing properties of Dundee Realty Corporation ("DRC"). The acquisition of such properties was part of a transaction (the "Acquisition") effected, in part, by way of a statutory plan of arrangement involving DRC and its shareholders that resulted in the acquisition of DRC by DRC Holding Corp., a company currently owned by the former principal shareholder of DRC, Dundee Bancorp Inc., its affiliates and certain members of management of DRC.
3. Dundee REIT is authorized to issue an unlimited number of two classes of units, REIT Units and Special Trust Units. The REIT Units are issuable in one or more series, of which two series have been designated as "REIT Units, Series A" and "REIT Units, Series B", respectively.
4. Each REIT Unit, Series A and REIT Unit, Series B represents an undivided beneficial interest in Dundee REIT and in distributions made by Dundee REIT, whether of net income, net realized capital gains or other amounts and, in the event of termination or winding up of Dundee REIT, in the net assets of Dundee REIT remaining after satisfaction of all liabilities. The distribution entitlement of the REIT Units, Series A and REIT Units, Series B is derived from different sources. In the case of the REIT Units, Series A, the distribution entitlement is derived from the securities of Dundee Properties Operating Trust A held by Dundee REIT while, in the case of the REIT Units, Series B, the distribution entitlement is derived from the securities of Dundee Properties Operating Trust B held by Dundee REIT. However, the trustees of Dundee REIT are required to take all necessary steps to ensure that the timing, amount and nature of the distributions on the REIT Units, Series A and the REIT Units, Series B will be the same.
5. As at July 31, 2003, 9,370,192 REIT Units, Series A, 6,909,245 Special Trust Units and no REIT Units, Series B were issued and outstanding.

2003 BCSECCOM 605

6. The REIT Units, Series A are listed on the Toronto Stock Exchange (“TSX”) and commenced trading on July 2, 2003 under the symbol “D.UN”.
7. Neither the REIT Units, Series B nor the Special Trust Units are listed or quoted on any exchange or market.
8. Dundee Properties Limited Partnership (“Dundee Properties LP”) is a limited partnership formed under the laws of the Province of Ontario, of which Dundee Properties (GP) Inc. (“Properties General Partner”) is the sole general partner. All of the outstanding shares of Properties General Partner are held by Dundee REIT. The head office of Dundee Properties LP is located in Toronto, Ontario.
9. Dundee Properties LP is authorized to issue (a) two initial units, (b) an unlimited number of LP Class A Units, (c) an unlimited number of LP Class B Units, issuable in two series, which series have been designated as “LP Class B Units, Series 1” and “LP Class B Units, Series 2”, respectively, and (d) such other classes of partnership interests as Properties General Partner may decide from time to time.
10. As at July 31, 2003, no initial units, 9,370,192 LP Class A Units, 6,909,245 LP Class B Units, Series 1 and 1 LP Class B Unit, Series 2 were issued and outstanding.
11. All of the LP Class A Units and LP Class B Units, Series 2 are indirectly held by Dundee REIT.
12. All of the issued and outstanding LP Class B Units, Series 1 are held by DRC and Dundee Consolidated Properties, a limited partnership of which DRC is the sole general partner and a limited partner.
13. Each LP Class B Unit, Series 1 may be surrendered for or, if such surrender cannot be effected, indirectly exchanged for one REIT Unit, Series B at any time by the holder thereof.
14. In connection with the Acquisition, one Special Trust Unit was issued by Dundee REIT in respect of each issued and outstanding LP Class B Unit, Series 1 of Dundee Properties LP. The purpose of the Special Trust Units of Dundee REIT is to provide a means by which holders of LP Class B Units, Series 1 of Dundee Properties LP may vote at meetings of unitholders of Dundee REIT.

2003 BCSECCOM 605

15. The REIT Units, Series A, REIT Units, Series B and the LP Class B Units, Series 1 of Dundee Properties LP, together with the Special Trust Units, have economic and voting rights which are equivalent in all material respects.
16. Dundee REIT is not a “mutual fund” as defined in the Legislation because the holders of the REIT Units, Series A, REIT Units, Series B and Special Trust Units are not entitled to receive on demand, or within a specified period after demand, an amount computed by reference to the value of their proportionate interest in the whole or in a part of the net assets of Dundee REIT.
17. Dundee REIT became a reporting issuer in each of the Provinces of Canada where such a concept exists on or about June 30, 2003, as a result of the Acquisition, and is not in default of any of its obligations as a reporting issuer. Under securities legislation in British Columbia, Dundee REIT is deemed to have been a reporting issuer as at June 30, 2003 for the longest period of time that DRC, as a party to the Acquisition, had been a reporting issuer at the date of the Acquisition.
18. Dundee REIT intends to make monthly cash distributions to the holders of REIT Units, Series A and REIT Units, Series B on the following basis: (i) not less than 80% of Dundee REIT’s distributable series A income will be distributed on or about the 15th day of the each month to the holders of record of REIT Units, Series A as at the last business day of the previous month; and (ii) not less than 80% of Dundee REIT’s distributable series B income will be distributed on or about the 15th day of the each month to the holders of record of REIT Units, Series B as at the last business day of the previous month.
19. Dundee REIT intends to establish the Plan pursuant to which holders of REIT Units, Series A and REIT Units, Series B, other than such holders who are resident in the United States, may, at their option, invest all or a portion of the cash distributions paid on their REIT Units, Series A or REIT Units, Series B, as the case may be, in additional REIT Units, Series A (“Additional Units”) as an alternative to receiving cash distributions.
20. Following enrolment in the Plan by a holder of REIT Units, Series A or REIT Units, Series B (a “Plan Participant”), all or a designated portion of each monthly cash distribution payable to each Plan Participant will be automatically paid to Computershare Trust Company of Canada in its capacity as agent under the Plan (the “Plan Agent”) and will be applied by the Plan Agent to purchase Additional Units directly from Dundee REIT.
21. Distributable series A income or distributable series B income, as the case may be, due to Plan Participants will be automatically reinvested in Additional

2003 BCSECCOM 605

Units at a price per Additional Unit to be determined by Dundee REIT, but which is expected to be calculated by reference to the weighted average closing price of REIT Units, Series A on the TSX for the five trading days immediately preceding the relevant distribution payment date (the “Market Price”). Plan Participants will be entitled to receive a further distribution of Additional Units equal in value to 4% of each distribution that is reinvested under the Plan. No commission, service charges or brokerage fees will be payable by the Plan Participants under the Plan.

22. The Plan also allows Plan Participants to make optional cash payments (“Optional Cash Payments”) which will be used by the Plan Agent to purchase Additional Units. Each Plan Participant who elects to make Optional Cash Payments must invest a minimum of \$1,000 per remittance and may invest up to a maximum of \$250,000 per calendar year. The aggregate number of Additional Units that may be purchased by all Plan Participants with Optional Cash Payments in a financial year will be limited to 2% of the aggregate number of REIT Units, Series A and REIT Units, Series B outstanding at the commencement of that financial year.
23. A cash adjustment for any fractional Additional Unit held for a Plan Participant will be paid by the Plan Agent upon the withdrawal from or termination by such Plan Participant of its participation in the Plan, or upon termination of the Plan, based on a market price to be determined by Dundee REIT.
24. The Plan Agent’s fees for administering the Plan will be paid by Dundee REIT out of its assets.
25. A Plan Participant may terminate its participation in the Plan at any time by written notice to the Plan Agent. After a termination is processed by the Plan Agent, distributions declared by Dundee REIT will be payable to such holder of REIT Units, Series A or REIT Units, Series B, as the case may be, in cash or otherwise in the form declared by Dundee REIT.
26. Dundee REIT reserves the right to amend, suspend or terminate the Plan at any time in its sole discretion, in which case Plan Participants and the Plan Agent will be sent written notice thereof in accordance with the Plan.
27. The Legislation in the Jurisdictions provides exemptions from the Registration Requirement and the Prospectus Requirement for trades in securities made pursuant to certain types of reinvestment plans. These exemptions are only available where the reinvestment plan entitles an investor to direct that dividends, interest or distributions of capital gains be applied to the purchase

2003 BCSECCOM 605

of additional securities of the issuer or where the issuer distributes securities to its securityholders as a stock dividend or other distribution out of earnings or surplus. These exemptions are not available to Dundee REIT because the cash distributions payable to the unitholders of Dundee REIT are, at least partially, distributions of income, rather than dividends, interest or distributions of capital gains, and the distribution of Additional Units pursuant to the Plan are not stock dividends or other distributions out of earnings or surplus.

28. The Legislation in Ontario, British Columbia, Saskatchewan and Nova Scotia also provide exemptions from the Registration Requirement and the Prospectus Requirement for trades in mutual fund securities pursuant to mutual fund reinvestment plans. However, Dundee REIT is not a “mutual fund” under the Legislation because Dundee REIT does not determine the redemption price for the REIT Units, Series A, REIT Units, Series B or Special Trust Units with reference to the value of a proportionate interest in the whole or in part of the net assets of Dundee REIT.

AND WHEREAS under 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 pursuant to the Legislation is that the trades of Additional Units by Dundee REIT to the Plan Participants pursuant to the Plan shall not be subject to the Registration Requirement and the Prospectus Requirement of the Legislation, provided that:

- (a) at the time of the trade, Dundee REIT is a reporting issuer or the equivalent under the Legislation and is not in default of any requirements of the Legislation;
- (b) no sales charge is payable in respect of the trade;
- (c) Dundee REIT has caused to be sent to the person or company to whom the Additional Units are traded, not more than 12 months before the trade, a copy of the Plan which contains a statement describing:
 - (i) the person’s or company’s right to withdraw from the Plan and to make an election to receive cash instead of Additional Units on the making of a distribution by Dundee REIT; and

2003 BCSECCOM 605

- (ii) instructions on how to exercise the right referred to in (i);
- (d) in the financial year during which the trade takes place, the aggregate number of Additional Units issued pursuant to the Optional Cash Payments shall not exceed two percent of the aggregate number of REIT Units, Series A and REIT Units, Series B outstanding at the commencement of such financial year;
- (e) except in Québec, New Brunswick and PEI, the first trade or resale of Additional Units acquired pursuant to the Plan in a Jurisdiction shall be deemed to be a distribution or primary distribution to the public under the Legislation unless the conditions set out in paragraphs 1 through 5 of subsection 2.6(4) of Multilateral Instrument 45-102 *Resale of Securities* are satisfied at the time of such first trade or resale; and
- (f) in Québec, the first trade (alienation) of Additional Units acquired pursuant to the Plan shall be deemed to be a distribution or primary distribution to the public unless:
 - (i) at the time of the first trade, Dundee REIT is a reporting issuer in Québec and is not in default on any of the requirements of securities legislation in Québec;
 - (ii) no unusual effort is made to prepare the market or to create a demand for the Additional Units;
 - (iii) no extraordinary commission or consideration is paid to a person or company other than the vendor of the Additional Units in respect of the first trade; and
 - (iv) the vendor of the Additional Units, if an insider of Dundee REIT, has no reasonable grounds to believe that Dundee REIT is in default of any requirement of the securities legislation in Québec.

DATED September 2, 2003.

H. Lorne Morphy

Wendell S. Wigle