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Headnote

Registration and prospectus relief granted for trades in baskets of securities where individual securities may have an aggregate acquisition cost of less than \$97,000

Exemption Order

Libest Holdings Canada Co., Ltd.

Sections 48 and 76 of the *Securities Act*, R.S.B.C. 1996, c. 418

Background

- ¶ 1 Libest applied for an exemption from the requirements to be registered to trade and to file and obtain receipts for a preliminary prospectus and prospectus in sections 34(1)(a) and 61 of the Act (the Registration and Prospectus Requirements) for certain intended trades;

Representations

- ¶ 2 Libest represents that:
1. it was incorporated under the *Company Act* (British Columbia) and is controlled by Japan Libest Co., Ltd., a Japanese corporation;
 2. neither it nor Japan Libest Co., Ltd. is or has any intention of becoming a reporting issuer under the Act;
 3. in 1989, it acquired ownership of a phased strata title development created by a strata plan filed under the *Condominium Act* (British Columbia) located in a hotel condominium/commercial complex known as the Westbrook Whistler in the Resort Municipality of Whistler, including 49 residential strata lots (the Lots);
 4. a fee simple interest in a Lot is a security under the Act (a Security), as the Lots are or will be subject to a rental pool management agreement in compliance with a restrictive covenant in favour of the Resort Municipality of Whistler under which they must be made available for rental to the public (subject to the owner's rights to occupy the Lot for not more than 56 days per year);
 5. commencing in 1989, it distributed Securities relating to 35 of the 49 Lots, each of which was subject to leases back to it;

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6. the leases provide for a conveyance to it by the lessors of their occupancy rights in return for a fixed annual amount of rent and are automatically renewable every two years for a period of 99 years unless terminated earlier by the lessors for non-payment of rent;
7. it distributed the Securities under an order of the Superintendent of Brokers (now the Executive Director) dated May 18, 1989, as amended by a further order dated November 28, 1989, and a disclosure statement prepared in accordance with Part 2 of the *Real Estate Act*;
8. it wishes to sell interests in some or all of the Lots;
9. such interests will be sold as a “basket” of Securities and each “basket” will have an aggregate acquisition cost to a purchaser (a Purchaser) of not less than \$97,000; and
10. an individual Security that forms part of the “basket” of Securities may have an aggregate acquisition cost to a Purchaser of less than \$97,000.

Order

- ¶ 3 Because it is not prejudicial to the public interest, the Executive Director orders that:
1. under sections 48 and 76 of the Act, a trade to a Purchaser of a Security is exempt from the Registration and Prospectus Requirements; and
 2. under section 76 of the Act, any trade by a Purchaser in a Security acquired under this order is deemed to be a distribution unless the conditions in subsections (2) or (3) of section 2.5 of Multilateral Instrument 45-102 *Resale of Securities* are satisfied.

¶ 4 April 30, 2002

Derek E. Patterson
Manager