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Headnote

Mutual Reliance Review System for Exemptive Relief Application - closed-end real estate investment trust exempt from prospectus and registration requirements in connection with issuance of units to existing unit holders pursuant to distribution reinvestment plan whereby distributions are reinvested in additional units of the trust, subject to certain conditions - first trade in additional units deemed a distribution unless made in compliance with paragraphs 2 to 5 of section 2.6 of MI 45-102

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, NOVA SCOTIA, NEW BRUNSWICK, PRINCE
EDWARD ISLAND, NEWFOUNDLAND AND LABRADOR,
YUKON, NUNAVUT AND NORTHWEST TERRITORIES**

AND

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

AND

**IN THE MATTER OF
TGS NORTH AMERICAN 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, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Yukon, Nunavut and Northwest Territories (the “Jurisdictions”) has received an application from TGS North American Real Estate Investment Trust (the “REIT”) for a decision, pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that the requirement contained in the Legislation to be registered to trade in a security and to file and obtain a receipt for a preliminary prospectus and a final prospectus (the “Registration and Prospectus Requirements”) shall not apply to the distribution or resale of units of the REIT pursuant to a distribution reinvestment plan (the “DRIP”);

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

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

1. The REIT is an unincorporated open-end investment trust established under the laws of the Province of Alberta by declaration of trust dated July 31, 2002, as amended and restated (the “Declaration of Trust”).
2. The beneficial interests in the REIT are divided into a single class of units (the “Units”) and the REIT is authorized to issue an unlimited number of Units.
3. Each Unit represents a proportionate undivided beneficial interest in the REIT, and entitles holders of Units (“Unitholders”) to one vote at any meeting of Unitholders and to participate pro rata in the distributions of the REIT.
4. The Units of the REIT have been conditionally approved for listing on the Toronto Stock Exchange (the “TSX”).
5. The REIT is not a “mutual fund” as described in the Legislation because the Unitholders are not entitled to receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the REIT as contemplated in the definition of “mutual fund” in the Legislation.
6. The REIT will become a reporting issuer or the equivalent thereof in each province and territory in Canada when it obtains a receipt for its final prospectus (the “Prospectus”). As of the date hereof, the REIT is not in default of any requirements under the Legislation.
7. The REIT has been formed to invest in income-producing real estate located in western North America. The REIT offers an opportunity to invest, through a tax-efficient Canadian real estate investment trust structure, in a diversified portfolio of office, retail and, in the future, industrial properties organized along the natural north/south economic and trading patterns of western North America. The REIT’s properties will be located in selected markets in the western United States and western Canada which exhibit strong economic and population growth trends. The REIT will be internally managed.
8. The REIT currently intends to make cash distributions to Unitholders monthly, equal to, on an annual basis, approximately 89% of its Distributable Income.

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9. The REIT intends to establish the DRIP pursuant to which Unitholders may, at their option, invest cash distributions paid on their Units in additional Units ("Additional Units"). The DRIP will not be available to Unitholders who are not Canadian residents.
10. Distributions due to participants in the DRIP ("DRIP Participants") will be paid to Computershare Trust Company of Canada in its capacity as agent under the DRIP (in such capacity, the "DRIP Agent") and applied to purchase Additional Units. All Additional Units purchased under the DRIP will be purchased by the DRIP Agent directly from the REIT.
11. The price of Additional Units purchased with such cash distributions will be the volume weighted average of the closing price for a board lot of Units on the TSE for the twenty trading days immediately preceding the relevant distribution date. Unitholders who elect to participate in the DRIP will receive a further distribution of Additional Units equal in value to 3% of each distribution that is reinvested under the DRIP.
12. No commissions, service charges or brokerage fees will be payable by DRIP Participants in connection with the DRIP and all administrative costs will be borne by the REIT.
13. Additional Units purchased under the DRIP will be registered in the name of the DRIP Agent, as agent for the DRIP Participants.
14. Unitholders may terminate their participation in the DRIP at any time by written notice to the DRIP Agent. Such notice, if received prior to a distribution date, will have effect for such distribution. Thereafter, distributions payable to such Unitholders will be by cheque.
15. The REIT may amend, suspend or terminate the DRIP at any time, provided that such action shall not have a retroactive effect which would prejudice the interests of the DRIP Participants. All DRIP Participants will be sent notice of any such amendment, suspension or termination.
16. The distribution of the Plan Units by the REIT pursuant to the DRIP cannot be made in reliance on registration and prospectus exemptions contained in the Legislation as the DRIP involves the reinvestment of Distributable Income distributed by the REIT and not the reinvestment of distributions of dividends, interest, capital gains or earnings of surplus of the REIT.
17. The distribution of the Additional Units by the REIT pursuant to the DRIP cannot be made in reliance on registration and prospectus exemptions

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contained in the Legislation for distribution reinvestment plans of mutual funds, as the REIT is not a “mutual fund” as defined in the Legislation.

18. As of the date of closing, the REIT will be considered a “qualifying issuer” for purposes of Multilateral Instrument 45-102 - Resale of Securities.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each of the Decision Makers (collectively, the “Decision”);

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers 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 the REIT to the Plan Agent for the account of the DRIP Participants pursuant to the DRIP shall not be subject to the Registration and Prospectus Requirements of the Legislation provided that:

- (a) at the time of the trade the 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) the 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 statement describing:
 - (i) their rights to withdraw from the DRIP and to make an election to receive cash instead of Units on the making of a distribution of income by the REIT; and
 - (ii) instructions on how to exercise the right referred to in (i);
- (d) disclosure of the initial distribution of the Additional Units is made to the relevant Jurisdictions by providing the particulars of the date of the distribution of such Additional Units, the number of such Additional Units and the purchase price paid or to be paid for such Additional Units in:
 - (i) an information circular or take-over bid circular filed in accordance with the Legislation; or

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- (ii) a letter filed with the Decision Maker in the relevant Jurisdiction by a person or company certifying that the person or company has knowledge of the facts contained in the letter,

when the REIT distributes such Additional Units for the first time and thereafter, not less frequently than annually, unless the aggregate number of Additional Units so traded in any month exceeds 1% of the Units outstanding at the beginning of a month in which the Additional Units were traded, in which case a separate report shall be filed in each relevant Jurisdiction in respect of that month within ten days of the end of such month;

- (e) except in Québec, the first trade in Additional Units acquired pursuant to this Decision in a Jurisdiction shall be deemed a distribution or primary distribution to the public under the Legislation of such Jurisdiction and shall not be subject to the Prospectus Requirements, provided that the conditions in paragraphs 2 through 5 of subsections 2.6(3) or (4) of Multilateral Instrument 45-102 - Resale of Securities are satisfied; and
- (f) in Québec, the first trade (alienation) in Additional Units acquired pursuant to this Decision shall be deemed a distribution or primary distribution to the public unless:
 - (i) at the time of the first trade, the REIT is and has been a reporting issuer in Québec for the four months immediately preceding the trade;
 - (ii) no unusual effort is made to prepare the market or to create a demand for the Units;
 - (iii) no extraordinary commission or consideration is paid to a person or company in respect of the trade; and
 - (iv) if the seller of the Additional Units is an insider of the REIT, the seller has reasonable grounds to believe that the REIT is not in default of any requirement of the Legislation of Québec.

DATED 13th day of January, 2003.

Howard I. Wetston

Robert W. Korthals