

2006 BCSECCOM 694

October 31, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-102 *Continuous Disclosure Obligations*, s. 13.1 – all continuous disclosure requirements - 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 of National Instrument 51-102 *Continuous Disclosure Obligations* except that its parent issuer is not an SEC issuer; the parent issuer is a Canadian reporting issuer that will send copies of all of its documents to the securityholders of the exchangeable share issuer and explain the reasons the information sent to them relates to the parent, rather than the exchangeable share issuer; the exchangeable share issuer will remain a subsidiary of the parent issuer, and will not issue any securities other than exchangeable shares or debt instruments to certain parties

Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*, s. 4.5 – certification of annual and interim f/s – An issuer wants relief from the requirements 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

Applicable British Columbia Provisions

National Instrument 51-102, s. 13.1

Multilateral Instrument 52-109, Parts 2 and 3, s. 4.5

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Quebec and Nova Scotia
(the Jurisdictions)

and

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

and

In the Matter of Extendicare Limited Partnership
(the Filer)

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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 each of the Jurisdictions (the Legislation) that:
 - 1.1 the requirements contained 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(NI 51-102) and any comparable continuous disclosure requirements under the Legislation that have not yet been repealed or otherwise rendered ineffective since the adoption of NI 51-102 in each of the Jurisdictions shall not apply to the Filer (the Continuous Disclosure Relief); and
 - 1.2 the requirements contained in Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (MI 52-109) shall not apply to the Filer (the Certification Relief),in each case provided that certain conditions are satisfied.
2. Under the Mutual Reliance Review System for Exemptive Relief Applications:
 - 2.1 the Alberta Securities Commission 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

- 4.1 This decision is based on the following facts represented by the Filer:

Extendicare Real Estate Investment Trust

- 4.1 Extendicare Real Estate Investment Trust (the REIT) is an unincorporated open-ended limited purpose trust established under the laws of the Province of Ontario pursuant to a deed of trust dated September 11, 2006.

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- 4.2 The head office of the REIT is located in Markham, Ontario.
- 4.3 The REIT is authorized to issue an unlimited number of trust units (Trust Units) and an unlimited number of special voting units (Special Voting Units).
- 4.4 The REIT is not currently a reporting issuer in any jurisdiction of Canada, but will become a reporting issuer in each of the Jurisdictions on completion of an arrangement involving, among others, the REIT, the Filer and Extendicare Inc. (Extendicare) that, subject to the satisfaction or waiver of applicable conditions, is anticipated to close on or about November 1, 2006 (the Arrangement). The REIT will become a reporting issuer in Ontario on the Trust Units becoming listed and posted for trading on the Toronto Stock Exchange (the TSX).

Extendicare Limited Partnership

- 4.5 The Filer is a limited partnership formed under the laws of the Province of Ontario.
- 4.6 The head office of the Filer is located in Markham, Ontario.
- 4.7 The Filer is authorized to issue various classes of partnership interests, including Class A limited partnership units (Ordinary LP Units) and Class B limited partnership units (Exchangeable LP Units).
- 4.8 All of the outstanding Ordinary LP Units are and will, at the effective time of the Arrangement, be indirectly held by the REIT.
- 4.9 The general partner of the Filer is Extendicare Holding General Partner Inc., which is an indirect wholly-owned subsidiary of the REIT and, as general partner, has the authority to manage the business and affairs of the Filer.
- 4.10 The Filer is not currently a reporting issuer in any jurisdiction of Canada, but will become a reporting issuer in each of the Jurisdictions on completion of the Arrangement.

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Exchange of Securities under the Arrangement

- 4.11 Pursuant to the Arrangement, holders of subordinate voting shares and multiple voting shares of Extendicare (collectively, Extendicare Shares) will ultimately exchange their Extendicare Shares for shares of Assisted Living Concepts, Inc. and either: (i) Trust Units; (ii) Exchangeable LP Units and Special Voting Units; or (iii) a combination thereof.

Exchangeable LP Units

- 4.12 The Exchangeable LP Units, together with the Special Voting Units, are securities that, taken together, have economic and voting rights that are, as nearly as practicable, equivalent to those attached to the Trust Units.
- 4.13 In particular, each Exchangeable LP Unit:
- 4.13.1 will be issued together with a Special Voting Unit of the REIT entitling the holder to voting rights that are, to the greatest extent practicable, equivalent to the voting rights attached to the Trust Units; and
 - 4.13.2 will be exchangeable at the option of the holder for a Trust Unit (subject to customary anti-dilution adjustments).
- 4.14 Except in limited circumstances, the holders of Exchangeable LP Units will not have any voting rights in respect of matters to be decided by the limited partners of the Filer.
- 4.15 The Exchangeable LP Units will not be listed on the TSX or any other exchange or quoted in any quotation and trade reporting system.
- 4.16 Following completion of the Arrangement, the REIT will beneficially own, directly or indirectly, all of the issued and outstanding securities of the Filer, other than the Exchangeable LP Units, and the consolidated financial results of the REIT will include the financial results of the Filer.

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Decision

5. Each of the Decision Makers is satisfied that the tests contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decisions described herein have been met.
6. The decision of the Decision Makers under the Legislation is that the Continuous Disclosure Relief and the Certification Relief is granted for so long as:
 - 6.1 the REIT remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities of the Filer, other than the Exchangeable LP Units;
 - 6.2 the REIT is a "reporting issuer" in at least one of the jurisdictions listed in Appendix B of National Instrument 45-102 *Resale of Securities*;
 - 6.3 the REIT files all documents it is required to file under NI 51-102;
 - 6.4 the Filer does not issue any securities other than: (i) Exchangeable LP Units; (ii) other exchangeable securities that provide the holders of the securities with economic and voting rights which are, as nearly as possible except for tax implications, equivalent to the Trust Units; (iii) securities issued to the REIT or any affiliate of the REIT; (iv) debt securities issued to banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches, savings or credit unions, financial services cooperatives, insurance companies or other financial institutions; or (v) securities issued under the exemption from the prospectus requirement contained in section 2.35 of National Instrument 45-106 *Prospectus and Registration Exemptions* or a substantially equivalent exemption;
 - 6.5 the Filer files in electronic format:
 - 6.5.1 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
 - 6.5.2 copies of all documents the REIT is required to file under the Legislation, other than in connection with a distribution, at the same time as the filing by the REIT of those documents with the applicable Decision Makers;

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- 6.6 the Filer concurrently sends, or causes to be sent, to all holders of Exchangeable LP Units all disclosure materials that are sent to holders of Trust Units in the manner and at the time required by the Legislation, if the REIT is a reporting issuer in one of the Jurisdictions;
- 6.7 the REIT complies with the requirements of the Legislation to immediately issue and file any news release that discloses any material change in its affairs;
- 6.8 the Filer complies with the requirements of the Legislation to issue a news release and file 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; and
- 6.9 the REIT includes in all mailings of proxy solicitation materials to holders of Exchangeable LP Units a clear and concise statement that:
 - 6.9.1 explains the reason the mailed material relates solely to the REIT;
 - 6.9.2 indicates that the Exchangeable LP Units are intended to be, to the extent possible, the economic equivalent of the Trust Units; and
 - 6.9.3 describes the voting rights associated with the Exchangeable LP Units.

Decision

7. This decision will terminate in any of the Jurisdictions 90 days after the effective date in that Jurisdiction of any amendments to Part 13 of NI 51-102 that provide the Filer with automatic relief from the requirements of NI 51-102 (and, by operation of Part 4 of MI 52-109, the requirements of MI 52-109) if the Filer satisfies conditions that are substantially equivalent to the conditions set forth in paragraph 6 of this decision document.

Blaine Young
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Alberta Securities Commission