

## 2002 BCSECCOM 468

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – relief from registration and prospectus requirements granted in connection with an arrangement involving exchangeable shares where exemptions not available for technical reasons - first trade of securities acquired deemed a distribution unless certain conditions in Multilateral Instrument 45-102 *Resale of Securities* are satisfied

### **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 45(2)(a), 48, 61, 74(2)(b), 76

**IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA,  
BRITISH COLUMBIA, MANITOBA, NEW BRUNSWICK,  
NEWFOUNDLAND AND LABRADOR, THE NORTHWEST  
TERRITORIES, NOVA SCOTIA, NUNAVUT, ONTARIO, PRINCE  
EDWARD ISLAND, QUÉBEC, SASKATCHEWAN AND THE YUKON  
TERRITORY**

**AND**

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

**AND**

**IN THE MATTER OF NORTHERN PROPERTY REAL ESTATE  
INVESTMENT TRUST, NORTHERN PROPERTY LIMITED  
PARTNERSHIP AND NORTHERN PROPERTY TRUST**

### **MRRS DECISION DOCUMENT**

1. WHEREAS the Canadian securities regulatory authority or regulator (collectively, the “Decision Makers”) in each of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Québec, Saskatchewan and the Yukon Territory (the “Jurisdictions”) has received an application from Northern Property Real Estate Investment Trust (“NPR”), Northern Property Limited Partnership (the “Partnership”) and Northern Property Trust (“NP Trust”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirements under 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 certain trades

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of securities to be made in connection with a reorganization of Urbco Inc. (“Urbco”) under section 193 of the *Business Corporations Act* (Alberta) (the “ABCA”) involving Urbco and the holders of its common shares (the “Arrangement”);

2. AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”) the Alberta Securities Commission is the principal regulator for this application;
3. AND WHEREAS NPR, the Partnership, and NP Trust have represented to the Decision Makers that:
  - 3.1 Urbco is a corporation incorporated under the laws of Alberta;
  - 3.2 the authorized capital of Urbco consists of an unlimited number of common shares (the “Urbco Common Shares”) and an unlimited number of preferred shares;
  - 3.3 as at March 31, 2002, 10,348,191 Urbco Common Shares were issued and outstanding;
  - 3.4 Urbco is a reporting issuer in British Columbia, Alberta and Ontario;
  - 3.5 the Urbco Common Shares are presently listed on The Toronto Stock Exchange (“TSE ”);
  - 3.6 following the effective date of the Arrangement, the Urbco Common Shares will be delisted from the TSE and Urbco will apply to cease to be a reporting issuer, where applicable;
  - 3.7 NPR is an unincorporated open-ended trust governed by the laws of the Province of Alberta under a declaration of trust;
  - 3.8 NPR is authorized to issue an unlimited number of units (“Units”) and an unlimited number of special voting units (“Special Voting Units”);
  - 3.9 each Unit is transferable and redeemable on demand by the holder, and represents an equal undivided beneficial interest in distributions by NPR;
  - 3.10 each Special Voting Unit entitles the holder to one vote at any meeting of Unit holders but does not entitle the holder to any distributions by NPR;

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- 3.11 Special Voting Units are redeemable at any time by the holder for nominal consideration and are not transferable, except in certain limited circumstances and will only be issued in connection with the issuance of class B limited partnership units (“Class B LP Units”) or other convertible securities of the Partnership;
- 3.12 NPR was created to directly and indirectly acquire the portfolio of income producing properties of Urbco under the Arrangement;
- 3.13 the objectives of NPR are to provide Unit holders with stable and growing cash distributions and to maximize unit value through management of properties directly and indirectly held by it and to acquire additional residential and commercial rental properties or interests;
- 3.14 NPR has applied for and received conditional approval from the TSE for the listing on the TSE of Units issuable in connection with the Arrangement, or issuable from time to time in exchange for Class B LP Units, subject to, among other things, completion of the Arrangement;
- 3.15 the Partnership is a limited partnership formed under the laws of Alberta;
- 3.16 the General Partner of the Partnership is Northern Property Holdings Corp. (“Holdings”), a wholly-owned subsidiary of NPR;
- 3.17 the Partnership was formed to hold all of the Urbco Common Shares and to operate the real property interests not directly held by NPR after completion of the Arrangement;
- 3.18 all partners of the Partnership must be residents of Canada;
- 3.19 initially, the Partnership will have outstanding one or more general partnership units, held by Holdings, and class A limited partnership units (“Class A LP Units”), held by NP Trust, a wholly-owned subsidiary of NPR;
- 3.20 the Partnership will issue Class B LP Units to persons who elect to receive Class B LP Units instead of Units under the Plan of Arrangement. The Partnership may issue additional Class B LP Units in respect of other property acquisitions made by the Partnership from time to time;
- 3.21 the Class B LP Units:

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- 3.21.1 are exchangeable by the holders for Units at any time;
- 3.21.2 are required to be exchanged for Units in certain circumstances;
- 3.21.3 entitle the holder to receive cash distributions from the Partnership equal to cash distributions made by NPR on the Units;
- 3.21.4 entitle the holders to receive Special Voting Units to vote at meetings of holders of Units of NPR;
- 3.21.5 are transferable only in limited circumstances; and
- 3.21.6 are intended to be, to the greatest extent practicable, the economic equivalent of Units;
- 3.22 the Partnership is not and does not intend to become a reporting issuer (or equivalent) in any of the Jurisdictions;
- 3.23 NP Trust is an unincorporated open-ended trust established under the laws of the Province of Alberta pursuant to a declaration of trust;
- 3.24 NP Trust is a limited purpose trust and initially its activities will be restricted to holding securities of the Partnership;
- 3.25 all of the units of NP Trust will be owned by NPR;
- 3.26 NP Trust is not and does not intend to become a reporting issuer (or equivalent) in any of the Jurisdictions;
- 3.27 the Arrangement will require:
  - 3.27.1 the approval of two-thirds of the votes cast by the holders of the Urbco Common Shares present in person or by proxy at a meeting of shareholders to be held on May 13, 2002 (the "Meeting"); and
  - 3.27.2 approval of the Court of Queen's Bench of Alberta (the "Court"), the application in respect of which is expected to be heard on or about May 16, 2002;
- 3.28 an information circular (the "Circular") has been prepared in conformity with the provisions of the ABCA and applicable securities laws and an interim order dated April 12, 2002 has been obtained from the Court;

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- 3.29 the Circular contains prospectus-level disclosure of the business and affairs of NPR, Urbco and the Partnership and a detailed description of the Arrangement;
- 3.30 the Circular has been mailed to the holders of the Urbco Common Shares in connection with the Meeting;
- 3.31 upon the Plan of Arrangement becoming effective, in accordance with elections made or deemed to be made by the holders of Urbco Common Shares, the outstanding Urbco Common Shares will be exchanged for Units or Class B LP Units;
- 3.32 upon the completion of the Arrangement, NPR will own, directly and indirectly, the existing real property portfolio of Urbco and all of the issued and outstanding Urbco Common Shares will be held by the Partnership;
- 3.33 the limited partnership agreement governing the Partnership (the “Limited Partnership Agreement”) will provide that the Class B LP Units will be non-voting (except as required by the Limited Partnership Agreement or by applicable law) and each Class B LP Unit will entitle the holder to distributions from the Partnership payable at the same time as, and equivalent to, each distribution paid by NPR on Units of NPR;
- 3.34 distributions on the Class B LP Units will be derived from income on real property interests held by Urbco subsequent to the Arrangement;
- 3.35 to the extent distributions per Class B LP Unit would be less than distributions per Unit derived from the real property interests held by NPR, the Partnership will subscribe for a sufficient number of Units as may be required in order to cause distributions per Class B LP Unit to equal distributions per Unit;
- 3.36 to the extent distributions per Unit would be less than distributions per Class B LP Unit, the Partnership will distribute sufficient income through distributions on the Class A LP Units held indirectly by NPR to cause distributions on Units and Class B LP Units to be equal;
- 3.37 NPR has agreed that, to the extent further Class B LP Units are issued, it will issue a corresponding number of Special Voting Units;
- 3.38 under the Arrangement, each holder of Class B LP Units will receive one Special Voting Unit for each Class B LP Unit such holder receives;

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- 3.39 Special Voting Units issued to the holders of Class B LP Units may be transferred only under the same circumstances as the associated Class B LP Units, will be evidenced only by the certificates representing such Class B LP Units and will be automatically redeemed for nominal consideration upon the exchange of Class B LP Units for Units of NPR;
- 3.40 the Limited Partnership Agreement provides the holders of the Class B LP Units with a put right (the "Exchange Right") to require NPR to purchase from a holder of Class B LP Units all or any part of his or her Class B LP Units. The purchase price for each Class B LP Unit purchased by NPR will be an amount equal to the current market price of a Unit of NPR, to be satisfied by the delivery to the holder of one Unit of NPR, together with an additional amount equivalent to the full amount of all declared and unpaid distributions on such Class B LP Unit;
- 3.41 the Limited Partnership Agreement provides the Partnership with the right (the "Call Right") to acquire all outstanding Class B LP Units for Units of NPR on a one-for-one basis in certain circumstances, which include the holder of Class B LP Units becoming a non-resident of Canada (within the meaning of the Income Tax Act (Canada)), the occurrence of a transaction involving a change of control of NPR or in the event that there are issued and outstanding, at any time, less than 10% of the number of Class B LP Units originally issued under the Arrangement;
- 3.42 the exchange mechanics under the Exchange Right and the Call Right provide that where a holder of Class B LP Units exercises the Exchange Right or the Partnership exercises the Call Right, the Partnership will purchase from NPR a number of Units of NPR equal to the number of Class B LP Units for which the Exchange Right or Call Right, as the case may be, is exercised (the "Partnership Unit Purchase"). The Partnership will then redeem such Class B LP Units in exchange for the Units of NPR purchased from NPR (the "Partnership Unit Distribution");
- 3.43 the Declaration of Trust provides that upon the exercise of the Exchange Right or the Call Right, the Special Voting Units attaching to the Class B LP Units being exchanged will be automatically redeemed by NPR;
- 3.44 in order to fund the Partnership Unit Purchase in connection with the exercise of the Exchange Right or the Call Right, as the case may be, NPR will subscribe for unsecured subordinated trust notes (the "Subordinated Trust Notes") issued by NP Trust (the "NP Trust Note

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Distribution") in an aggregate principal amount equal to the purchase price for the Units to be acquired by the Partnership. NP Trust will in turn subscribe for unsecured subordinated notes ("Partnership Notes") issued by the Partnership (the "Partnership Note Distribution") in the same principal amount. In this manner, NPR will indirectly lend the Partnership sufficient funds to effect the Partnership Unit Purchase;

- 3.45 the Partnership may effect Partnership Note Distributions in order to fund the purchase of Units by the Partnership for the purposes of maintaining the economic equivalency of Units and Class B LP Units as described above;
- 3.46 under the terms of a support agreement to be entered into between NPR, NP Trust, the Partnership, and the limited partners of the Partnership, in certain circumstances where the Partnership is unable to deliver Units of NPR to holders of Class B LP Units upon exercise of the Exchange Right, such as in the event of the insolvency of the Partnership, a holder of Class B LP Units will have the right (the "Retraction Right") to cause NP Trust to acquire, and for NPR to issue, Units of NPR to NP Trust for nominal consideration (the "NP Trust Unit Purchase"). NP Trust will then exchange, for no additional consideration, such Units for the Class B LP Units to which the exercise of the Retraction Right relates (the "NP Trust Unit Distribution");
- 3.47 upon exercise of the Retraction Right, the Special Voting Units attaching to the Class B LP Units being exchanged will be automatically redeemed by NPR;
- 3.48 it is anticipated that the majority of all future property interests to be acquired by NPR will be acquired directly by NPR. However, there may be circumstances where it is in the best interests of Unit holders to acquire property interests indirectly through the Partnership, in exchange for Class B LP Units;
- 3.49 to the extent Class B LP Units are issued in connection with the indirect acquisition of property interests by NPR, NPR will be required to issue, for no additional consideration, an equivalent number of Special Voting Units (such distribution of Special Voting Units, a "Property Acquisition Distribution");
- 3.50 concurrently with the completion of the Arrangement, NPR expects to raise gross proceeds of \$66 to \$70 million by way of a public offering of Units (the "Offering");

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- 3.51 a preliminary prospectus in connection with the Offering was filed with the Decision Makers in each of the Jurisdictions on April 15, 2002, and a final prospectus is expected to be filed on or about May 13, 2002;
- 3.52 upon receiving a receipt for a final prospectus under the Offering, NPR will become a reporting issuer in the Jurisdictions;
- 3.53 closing of the Offering will occur concurrently with, and is conditional upon completion of, the Arrangement;
- 3.54 subject to satisfying all closing conditions and obtaining all applicable regulatory and shareholder approvals, it is anticipated that the Arrangement will be effected and the Offering will close on or about May 22, 2002;
- 3.55 exemptions from the Registration Requirement and the Prospectus Requirement are not available in all the Jurisdictions for the following trades (the “Trades”):
  - 3.55.1 trades made in connection with the Arrangement involving non-corporate entities;
  - 3.55.2 trades made in connection with a Partnership Unit Purchase or an NP Trust Unit Purchase;
  - 3.55.3 trades made in connection with a Partnership Unit Distribution or an NP Trust Unit Distribution;
  - 3.55.4 trades made in connection with a Partnership Note Distribution where NP Trust acquires Partnership Notes with an aggregate acquisition cost of less than a minimum prescribed amount;
  - 3.55.5 trades made in connection with an NP Trust Note Distribution where NPR acquires Subordinated Trust Notes with an aggregate acquisition cost of less than a minimum prescribed amount;
  - 3.55.6 the issuance of Special Voting Units by NPR in connection with a Property Acquisition Distribution where assets are acquired by the Partnership with a fair value of not less than a prescribed amount;
- 4. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);



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5. 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;
6. THE DECISION of the Decision Makers under the Legislation is that:
  - 6.1 the Registration Requirement and the Prospectus Requirement will not apply to the Trades provided that the first trade in Units, Class B LP Units, Partnership Notes, Subordinated Trust Notes, and Special Voting Units acquired under this Decision are deemed to be a distribution or primary distribution to the public;
  - 6.2 the Registration Requirement and the Prospectus Requirement will not apply to the first trade of Class B LP Units and Special Voting Units and the Prospectus Requirements will not apply to the first trade of Units acquired under this Decision provided that:
    - 6.2.1 except in Québec, NPR satisfies the conditions in subsections (3) or (4) of section 2.6 of Multilateral Instrument 45-102 *Resale of Securities* ("MI 45-102") and for the purposes of determining the period of time that NPR has been a reporting issuer under section 2.6 of MI 45-102 the period of time that Urbco was a reporting issuer immediately before the Arrangement may be included; and
    - 6.2.2 in Québec,
      - 6.2.2.1 the issuer is and has been a reporting issuer in Québec for the twelve months immediately preceding the trade;
      - 6.2.2.2 no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade;
      - 6.2.2.3 no extraordinary commission or consideration is paid to a person or company in respect of the trade; and
      - 6.2.2.4 if the selling shareholder is an insider or officer of the issuer, the selling shareholder has no reasonable grounds to believe that the issuer is in default of securities legislation.

DATED this 17<sup>th</sup> day of May, 2002.

Eric T. Spink, Vice-Chair

Walter B. O'Donoghue, Q.C., Member