

2007 BCSECCOM 752

October 31, 2007

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 44-101 *Short Form Prospectus Distributions*, s. 8.1 – exemption from short form qualification requirements - Qualification - An issuer wants relief from the qualification criteria in NI 44-101 so it can file a short form prospectus - The issuer does not comply with s. 2.2(c) because it failed to file business acquisition reports (BARs) required under NI 51-102 *Continuous Disclosure Obligations*; if the issuer had applied for relief from the BAR requirements, it is reasonably likely the regulators would have granted the relief; the issuer will make appropriate disclosure in its final prospectus concerning its application for relief from the qualification criteria; except for its failure to file the BARs, the issuer satisfies the qualification criteria to use the short form system

Applicable British Columbia Provisions

NI 44-101, ss. 2.1, 2.2(c) and 8.1

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba,
Ontario, Quebec, Nova Scotia, Newfoundland and Labrador,
Prince Edward Island and New Brunswick,
Northwest Territories, Nunavut and Yukon
(the Jurisdictions)

and

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

and

In the Matter of
Canadian Apartment Properties Real Estate Investment Trust
(the Filer or the REIT)

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application (the Application) from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that

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the Filer be exempted from the provisions of section 2.1 of National Instrument 44-101 *Short Form Prospectus Distributions* (NI 44-101) so as to permit the REIT to file a short form prospectus under NI 44-101 (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 44-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

This decision is based upon the following facts represented by the Filer:

1. The REIT is an internally managed unincorporated closed-end real estate investment trust owning interests in multi-unit residential properties including apartment buildings and townhouses located in major urban centres across Canada and two land lease adult lifestyle communities.
2. The REIT was established under the laws of the Province of Ontario by a declaration of trust and its head office is located in Toronto, Ontario.
3. The REIT is a reporting issuer under the securities legislation of each of the provinces and territories of Canada.
4. The units of the REIT are listed and posted for trading on the Toronto Stock Exchange under the trading symbol CAR.UN.
5. The REIT completed its initial public offering on May 21, 1997 pursuant to its final long form prospectus dated May, 12 1997.
6. As at October 22, 2007, the REIT had ownership interests in 27,853 residential suites well diversified by geographic location and asset class and 1,233 land lease sites.
7. As at and for the year ended December 31, 2006 the REIT had assets in excess of \$2 billion, net operating income ("NOI") (calculated as revenue less operating expenses (including trust expenses, interest income, interest on bank

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indebtedness and interest expense), but before deducting depreciation expense) of approximately \$132.5 million and income from continuing operations of approximately \$722,000.

8. As at and for the year ended December 31, 2005 the REIT had assets of approximately \$1.9 billion, net operating income of approximately \$120.9 million and income from continuing operations of approximately \$1.3 million.
9. Since August 15, 2006, the date of a Decision Document issued by the Decision Makers evidencing the final receipt of the regulators in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon and Nunavut for the short form prospectus of the REIT dated August 15, 2006, the REIT completed five acquisitions (collectively, the Acquisitions) with aggregate acquisition costs of \$259.2 million. Three of these acquisitions were completed in 2007, with aggregate acquisition costs of \$234.3 million (in the aggregate, less than 12% of the consolidated assets of the REIT as at December 31, 2006) and two were completed in 2006 (post August 15), with aggregate acquisition costs of approximately \$24.9 million (in the aggregate, approximately 1.3% of the consolidated assets of the REIT as at December 31, 2005).
10. The Acquisitions were acquisitions of land and buildings as opposed to shares of corporations.
11. The Acquisitions are not significant under the asset test or the investment test outlined in Part 8.3 of NI 51-102.
12. The application of the income test using income from continuing operations of the REIT produces anomalous results because the significance of the Acquisitions is exaggerated out of proportion to their significance on an objective basis in comparison to the results of the asset and investment tests.
13. Under Part 8 of NI 51-102 the REIT is required to file a business acquisition report ("BAR") for any significant acquisitions (as such term is used in Part 8 of NI 51-102) that it completes and such BAR must contain certain financial statements of the acquired business. The REIT has not filed any BARs in respect of the Acquisitions, and therefore has not filed all periodic and timely disclosure documents that it is required to have filed in the Jurisdictions.
14. The REIT filed and obtained an MRRS decision document for a preliminary short form prospectus (the Preliminary Prospectus) on October 23, 2007. The REIT intends to file a final short form prospectus on October 31, 2007 (the

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Final Prospectus), as required by the terms of an underwriting agreement dated October 23, 2007 between the REIT and RBC Dominion Securities Inc., Scotia Capital Inc., TD Securities Inc., BMO Nesbitt Burns Inc., National Bank Financial Inc., Canaccord Capital Corporation, and CIBC World Markets Inc.

Decision

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 under the Legislation is that the Requested Relief is granted provided that the Final Prospectus contains disclosure that:

- (i) the Filer has received the Requested Relief,
- (ii) the date that the Requested Relief was granted, and
- (iii) the Filer had not obtained the Requested Relief at the time of filing the Preliminary Prospectus.

Erez Blumberger
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Ontario Securities Commission