

2002 BCSECCOM 1023

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from registration and prospectus requirements to allow issuer to include pro forma combined financial statements in an offering memorandum, subject to certain conditions

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 48 and 76

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA AND ALBERTA

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

AND IN THE MATTER OF CAREVEST FIRST MORTGAGE INVESTMENT CORPORATION

MRRS DECISION DOCUMENT

- ¶ 1 WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia and Alberta (the “Jurisdictions”) has received an application from CareVest First Mortgage Investment Corporation (the “Filer”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the registration requirement and prospectus requirement shall not apply to the offering of preferred shares by the Filer.
- ¶ 2 AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the British Columbia Securities Commission is the principal regulator for this application;
- ¶ 3 AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions*;
- ¶ 4 AND WHEREAS the Filer has represented to the Decision Makers that:

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1. the Filer was formed by amalgamation under the *Canada Business Corporations Act* on September 30, 2002, was extra-provincially registered in Alberta on October 11, 2002 and in British Columbia on November 10, 2002, and is not a reporting issuer in any jurisdiction;
2. the Filer's head office is located in Victoria, British Columbia;
3. the authorized capital of the Filer consists of an unlimited number of common shares of which 160 are issued and outstanding and an unlimited number of preferred shares of which 17,834,582 are issued and outstanding;
4. the Filer is a mortgage investment corporation that sells preferred shares to investors and invests the funds raised in mortgages attaching to projects primarily located in British Columbia and Alberta;
5. the Filer has offered preferred shares to investors in British Columbia and Alberta under the prospectus and registration exemption found in section 4 of Multilateral Instrument 45-103 using Form 45-103F1 (the "Form"), the form of Offering Memorandum required by Multilateral Instrument 45-103 *Capital Raising Exemptions* ("MI 45-103");
6. the Filer is in compliance with every requirement of the Form except the requirement found in section B of the Instructions attached to the Form which requires the offering memorandum to include audited financial statements of the Filer for the years ended December 31, 2001, compared to December 31, 2000, and unaudited interim financial statements, prepared in accordance with Canadian generally accepted accounting principles;
7. the Filer was created by the amalgamation of four companies (the "Amalgamating Companies"), one of which was incorporated in 1999 and three of which were incorporated in 2000;
8. only two of the four Amalgamating Companies were operational in 2000;
9. audited financial statements for the year ended December 31, 2001 are available for all four Amalgamating Companies and audited financial statements for the year ended December 31, 2000 are available for the two Amalgamating Companies which had operations during 2000;
10. the Filer proposes to include the following financial statements in its offering memorandum:

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- (a) Pro forma combined balance sheet, income statement and statement of cash flows of the Filer as at and for the nine-months ended September 30, 2002 prepared based upon the unaudited financial statements available for each of the four Amalgamating Companies and presented as if the Amalgamating Companies had been combined since their inception;
 - (b) the following annual statements prepared based upon the audited financial statements available for each of the four Amalgamating Companies and presented as if the Amalgamating Companies had been combined since their inception:
 - (i) Pro forma combined balance sheet, income statement and statement of cash flows of the Filer as at and for the year ended December 31, 2001 compared to December 31, 2000;
 - (ii) Pro forma combined balance sheet, income statement and statement of cash flows of the Filer as at and for the year ended December 31, 2001; and
 - (iii) Pro forma combined balance sheet, income statement and statement of cash flows of the Filer as at and for the year ended December 31, 2000(collectively, the “Pro forma Annual Combined Statements”); and
 - (c) audited financial statements for the year ended December 31, 2001 for all four Amalgamating Companies and audited financial statements for the year ended December 31, 2000 for the two Amalgamating Companies which had operations during 2000;
11. investors can track the figures from the Pro forma Annual Combined Statements back to the audited financial information available for each Amalgamating Company, which will be contained in the offering memorandum; and
12. if the Filer is required to audit the financial statements of the Filer for the year ended December 31, 2001 as compared to December 31, 2000, as if the Amalgamating Companies had been combined since their inception, the Filer will incur additional costs and face delays because, among other factors, the audited financial statements were prepared by different auditors.
- ¶ 5 AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively the “Decision”);
- ¶ 6 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;

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- ¶ 7 THE DECISION of the Decision Makers under the Legislation is that the registration requirement and prospectus requirement will not apply to the offering of preferred shares by the Filer provided that:
1. the Filer complies with all of the requirements of Part 4 of MI 45-103 except that the offering memorandum will include the financial statements listed in representation 10 above instead of the statements required by section B of the Instructions attached to the Form;
 2. the first trade in preferred shares acquired under this Decision in a Jurisdiction will be deemed to be a distribution under the Legislation unless the conditions in subsections (2) or (3) of section 2.5 of Multilateral Instrument 45-102 *Resale of Securities* are satisfied; and
 3. this Decision will terminate on the earlier of April 30, 2003 or the date the Filer has prepared audited financial statements for the year ending December 31, 2002.

¶ 8 December 17, 2002

Brenda Leong
Director