

# 2007 BCSECCOM 341

June 1, 2007

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - *Securities Act*, s. 88 – Cease to be a reporting issuer in BC - The securities of the issuer are beneficially owned by more than 50 persons and are not traded through any exchange or market - The issuer became a wholly owned subsidiary of another company; the issuer has debt securities outstanding that are held by more than 50 holders; there is no market for the debt securities; the issuer is not required under the terms of the debt instrument to provide any continuous disclosure to the holders of the debt securities as long as the securities are outstanding or to remain a reporting issuer; the issuer does not intend to do a public offering of its securities to Canadian residents; the issuer will not be a reporting issuer in any Canadian jurisdiction

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, s. 88

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New  
Brunswick, Nova Scotia, and Newfoundland and Labrador  
(the “Jurisdictions”)

and

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

and

In the Matter of  
Summit Real Estate Investment Trust  
(the “Filer”)

## **MRRS Decision Document**

## **Background**

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

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under the securities legislation of the Jurisdictions (the “Legislation”) that the Filer is not a reporting issuer in each of the Jurisdictions (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 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

### **Representations**

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

1. The Filer is a trust formed pursuant to the laws of the Province of Ontario and governed by an amended and restated declaration of trust dated as of January 15, 2007 (the “Declaration of Trust”).
2. The head office of the Filer is located at 220 Bay Street, 12th Floor, Toronto, ON M5J 2W4.
3. In the fall of 2006, ING Real Estate Canada Trust (“INGREC”) made a formal take-over bid (the “Offer”) for all of the issued and outstanding units of the Filer (the “Units”), which Offer expired on October 11, 2006. In January 2007, INGREC successfully completed the acquisition of 100% of the Units by way of a subsequent acquisition transaction involving the redemption of all remaining Units not then owned by INGREC, resulting in INGREC being the sole Unitholder of the Filer. The Units were subsequently delisted from the Toronto Stock Exchange (the “TSX”) effective January 26, 2007.
4. INGREC is owned indirectly as to 50% by ING Groep N.V. ING Groep N.V. is one of the world’s largest financial services companies with securities listed on several stock exchanges, including the New York Stock Exchange. ING Industrial Fund indirectly holds the remaining 50% interest in INGREC. ING Industrial Fund is a substantial property trust listed on the Australian Stock Exchange.
5. Prior to the completion of the Offer, the Filer also had 6.25% convertible debentures due March 31, 2014 (the “Convertible Debentures”) listed on the

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TSX. All of the Convertible Debentures were converted into Units or redeemed in January 2007 in connection with the completion of the acquisition of 100% of the Units by INGREC.

6. The Filer does not have any securities outstanding, including debt securities, other than:

- (a) Two Units held by INGREC,
- (b) 5.70% Series A senior unsecured debentures due November 10, 2011 in the aggregate principal amount of \$115,000,000 (the "Series A Debentures"), and
- (c) 5.38% Series B senior unsecured debentures due March 1, 2012 in the aggregate principal amount of \$100,000,000 (the "Series B Debentures") (the Series A Debentures and the Series B Debentures, collectively, the "Debentures").

The Debentures are not (and have never been) listed on any exchange or market.

7. As of May 9, 2007, (i) an aggregate principal amount of \$114,607,000 Series A Debentures remained outstanding and were beneficially held by approximately 729 residents in the Jurisdictions and (ii) an aggregate principal amount of \$83,200,000 Series B Debentures remained outstanding and were beneficially held by approximately 45 residents in the Jurisdictions.
8. As of May 9, 2007, the approximate number of beneficial holders of the Debentures in each of the Jurisdictions is as follows:

<u>Jurisdiction</u>	<u>Series A Debenture Holders</u>	<u>Series B Debenture Holders</u>
Alberta	86	1
British Columbia	132	2
Manitoba	29	-
Nova Scotia	7	-
Ontario	347	39
Québec	109	3
Saskatchewan	19	-

9. Effective as of April 1, 2007, a reorganization of the Filer was effected which, through a series of steps, resulted in ING Summit Industrial Fund LP ("Industrial LP") becoming the successor issuer to the Filer (the "Reorganization").

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10. Industrial LP is a limited partnership formed pursuant to the laws of the Province of Manitoba on March 22, 2007. The general partner of Industrial LP is ING Summit Industrial Fund GP Inc., a corporation formed pursuant to the laws of the Province of Ontario and which holds approximately a 0.1% interest in Industrial LP. Industrial LP was formed for the purposes of the Reorganization and is an indirect affiliate of INGREC.
11. Pursuant to the Reorganization, Industrial LP (i) acquired substantially all of the assets of the Filer and (ii) assumed all of the material obligations and liabilities of the Filer, including the Filer's obligations and liabilities under the Debentures. The Filer no longer holds any material assets (other than certain rights of indemnity by Industrial LP, including for losses in relation to the Debentures).
12. While, under the terms of the Debentures, the Filer was entitled upon the Reorganization becoming effective to be completely released from any related obligations, this could have resulted in adverse tax consequences to the holders of the Debentures. Accordingly, the Filer has agreed to continue to be bound to make payments under the Debentures as a co-borrower. The Filer does not foresee any circumstances which would result in it being unable to act as a co-borrower of the Debentures.
13. The payment obligations in respect of the Debentures will be made by Industrial LP. The Filer will have no material independent assets to support the payment obligations under the Debentures and does not expect to make any payments in respect of the Debentures.
14. The Declaration of Trust does not contain a provision requiring the Filer to maintain its status as a reporting issuer, nor does it contain a provision requiring the Filer to provide continuous disclosure documents to holders of the Debentures. The trust indenture dated as of November 10, 2004 (as amended) in respect of the Debentures provides that, in the event the Filer ceases to be a reporting issuer, it will continue to provide financial statements to holders of the Debentures as if the Filer were a reporting issuer. As successor issuer to the Filer, Industrial LP has assumed this obligation to continue to provide financial statements.
15. As a result of the Reorganization, Industrial LP, by operation of law, became a reporting issuer in each of British Columbia, Saskatchewan, Manitoba, Québec and Nova Scotia. Concurrent with the Filer's application for the Requested Relief, Industrial LP has submitted an application to the securities regulatory authority or regulator in each of the provinces of Alberta, Ontario,

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New Brunswick and Newfoundland and Labrador to become a reporting issuer under the securities legislation of each such province.

16. As a reporting issuer, Industrial LP will provide holders of Debentures with continuous disclosure documents as required by the Legislation, including filings of interim and annual financial statements and the related management's discussion and analysis of Industrial LP.
17. Upon the occurrence of any material change to Industrial LP (including any material change involving the rights or obligations of the Filer under the Debentures), the holders of the Debentures shall receive all relevant information from the material change reports required to be filed by Industrial LP under the Legislation.
18. The Filer does not have securities listed or posted for trading on any marketplace as defined in National Instrument 21-101 *Marketplace Operation*.
19. The Filer is not in default of any of its obligations as a reporting issuer under the Legislation. By an order of the Decision Makers dated March 30, 2007, the Filer was granted relief from the requirement under the Legislation to file an annual information form for its financial year ended December 31, 2006.
20. The Filer is applying for a decision that it is not a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer.
21. The Filer does not intend to seek financing by way of a public offering of its securities.
22. On April 3, 2007, the Filer issued and filed a news release announcing that (i) the Reorganization had been completed, (ii) Industrial LP is the successor to the Filer, (iii) Industrial LP has acquired all of the Filer's industrial properties and related obligations including the obligations under the Debentures, and (iv) the Filer will remain a co-borrower under the Debentures. The Filer's issuer profile on the System for Electronic Document Analysis and Retrieval (SEDAR) has been updated to indicate that the Filer is the previous issuer to Industrial LP.

### **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.

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The decision of the Decision Makers under the Legislation is that the Requested Relief is granted.

Harold P. Hands  
Commissioner  
Ontario Securities Commission

Wendell S. Wigle  
Commissioner  
Ontario Securities Commission