

2003 BCSECCOM 139

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from registration and prospectus requirements in connection with issuance of units by open-end real estate investment trust to existing unitholders holding minimum of 500 units pursuant to a distribution reinvestment plan whereby distributions of income are reinvested in additional units of the trust, subject to certain conditions - first trade relief provided for additional units, subject to certain conditions

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61 and 76
MI 45-102 – *Resale of Securities*, s. 2.6(3)

IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA, BRITISH COLUMBIA, SASKATCHEWAN, MANITOBA, ONTARIO, QUÉBEC, NEW BRUNSWICK, NOVA SCOTIA, NEWFOUNDLAND AND PRINCE EDWARD ISLAND

AND

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

AND

IN THE MATTER OF INNVEST REAL ESTATE INVESTMENT TRUST

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador, and Prince Edward Island (the “Jurisdictions”) has received an application from InnVest Real Estate Investment Trust (“InnVest REIT”) for a decision pursuant to the securities legislation in each of the Jurisdictions (the “Legislation”) that the requirements contained in the Legislation to be registered to trade in a security and to file and obtain a receipt for a preliminary and final prospectus (the “Registration and Prospectus Requirements”) shall not apply to the distribution and resale of units of InnVest REIT pursuant to a distribution reinvestment plan (the “DRIP”);

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (“MRRS”), the Ontario Securities Commission is the principal regulator for this application;

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AND WHEREAS InnVest REIT has represented to the Decision Makers that:

1. InnVest REIT is an unincorporated open-ended real estate investment trust established under the laws of the Province of Ontario pursuant to a declaration of trust dated January 1, 2002, as amended and restated as of July 18, 2002.
2. The beneficial interests in InnVest REIT are divided into a single class of units (the "Units") and InnVest REIT is authorized to issue an unlimited number of Units. As of the date hereof, 41,075,910 Units are issued and outstanding.
3. InnVest's REIT's focus will be on managing its portfolio of hotel properties and acquiring other hotel properties as opportunities arise. Its objectives are: (i) to provide holders of Units ("Unitholders") with stable and growing cash distributions, payable monthly, principally from the ownership of limited service hotels; and (ii) to maximize long-term Unit value by implementing InnVest REIT's business strategy.
4. InnVest REIT became a reporting issuer or the equivalent thereof in each of the Jurisdictions on July 19, 2002 when it obtained a receipt for its final prospectus dated July 18, 2002. As of the date hereof, InnVest REIT is not in default of any requirements under the Legislation.
5. The Units are currently listed and posted for trading on the Toronto Stock Exchange (the "TSX").
6. The REIT is not a "mutual fund" as described in the Legislation because the Unitholders are not entitled to receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets of InnVest REIT, as contemplated in the definition of "mutual fund" in the Legislation.
7. InnVest REIT currently intends to make cash distributions to Unitholders monthly equal to, on an annual basis, not less than 80% of its distributable income.
8. InnVest REIT intends to establish the DRIP pursuant to which Unitholders who beneficially hold a minimum of 500 Units may, at their option, automatically reinvest cash distributions paid on their Units in additional Units ("Additional Units"). The DRIP will not be available to Unitholders who are not Canadian residents.
9. Distributions due to participants in the DRIP ("Participants") will be paid to Computershare Trust Company of Canada in its capacity as agent under the

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DRIP (in such capacity, the “DRIP Agent”) and applied to purchase Additional Units. All Additional Units purchased under the DRIP will be purchased by the DRIP Agent directly from InnVest REIT.

10. The price of Additional Units purchased with cash distributions will be the volume weighted average of the closing price for a board lot of Units on the TSX for the five trading days immediately preceding the relevant distribution date. Unitholders who elect to participate in the DRIP will receive a further distribution of Additional Units equal in value to 3% of each distribution that is reinvested under the DRIP.
11. No commissions, service charges or brokerage fees will be payable by Participants in connection with the DRIP and all administrative costs will be borne by InnVest REIT.
12. Additional Units purchased under the DRIP will be registered in the name of The Canadian Depository for Securities Limited (“CDS”) as the Units are held by Unitholders in book entry only form through CDS and its participants.
13. Participants may terminate their participation in the DRIP at any time by written notice to their broker, who will in turn notify CDS. CDS will notify the DRIP Agent, on a monthly basis, of the number of Units participating in the DRIP. If a Participant elects to terminate his or her participation in the DRIP, he or she will receive all further distributions by cheque.
14. The distribution of Additional Units by InnVest REIT pursuant to the DRIP cannot be made in reliance on certain existing registration and prospectus exemptions contained in the Legislation as the DRIP involves the reinvestment of distributions of distributable income of InnVest REIT and not the reinvestment of dividends, interest or distributions of capital gains or out of earnings or surplus.
15. The distribution of Additional Units by InnVest REIT pursuant to the DRIP cannot be made in reliance on registration and prospectus exemptions contained in the Legislation for distribution reinvestment plans of mutual funds, as InnVest REIT is not a “mutual fund” as defined in the Legislation.

AND WHEREAS under the MRRS, this MRRS Decision Document evidences the decision of each of the Decision Makers (collectively, the “Decision”);

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the decision has been met;

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THE DECISION of the Decision Makers pursuant to the Legislation is that the trades of Additional Units by InnVest REIT to the DRIP Agent for the account of Participants pursuant to the DRIP shall not be subject to the Registration and Prospectus Requirements of the Legislation provided that:

- (a) at the time of the trade InnVest REIT is a reporting issuer or the equivalent under the Legislation and is not in default of any requirements of the Legislation;
- (b) no sales charge is payable in respect of the trade;
- (c) InnVest REIT has caused to be sent to the person or company to whom the Additional Units are traded, not more than 12 months before the trade, a statement describing:
 - (i) their right to withdraw from the DRIP and to make an election to receive cash instead of Units on the making of a distribution of income by InnVest REIT, and
 - (ii) instructions on how to exercise the right referred to paragraph (i) above;
- (d) disclosure of the distribution of the Additional Units is made to the relevant Jurisdictions by providing the particulars of the date of the distribution of such Additional Units, the number of such Additional Units and the purchase price paid or to be paid for such Additional Units in:
 - (i) an information circular or take-over bid circular filed in accordance with the Legislation; or
 - (ii) a letter filed with the Decision Maker in the relevant Jurisdiction by a person or company certifying that the person or company has knowledge of the facts contained in the letter,

when InnVest REIT distributes such Additional Units for the first time and thereafter not less frequently than annually, unless the aggregate number of Additional Units so traded in any month exceeds 1% of the Units outstanding at the beginning of a month in which the Additional Units were traded, in which case a separate report shall be filed in each relevant Jurisdiction in respect of that month within ten days of the end of the month;

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- (e) except in Québec, the first trade in Additional Units acquired pursuant to this Decision will be a distribution or primary distribution to the public unless the conditions in paragraphs 2 through 5 of subsection 2.6(3) of Multilateral Instrument 45-102 *Resale of Securities* are satisfied;
- (f) in Québec, the first trade in Additional Units acquired pursuant to this Decision will be a distribution unless:
 - (i) at the time of the first trade the issuer is a reporting issuer in Québec and is not in default of any of the requirements of securities legislation in Québec;
 - (ii) no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the alienation;
 - (iii) no extraordinary commission or other consideration is paid in respect of the alienation; and
 - (iv) if the seller of the securities is an insider of the issuer, the seller has no reasonable grounds to believe that the issuer is in default of any requirements of securities legislation.

DATED this 24th day of January, 2003.

Robert W. Korthals
Robert L. Shirriff