

2007 BCSECCOM 579

August 28, 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, Quebec,
Nova Scotia, New Brunswick 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
Alexis Nihon 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 under the securities legislation of the Jurisdictions (the “Legislation”) that the Filer is deemed to have ceased to be a reporting issuer in the Jurisdictions (the “Request”).

2007 BCSECCOM 579

Under the Mutual Reliance Review System for Exemptive Relief Applications (“MRRS”):

- (a) the Autorité des marchés financiers 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 an unincorporated closed-end investment trust created by a contract of trust amended and restated as of May 24, 2007, governed by the laws of the Province of Québec (the “Contract of Trust”).
2. The Filer’s head office is located at 1 Place Alexis Nihon, Montreal, Québec, H3Z 3B8.
3. Pursuant to the Contract of Trust, the Filer is authorized to issue an unlimited number of trust units (the “Units”). As of July 26, 2007, there were 30,039,115 Units outstanding and Homburg Acquisition Inc. (“HAI”) was the registered and beneficial owner of all these Units.
4. Pursuant to a trust indenture (the “Indenture”) made as of August 31, 2004 between the Filer and Natcan Trust Company, the Filer issued \$55,000,000 aggregate principal amount of Series A 6.20% convertible unsecured subordinated debentures due June 30, 2014 (the “Convertible Debentures”). All Convertible Debentures are held by way of a global certificate registered in the name of CDS & Co. On March 16, 2006, the Filer consented to the assignment of the Indenture to Computershare Trust Company of Canada (the “Trustee”), as successor to Natcan Trust Company.
5. On February 27, 2007, HAI, a wholly-owned subsidiary of Homburg Invest Inc., made an offer by way of take-over bid circular to purchase all of the Units not already held by it or its affiliates, including the Units issuable upon the conversion of the Convertible Debentures, at a price of \$18.60 in cash per Unit (the “Offer”).

2007 BCSECCOM 579

6. On April 6, 2007, HAI announced that it had taken up all the Units validly deposited under the Offer as at midnight on April 5, 2007, representing approximately 70% of the issued and outstanding Units (on a fully-diluted basis), which together with the Units already owned by HAI and its affiliates represented approximately 87% of the issued and outstanding Units (on a fully-diluted basis).
7. On April 18, 2007, the Filer sent the holders of Units a notice of special meeting and information circular (the "Meeting Circular") for a special meeting of its unitholders held on May 17, 2007 (the "Meeting"). At the Meeting, the unitholders of the Filer were asked to consider and, if deemed advisable, approve certain amendments (the "Amendments") to the Contract of Trust, including a reorganization (the "Reorganization") of the Filer which included: (i) the creation of a new class of units of Alexis Nihon (the "Special Units"); (ii) the de-listing of the Units from the Toronto Stock Exchange (the "TSX"); (iii) the exchange of the Units (other than Units held by HAI and its affiliates) for Special Units on a one-for-one basis (the "Exchange"); (iv) the redemption of the Special Units at a redemption price of \$18.60 per Special Unit (the "Redemption"); and (v) with respect to any issuances of Special Units subsequent to the Exchange, the immediate redemption of such Special Units for a redemption price of \$18.60 per Special Unit. The Meeting Circular was also sent to the holders of Convertible Debentures. At the Meeting, the requisite majorities of unitholders approved the Amendments.
8. Pursuant to the terms of the Indenture, following the Reorganization, holders of Convertible Debentures became entitled to receive Special Units instead of Units upon the exercise of the conversion rights associated with their Convertible Debentures. Further, such Special Units will be immediately redeemed for \$18.60 per Special Unit in accordance with the Contract of Trust.
9. On May 22, 2007, the Filer exercised the satisfaction provisions set forth in the Indenture and entered into an escrow agreement with the Trustee pursuant to which the Filer deposited with the Trustee an amount of money sufficient to satisfy the entire payment of principal and interest payable to the holders of Convertible Debentures (the "Satisfaction Payment") until the earliest date that the Convertible Debentures are redeemable by the Filer. In addition to the Satisfaction Payment, the Filer also deposited with the Trustee an amount of money sufficient to pay \$18.60 per Special Unit to any holder of Convertible Debentures that exercises its conversion rights prior to their redemption.

2007 BCSECCOM 579

10. The effect of the Satisfaction Payment is that the Filer is deemed under the terms of the Indenture to have fully paid, satisfied and discharged the Convertible Debentures. The terms and conditions with respect to the Convertible Debentures set forth in the Indenture are no longer binding upon or applicable to the Filer, except certain provisions dealing with the form of the Convertible Debentures, the payment of principal and interest, conversion, redemption and the enforcement of the satisfaction provisions. More specifically, following the Satisfaction Payment, the Filer was released from its obligation to maintain a listing of the Convertible Debentures on the TSX and from its obligation to provide financial or other continuous disclosure documents to the holders of Convertible Debentures.
11. On May 23, 2007, the TSX de-listed the Units and Convertible Debentures (the "securities") at the close of markets. As a result, none of the Filer's securities are listed or traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*.
12. On May 24, 2007 the Exchange and the Redemption were completed and HAI became the sole unitholder of the Filer.
13. To the best of the Filer's knowledge, as of June 20, 2007 there were 125 beneficial holders of Convertible Debentures in Canada, including 52 holders of Convertible Debentures in Ontario and 45 holders of Convertible Debentures in Québec, holding in the aggregate \$2,518,000 principal amount of Convertible Debentures. To the best of the Filer's knowledge, in each of the other Jurisdictions, the Convertible Debentures are beneficially owned, directly or indirectly by less than 15 security holders.
14. The Convertible Debentures have been de-listed and the Filer does not anticipate that a market for the Debentures will develop. Furthermore, as a result of the Amendments and the Satisfaction Payment, the Convertible Debentures represent only the right to receive payment of principal and interests or conversion proceeds that are being held in trust by the Trustee. There is no longer any benefit or risk associated with ownership of the Convertible Debentures that relates to the Filer.
15. To the best of its knowledge, the Filer is not in default of any of its obligations under the Legislation as a reporting issuer.
16. The Filer has no outstanding securities, including debt securities, other than the Units and the Convertible Debentures.

2007 BCSECCOM 579

17. The Filer has no plans to seek public financing by offering its securities in Canada.

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 Request is granted.

Jean St-Gelais
Président-directeur général