

# 2008 BCSECCOM 557

September 12, 2008

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - *Securities Act*, s. 171 – Revoke or vary a decision - An issuer wants to vary or repeal and replace a previous decision it received to revise the conditions to the relief granted - The applicant previously obtained relief from certain requirements in securities legislation; the policy reasons for granting that relief have not changed, but certain of the conditions to the relief are no longer appropriate because of a change in the issuer's circumstances; the previous relief would no longer be available to the applicant; alternative conditions can be structured that address the issuer's new circumstances

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 48, 76, and 171

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario,  
Quebec, New Brunswick, Newfoundland and Labrador,  
Nova Scotia, Prince Edward Island, 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  
H&R Real Estate Investment Trust  
on its own behalf and on behalf of H&R Finance Trust

## MRRS Decision Document

## Background

The local securities regulatory authority or regulator (the “Decision Maker” and, collectively, the “Decision Makers”) in each of the Jurisdictions has received an application (the “Application”) from H&R Real Estate Investment Trust (the “Trust”) and H&R Finance Trust (“H&R Finance”) (the Trust and H&R Finance each a “Filer” and, collectively, the “Filers”), the new trust that will result from

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the reorganization of the Trust (the “Reorganization”) by way of a plan of arrangement under the *Business Corporations Act* (Alberta), for a decision by each Decision Maker under the securities legislation of the Jurisdictions (the “Legislation”) varying the MRRS Decision Document dated August 8, 2008 *In the Matter of H&R Real Estate Investment Trust on its own behalf and on behalf of H&R Finance Trust* (the “Original Decision Document”) as follows (the “Requested Relief”):

- a) by removing the word “Quebec,” from the first bullet on the first page of the Original Decision Document;
- b) by deleting paragraph 1(e) in the Original Decision Document and substituting it with the following:

“The decision of the Decision Makers other than the Decision Makers in the Northwest Territories and Nunavut, under the Legislation is that H&R Finance is designated as a Reporting Issuer in each of the Jurisdictions effective immediately upon the formation of H&R Finance pursuant to the plan of arrangement”;

- c) by deleting paragraph 1(f) in the Original Decision Document and substituting it with the following:

“The further decision of the Decision Makers under the Legislation is that the Dealer Registration and Prospectus Requirements in respect of (i) trades of units of H&R Finance to Trust Employees and (ii) except in Quebec, trades of units of H&R Finance to unitholders of H&R Finance in connection with the exercise of rights pursuant to the Unitholder Rights Plan of the Trust shall not apply to trades of securities of H&R Finance provided that the first trade of any security acquired as a result of this exemption shall be deemed to be a distribution under the Legislation of the Jurisdiction where the trade takes place unless the conditions in section 2.6(3) of National Instrument 45-102 *Resale of Securities* as they would apply to the Trust are satisfied”; and

- d) by deleting paragraph 1(g) in the Original Decision Document and substituting it with the following:

“The Dealer Registration and Prospectus Requirements relief terminates immediately if previously issued Stapled Units cease to be stapled or if H&R Finance issues units of H&R Finance that will not be stapled to units of the Trust (except for distributions of units of H&R Finance which are immediately followed by a consolidation of outstanding units of H&R

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Finance such that an equal number of units of H&R Finance and units of the Trust are outstanding immediately following such consolidation)”.

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 or the Original Decision Document.

### **Representations**

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

- 1. All of the representations provided by the Filers in the Original Decision Document remain true and accurate and are incorporated by reference into this decision document as representations of the Filers.

### **The 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.

Paulette L. Kennedy  
Commissioner  
Ontario Securities Commission

Wendell S. Wigle  
Commissioner  
Ontario Securities Commission