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Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief from registration, prospectus and issuer bid requirements granted for trades in connection with a business combination involving real estate investment trusts - relief from prohibition on collateral benefits granted in connection with concurrent take-over bid in respect of agreements to appoint certain persons to offeror's board of trustees and to provide transitional insurance coverage, where agreements are made for reasons other than to increase the value of the consideration paid to the affected unitholders

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61, 76, 105-110, 114(2)(a) and 114(2)(c)

**IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA,
BRITISH COLUMBIA, MANITOBA, NEW BRUNSWICK,
NEWFOUNDLAND AND LABRADOR, THE NORTHWEST
TERRITORIES, NOVA SCOTIA, NUNAVUT, ONTARIO, PRINCE
EDWARD ISLAND, QUÉBEC, SASKATCHEWAN AND THE YUKON
TERRITORY**

AND

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

AND

**IN THE MATTER OF
RETIREMENT RESIDENCES REAL ESTATE INVESTMENT TRUST
AND CPL LONG TERM CARE REAL ESTATE INVESTMENT TRUST**

MRRS DECISION DOCUMENT

WHEREAS the Canadian securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, British Columbia, Manitoba, Saskatchewan, Ontario, Québec, Nova Scotia, Newfoundland, Prince Edward Island, New Brunswick, the Northwest Territories, Nunavut, and the Yukon Territory (the "Jurisdictions") has received an application from Retirement Residences Real Estate Investment Trust ("Retirement REIT") and CPL Long Term Care Real Estate Investment Trust ("CPL REIT", and together with Retirement REIT, the "Applicants") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that:

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- (a) the registration and prospectus requirements contained in the Legislation shall not apply to the proposed distribution of trust units of Retirement REIT to unitholders of CPL REIT;
- (b) the issuance of trust units of Retirement REIT to CPL REIT pursuant to an acquisition agreement between CPL REIT and Retirement REIT dated February 12, 2002 (the “Agreement”) shall be exempt from the applicable fee requirements of the Legislation;
- (c) the acquisition of trust units of Retirement REIT by Retirement REIT pursuant to the Agreement shall be exempt from the provisions in the Legislation relating to delivery of an offer and issuer bid circular and any notices of change or variation thereto, minimum deposit periods and withdrawal rights, take-up of and payment for securities tendered to an issuer bid, disclosure, restrictions upon purchases of securities, identical consideration and collateral benefits (collectively, the “Issuer Bid Requirements”); and
- (d) the provision in the Legislation that prohibits an offeror who makes or intends to make a take-over bid and any person acting jointly or in concert with the offeror from entering into any collateral agreement, commitment or understanding with any holder or beneficial owner of securities of the offeree issuer that has the effect of providing to the holder or owner a consideration of greater value than that offered to other holders of the same class of securities (the “Prohibition on Collateral Agreements”) shall not apply to the Transitional Arrangements (as defined below);

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

AND WHEREAS the Applicants have represented to the Decision Makers as follows:

1. Retirement REIT has made an offer to purchase all of the issued and outstanding trust units of CPL REIT by way of take-over bid (the “Bid”) and merger transaction (the “Transaction”).
2. Retirement REIT is an unincorporated “closed-end” investment trust governed by the laws of the Province of Ontario and constituted pursuant to an amended and restated declaration of trust dated as of March 31, 2001, with its principal executive office in the City of Toronto, in the Province of Ontario.

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3. Retirement REIT is, and has been since April 11, 2001, a reporting issuer or equivalent in each of the Jurisdictions where the Legislation contemplates such status, and is a qualifying issuer within the meaning of Multilateral Instrument 45-102 (“MI 45-102”).
4. The outstanding trust units of Retirement REIT (“Retirement REIT Units”) are listed and posted on The Toronto Stock Exchange (the “TSE”) under the symbol “RRR.UN”.
5. Retirement REIT is not on a list of defaulting issuers maintained by any Decision Maker pursuant to the Legislation.
6. CPL REIT is an unincorporated “closed-end” investment trust governed by the laws of the Province of Ontario and constituted pursuant to an amended and restated declaration of trust dated as of March 9, 2000, with its principal executive office in the City of Toronto, in the Province of Ontario.
7. CPL REIT is a reporting issuer or equivalent in each of the Jurisdictions where the Legislation contemplates such status and is a qualifying issuer for purposes of MI 45-102.
8. The outstanding trust units of CPL REIT (“CPL REIT Units”) are listed and posted on the TSE under the symbol “CPL.UN”.
9. As at February 12, 2002, the issued capital of CPL REIT consisted of 24,634,862 trust units.
10. CPL REIT is not on a list of defaulting issuers maintained by any Decision Maker pursuant to the Legislation.
11. Retirement REIT, through a subsidiary entity, is the advisor and manager of CPL REIT, pursuant to which Retirement REIT, among other things, advises CPL REIT on major decisions (including, without limitation, proposed acquisitions) and provides overall guidance and supervision of management, administration, regulatory compliance and marketing on behalf of CPL REIT and/or its operating subsidiaries.
12. Certain trustees, officers and senior officers of CPL REIT are also trustees, officers and/or senior officers of Retirement REIT.
13. The Bid and the Transaction (the terms and structure of which are codified in the Agreement) form the principal parts of a proposed series of transactions

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which have been designed to result (if implemented) in, among other things, Retirement REIT acquiring substantially all of the assets, and assuming certain of the liabilities, of CPL REIT, and Retirement REIT being the sole holder of CPL REIT Units, with holders of CPL REIT Units, directly or indirectly, exchanging those units for Retirement REIT Units. Each CPL REIT unitholder will have the right to choose whether to exchange his, her or its CPL REIT Units directly for Retirement REIT Units by depositing CPL REIT Units pursuant to the Bid, a taxable disposition, or to have his, her or its CPL REIT Units exchanged (on a tax- deferred “rollover” basis) by way of a redemption by CPL REIT of its units where the redemption price will be satisfied by the distribution by CPL REIT of Retirement REIT Units issued to it in connection with the asset purchase.

14. The Bid is for not more than 14,000,000 of the issued and outstanding CPL REIT Units, on the basis of 1.20 Retirement REIT Units (collectively, the “Bid Payment Units”) for each CPL REIT Unit (the “Exchange Ratio”). Under the Transaction, each CPL REIT unitholder who does not tender under the Bid as at the time of completion of the Transaction will receive Retirement REIT Units (collectively, the “Transfer Payment Units”) from CPL REIT upon redemption of his or her CPL REIT Units based on the Exchange Ratio.
15. The Applicants mailed on or about March 1, 2002, among other things, a take-over bid circular and trustees’ circular relating to the Bid and a management information circular relating to the Transaction (the “Documents”) to holders of CPL REIT Units, which Documents contain prospectus-level disclosure regarding the business and affairs of Retirement REIT, including pro forma financial information giving effect to the Bid and the Transaction. The Documents also contain detailed descriptions of the Bid and the Transaction, including a notice of a meeting of CPL REIT unitholders (the “Special Meeting”) to consider and, if deemed advisable, approve the Transaction and a formal valuation, prepared in accordance with Commission Rule 61-501, of the subject matter of the proposed transactions (i.e. the CPL REIT Units and assets and the Retirement REIT Units). The Special Meeting took place on April 8, 2002 and requisite unitholder approval was obtained. The Bid, under which CPL REIT unitholder approval is a condition, will expire, subject to extension, on or about April 23, 2002, and, if all conditions of the Bid and the Transaction (they are parallel) have at that time been satisfied or waived it is anticipated that the Transaction would be closed on or about April 30, 2002.
16. Retirement REIT mailed, on or about March 1, 2002, an information circular, a notice of a meeting of Retirement REIT (the “Retirement REIT Special Meeting”) to consider and, if deemed advisable, approve the Transaction, and a formal valuation of the subject matter of the proposed transactions (i.e. the

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CPL REIT Units and assets and the Retirement REIT Units). The Retirement REIT Special Meeting took place on April 8, 2002 and requisite shareholder approval was obtained.

17. The Transaction will be carried out in accordance with the requirements contained in section 132.2 of the *Income Tax Act* (Canada) (“ITA Qualifying Exchange Requirements”) in order to permit the effective exchange of CPL REIT Units for Transfer Payment Units to occur on a tax-deferred “rollover” basis.
18. The sequence of steps under the Transaction will be as follows:
 - (a) Retirement REIT acquires substantially all of CPL REIT’s assets, assumes certain liabilities and issues Transfer Payment Units based on the Exchange Ratio and the number of CPL REIT Units remaining outstanding following the take-up of CPL REIT Units pursuant to the Bid; and
 - (b) in accordance with the ITA Qualifying Exchange Requirements, in the second step, the CPL REIT Units will be redeemed, with the consideration therefor to be the Transfer Payment Units. To the extent that CPL REIT unitholders become entitled to fractional Transfer Payment Units, such fractional units will be sold in the open market on their behalf and the proceeds of such sale paid to them forthwith. All Transfer Payment Units, which are received by Retirement REIT (as a CPL REIT unitholder as a result of it having previously taken up and paid for CPL REIT Units under the Bid), will be cancelled by Retirement REIT.
19. In order to ensure compliance with the ITA Qualifying Exchange Requirements, the take-up of CPL REIT Units under the Bid would occur after approval of the Transaction at the Special Meeting but prior to effecting the Transaction. The Transaction (including the distribution of Transfer Payment Units to CPL REIT Unitholders upon the redemption of the outstanding CPL REIT Units) will be completed as soon as possible following the issuance of Bid Payment Units under the Bid so as to provide the most consistent treatment possible to all CPL REIT Unitholders, whether they are exchanging CPL REIT Units for Retirement REIT Units under the Bid or as a result of the Transaction.
20. The Agreement provides for, among other things, the following (collectively, the “Transitional Arrangements”):
 - (a) certain of the CPL REIT trustees to be added to the Retirement REIT board of trustees at closing (the “Board Changes”); and

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- (b) trailing fidelity insurance for trustees and officers of CPL REIT, on terms consistent with pre-transaction coverage (the “Insurance Provision”).
21. Each of the proposed Transitional Arrangements are for commercial reasons entirely unrelated to providing any CPL REIT unitholder with consideration of greater value. Specifically, the Board Changes would be intended to reflect continuity of representation of CPL REIT minority unitholders, and the Insurance Provision as proposed is a customary element in transactions of the nature to ensure that executives are not exposed to liability where they would not otherwise have been as a consequence of the transaction.
 22. The compensation of the CPL REIT trustees who are added to the Retirement REIT board of trustees (the “CPL REIT Trustees”) will be commensurate with that paid to other Retirement REIT trustees, and is comparable (and depending upon the frequency of meetings possibly lower) than the compensation that they currently are entitled to receive from CPL REIT. The Insurance Provision will be economically equivalent (as to deductible and coverage type) and less advantageous than (as to coverage limit) existing coverage for CPL REIT trustees. All of the CPL REIT trustees hold CPL REIT Units.
 23. There are no exemptions under the Legislation to exempt the distribution of the Transfer Payment Units by CPL REIT to its unitholders from the prospectus and registration requirements contained in the Legislation.
 24. As a real estate investment trust, rather than a corporation, Retirement REIT cannot complete the acquisition of the CPL REIT Units not deposited to the Bid on a tax-deferred “roll-over” basis (i.e. the Transaction) by way of amalgamation, arrangement or other statutory mechanism available to corporations.
 25. Any issuance by Retirement REIT of Transfer Payment Units to CPL REIT is exempt from the prospectus and (except in the case of the first trades) registration requirements contained in the securities legislation of Ontario by virtue of the “accredited investor” exemption (the “Accredited Investor Exemption”) contained in the securities legislation of Ontario and would require payment of the applicable fees as set out in the securities legislation of Ontario.
 26. The acquisition by Retirement REIT of units of Retirement REIT pursuant to the Transaction may be an issuer bid, and the acquisition of CPL REIT units pursuant to the Bid might be an indirect issuer bid, for which there are no exemptions available from the Issuer Bid Requirements.

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AND WHEREAS pursuant to the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);

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;

THE DECISION of the Decision Makers pursuant to the Legislation is that:

1. the registration and prospectus requirements contained in the Legislation shall not apply to the distribution by CPL REIT of the Transfer Payment Units to the unitholders of CPL REIT in connection with the Transaction, provided that the first trade in any trust unit acquired pursuant to this Decision shall be a distribution or a primary distribution to the public under the Legislation of the Jurisdiction in which the trade takes place unless:
 - (i) except in Québec,
 - (a) the conditions in subsections (3) or (4) of Section 2.6 of Multilateral Instrument 45-102 (“MI 45-102”) are satisfied; or
 - (b) where such first trade is a control distribution as such term is defined in MI 45-102, such trade is made in compliance with Section 2.8 of MI 45-102;
 - (ii) in Québec, to the extent that there is no exemption available from the registration requirements and the prospectus requirements in respect of any of the trades acquired pursuant to this Decision, the trades are not subject to the registration requirements and the prospectus requirements, provided that the issuer is and has been a reporting issuer in Québec in good standing for the twelve months immediately preceding the trades; and no unusual effort is made to prepare the market or to create a demand for the trust units;
2. the issuance by Retirement REIT of Transfer Payment Units to CPL REIT under the Accredited Investor Exemption contained in the Legislation is exempt from the applicable fee requirements of the Legislation;
3. the acquisition by Retirement REIT of units of Retirement REIT pursuant to the Transaction and the indirect acquisition of units of Retirement REIT units pursuant to the Bid are exempt from the Issuer Bid Requirements; and

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4. the Transitional Arrangements are made for purposes other than to increase the value of the consideration paid to the CPL REIT Trustees and may be entered into notwithstanding the Prohibition on Collateral Agreements.

DATED April 23, 2002.

Theresa McLeod

Lorne Morphy