

2007 BCSECCOM 222

March 30, 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
Ontario, British Columbia, Alberta, Saskatchewan,
Manitoba, 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
Retirement Residences Real Estate Investment Trust
(the “Applicant”)

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 Applicant for a decision (the “Requested Relief”) under the securities legislation of the

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Jurisdictions (the “Legislation”) that the Applicant is not a reporting issuer in all of the Jurisdictions.

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

- (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 Applicant:

1. The Applicant was formed on December 28, 2000 pursuant to a declaration of trust (the “Declaration of Trust”) as amended and restated on March 1, 2001, April 30, 2002 and on March 7, 2007, and is a reporting issuer or the equivalent in each of the Jurisdictions.
2. The Applicant’s registered and principal place of business is 55 Standish Court, 8th Floor, Mississauga, Ontario L5R 4B2.
3. Pursuant to the Declaration of Trust, the Applicant is authorized to issue an unlimited number of units (the “Units”). There are currently 93,445,745 Units outstanding.
4. Pursuant to a trust indenture (the “Original Indenture”) dated August 6, 2003, 8.25% convertible unsecured debentures maturing on January 31, 2011 (the “8.25% Convertible Debentures”) were issued. Pursuant to a supplemental trust indenture (the “Supplemental Trust Indenture”, and together with the Original Indenture, the “Indenture”) dated April 5, 2005, 5.50% convertible unsecured debentures maturing on March 31, 2015 (the “5.50% Convertible Debentures”, and together with the 8.25% Convertible Debentures, the “Debentures”) were issued. The 8.25% Convertible Debentures and the 5.50% Convertible Debentures are each held in book-entry form with one global certificate for each registered in the name of CDS Clearing and Depository Services Inc. (“CDS”). CDS is the only registered holder of the Debentures.

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5. Pursuant to a support agreement entered into with the Applicant on October 5, 2006, PSPIB Destiny Inc. ("PSPIB Destiny"), a corporation wholly and directly owned by Public Sector Pension Investment Board ("PSPIB"), a crown corporation established by the Parliament of Canada, made an offer on October 23, 2006 (the "Take-over Offer") to purchase, at a price of \$8.35 per unit, all of the issued and outstanding Units of the Applicant. The Take-over Offer, which expired at 11:59 p.m. (local time) on January 26, 2007, was accepted by holders of approximately 93.7% of the outstanding Units.
6. PSPIB Destiny took up and paid for all Units tendered to the Take-over Offer and exercised its right (which intention was disclosed in the take over bid circular relating to the Take-over Offer), pursuant to section 5.25 of the Declaration of Trust, to effect a compulsory acquisition, at a price of \$8.35 per unit, of the remaining Units of the Applicant. PSPIB Destiny now owns 93,445,745 Units, representing 100% of the issued and outstanding Units.
7. The Units of the Applicant were delisted from the Toronto Stock Exchange (the "TSX") on February 2, 2007.
8. Pursuant to the terms of the Indenture, the Applicant was required to make an offer for the 8.25% Convertible Debentures and the 5.50% Convertible Debentures for 101% of their respective principal amounts plus accrued and unpaid interest (the "Debenture Offer") as a change in control of the Applicant had occurred. The Debenture Offer was made on January 31, 2007 in accordance with the terms of the Indenture and such Debenture Offer expired at noon (Toronto time) on March 8, 2007. By the expiry of the Debenture Offer, \$13,286,000 of the 8.25% Convertible Debentures representing 8.47% of the principal amount outstanding of the 8.25% Convertible Debentures outstanding were tendered to the Debenture Offer and \$89,837,000 of the 5.50% Convertible Debentures representing 44.97% of the principal amount outstanding of the 5.50% Convertible Debentures were tendered to the Debenture Offer. The tendered Debentures were immediately taken up by the Applicant and cancelled.
9. The Applicant defeased the 8.25% Convertible Debentures and 5.50% Convertible Debentures which were not tendered to the Debenture Offer on March 13, 2007 pursuant to the terms of the Indenture. Defeasance was done by the Applicant depositing sufficient cash and direct obligations of the Government of Canada with CIBC Mellon Trust Company ("CIBC Mellon"), the trustee under the Indenture, as trust property for the benefit of debenture holders, pursuant to a trust agreement that was entered into by the Applicant and CIBC Mellon. The cash and direct obligations of the Government of Canada deposited with CIBC Mellon are sufficient to fund all payments of

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principal and interest to holders of defeased Debentures to the respective maturity dates of the Debentures. The Debentures were thereafter deemed to be fully paid, satisfied and discharged and the provisions of the Indenture are no longer be binding on the Applicant, except certain provisions dealing with payment of principal and interest, redemption, conversion and enforcement by the trustee. Holders of defeased Debentures are entitled to payments of principal and interest in accordance with the Indenture and to exercise their conversion privilege.

10. There is no longer any obligation in the provisions of the Indenture which are binding on the Applicant to maintain the listing of the Debentures nor to maintain its status as a reporting issuer or equivalent in any of the Jurisdictions, and holders of defeased Debentures have no right to receive any financial or other disclosure of the Applicant.
11. The principal amount currently outstanding for the 8.25% Convertible Debentures is \$143,592,000. To the best of the Applicant's knowledge, there were approximately 4,067 beneficial holders of the 8.25% Convertible Debentures as of March 15, 2007 and the geographic distribution of the beneficial holders in the Jurisdictions was as follows:

Jurisdiction	No. of Beneficial Holders
Ontario	1,307
British Columbia	949
Alberta	1,017
Saskatchewan	27
Manitoba	96
Quebec	557
New Brunswick	21
Nova Scotia	17
Newfoundland	0

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12. The principal amount currently outstanding for the 5.50% Convertible Debentures is \$109,920,000. To the best of the Applicant's knowledge, there were approximately 2,820 beneficial holders of the 5.50% Convertible Debentures as of March 15, 2007 and the geographic distribution of the beneficial holders in the Jurisdictions was as follows:

Jurisdiction	No. of Beneficial Holders
Ontario	1,019
British Columbia	521
Alberta	636
Saskatchewan	98
Manitoba	53
Quebec	408
New Brunswick	22
Nova Scotia	16
Newfoundland	22

13. The 8.25% Convertible Debentures and the 5.50% Convertible Debentures were delisted from the TSX on March 13, 2007 and none of the Applicant's securities are traded on a marketplace in Canada as defined in National Instrument 21-101 *Marketplace Operation*.
14. Regardless of the number of holders of Debentures, the Units and Debentures have been delisted and the Applicant does not anticipate a market for the Units or Debentures to develop. It is unlikely that a holder of 8.25% Convertible Debentures or 5.50% Convertible Debentures would ever exercise their conversion privilege as such conversion privilege is "out-of-the-money". The conversion price for the 8.25% Convertible Debentures is \$12.35 per unit and the conversion price for the 5.50% Convertible Debentures is \$11.35 per unit. All outstanding Units were acquired by PSPIB Destiny at \$8.35 per Unit and pursuant to the Declaration of Trust, any Units issued upon conversion of Debentures will be redeemed by the Applicant for \$8.35 (which information was disclosed to holders of Debentures in the Debenture Offer). Unitholders

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also have the right to request redemption of their Units at any time pursuant to the Declaration of Trust. The defeased debentures really became the right to receive the payments that are being held in trust for them and as such no longer have the characteristics of a true security.

15. The Applicant is applying for the Requested Relief in all of the jurisdictions in Canada in which it is currently a reporting issuer.
16. To the best of its knowledge, the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer.
17. The Applicant has no outstanding securities, including debt securities, other than the Units, the 8.25% Convertible Debentures and the 5.50% Convertible Debentures.
18. The Applicant has no plans to seek public financing by way of an offering of 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 pursuant to the Legislation is that the Requested Relief is granted.

Robert L. Shirriff, Q.C.
Commissioner
Ontario Securities Commission

Wendell S. Wigle, Q.C.
Commissioner
Ontario Securities Commission