

2004 BCSECCOM 16

Headnote

Mutual Reliance Review System for Exemptive Relief Application – relief from the requirement to have a “current AIF” to be a qualifying issuer under MI 45-102 – issuer formed in 2003 permitted to use its prospectus that contained audited financial statements for underlying business

Applicable British Columbia Provisions

Multilateral Instrument 45-102 *Resale of Securities*, sections 1.1, 4.1

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, ONTARIO, NOVA SCOTIA AND NEWFOUNDLAND AND LABRADOR

AND

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

AND

IN THE MATTER OF DUNDEE 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, Ontario, Nova Scotia and Newfoundland and Labrador (the “Jurisdictions”) has received an application from Dundee Real Estate Investment Trust (the “Filer”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirement contained in the Legislation to have a “current AIF” (a “Current AIF”) as defined in Multilateral Instrument 45-102 – Resale of Securities (“MI 45-102”) filed on SEDAR to be a “qualifying issuer” (“Qualifying Issuer”) under MI 45-102 shall not apply to the Filer;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission has agreed to act as the principal regulator for this application;

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 – Definitions;

AND WHEREAS the Filer has represented to the Decision Makers that:

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1. the Filer is an unincorporated, open-ended real estate investment trust governed by the laws of the Province of Ontario which was formed on May 9, 2003;
2. the Filer is authorized to issue an unlimited number of units of two classes: REIT Units and Special REIT Units. The REIT Units are divided into and issuable in two series: REIT Units, Series A and REIT Units, Series B;
3. Dundee Realty Corporation (“DRC”) is a corporation existing under the laws of the Province of Ontario with its head office located in Toronto, Ontario;
4. in connection with a plan of arrangement (the “Arrangement”) involving the Filer, DRC and its shareholders, which became effective on June 30, 2003 (the “Effective Date”), the Filer acquired substantially all of the commercial revenue-producing properties (the “Properties”) and a joint interest in the property management business of DRC (collectively, the “Division”);
5. in connection with the preparation of the information circular provided to the shareholders of DRC in connection with the Arrangement, the Filer prepared audited financial statements of the Division (the “Divisional Statements”) as at December 31, 2002 and 2001 and for each of the years ended December 31, 2002, 2001 and 2000, an audited balance sheet of the Filer as at May 9, 2003, an unaudited pro forma condensed consolidated balance sheet of the Filer as at December 31, 2002 and a pro forma condensed consolidated statement of income of the Filer for the year then ended;
6. on or shortly prior to the Effective Date, the Filer became a reporting issuer or the equivalent to a reporting issuer in each of the Jurisdictions where such a concept exists in accordance with applicable law or pursuant to orders granted by certain securities regulatory authorities and the REIT Units, Series A, are listed for trading on The Toronto Stock Exchange, having commenced trading on July 2, 2003;
7. in connection with the issuance of \$56,420,000 of REIT Units, Series A, the Filer filed a long-form prospectus (the “Prospectus”) which included the Divisional Statements, the audited combined financial statements of the Division as at June 30, 2003, the audited balance sheet of the Filer as at June 30, 2003 and certain pro forma financial statements of the Filer;
8. sections 2.5 and 2.6 of MI 45-102 provide for a four month restricted period for securities issued by way of private placement by Qualifying Issuers. The Filer meets each of the criteria within the definition of a Qualifying Issuer in MI 45-102 except that the Filer does not have a current AIF filed on SEDAR.

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9. MI 45-102 defines a current AIF to include a long form prospectus which has been filed in any jurisdiction that includes audited financial statements for the Issuer's most recent financial year. The Filer's Prospectus does not satisfy this requirement. However, the Prospectus does include audited financial statements for the Division's most recently completed financial year, which provides equivalent information to potential investors as if such statements had been those of the Filer.

AND WHEREAS under 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 Makers with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers under the Legislation is that the requirement under the Legislation to have a Current AIF filed on SEDAR in order to be a Qualifying Issuer shall not apply to the Filer provided that:

- (a) the Filer files a notice on SEDAR advising that it has filed the Prospectus as an alternative form of annual information form and identifying the SEDAR project number under which the Prospectus was filed;
- (b) the Filer files a Form 45-102F2 on or before the tenth day after the distribution date of any securities certifying that it is a Qualifying Issuer except for the requirement that it have a Current AIF; and
- (c) this Decision expires 140 days after the Filer's financial year ending December 31, 2003.

DATED January 12, 2004.

Kelly Gorman