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Headnote

Mutual Reliance Review System for Exemptive Relief Application - real estate investment trust exempt from prospectus and registration requirements in connection with issuance of units to existing unit holders pursuant to distribution reinvestment plan whereby distributions are reinvested in additional units of the trust, subject to certain conditions - first trade in additional units deemed a distribution unless made in compliance with MI 45-102

Applicable British Columbia Provisions

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

Multilateral Instrument 45-102 *Resale of Securities*

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

AND

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

AND

**IN THE MATTER OF
BOREALIS RETAIL REAL ESTATE INVESTMENT TRUST**

MRRS DECISION DOCUMENT

WHEREAS the Canadian securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut (the “Jurisdictions”) has received an application from Borealis Retail Real Estate Investment Trust (the “REIT”) for a decision pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that the requirements contained in the Legislation to be registered to trade in a security and to file and obtain a receipt for a preliminary prospectus and a final prospectus (the “Registration and Prospectus Requirements”) shall not apply to the distribution and resale of units of the REIT (“Units”) pursuant to a distribution reinvestment plan to be implemented by the REIT (the “DRIP”);

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AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is 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* or in Québec Commission Notice 14-101;

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

1. The REIT is an unincorporated, open-ended investment trust established under the laws of the Province of Ontario by a declaration of trust dated March 28, 2003.
2. The beneficial interests in the REIT are divided into a single class of Units and the REIT is authorized to issue an unlimited number of Units. As of the date hereof, one Unit is issued and outstanding.
3. Each Unit represents a proportionate undivided beneficial interest in the REIT and entitles holders of Units (“Unitholders”) to one vote at any meeting of Unitholders and to participate *pro rata* in any distributions by the REIT and, in the event of termination of the REIT, in the net assets of the REIT remaining after satisfaction of all liabilities.
4. The REIT has applied to have the Units listed and posted for trading on the Toronto Stock Exchange (the “TSX”).
5. The REIT is not a “mutual fund” as defined in the Legislation because the Unitholders are not entitled to receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the REIT as contemplated in the definition of “mutual fund” in the Legislation.
6. The REIT is not currently a reporting issuer under the Legislation. On June 2, 2003, the REIT filed a preliminary prospectus in connection with an initial public offering of Units in each of the Jurisdictions. An amended and restated preliminary prospectus was filed by the REIT in each of the Jurisdictions on June 12, 2003. Upon issuance of a receipt for the final prospectus, the REIT will become a reporting issuer under the Legislation.
7. The REIT has been formed to directly or indirectly own, manage, lease and develop (where appropriate) retail properties, primarily in Canada. A portfolio

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of six retail centres will be acquired by the REIT on completion of the offering and related transactions.

8. The specific objectives of the REIT are: (i) to generate stable and growing cash distributions on a tax efficient basis; (ii) to enhance the value of the REIT's assets and maximize long-term Unit value through the active management of its assets; and (iii) to expand the asset base of the REIT and increase its distributable income through an accretive acquisition program by accessing the network of relationships and depth of commercial property and financing experience offered by Borealis Capital Corporation and its subsidiaries.
9. The REIT currently intends make cash distributions to Unitholders monthly equal to, on an annual basis, approximately 85% of its distributable income.
10. The REIT intends to establish the DRIP pursuant to which Unitholders may, at their option, invest cash distributions paid on their Units in additional Units ("Additional Units"). The DRIP will not be available to Unitholders who are not Canadian residents.
11. Distributions due to participants in the DRIP ("DRIP Participants") will be paid to CIBC Mellon Trust Company in its capacity as agent under the DRIP (in such capacity, the "DRIP Agent") and applied to purchase Additional Units. All Additional Units purchased under the DRIP will be purchased by the DRIP Agent directly from the REIT.
12. DRIP Participants will receive a further distribution, payable in Units, equal in value to 3% of each cash distribution that is reinvested under the DRIP.
13. No commissions, service charges or brokerage fees will be payable by DRIP Participants in connection with the DRIP and all administrative costs will be borne by the REIT.
14. DRIP Participants may terminate their participation in the DRIP at any time by providing prior written notice to their broker. Such notice, if actually received at least five business days prior to a distribution record date, will have effect in respect of the next distribution date. If a DRIP Participant elects to terminate his or her participation in the DRIP, he or she will receive all further distributions in cash.
15. The REIT may amend, suspend or terminate the DRIP at any time, provided that such action shall not have a retroactive effect which would prejudice the

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interests of the DRIP Participants. All DRIP Participants will be sent written notice of any such amendment, suspension or termination.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each of the Decision Makers (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 pursuant to the Legislation is that the trades of Additional Units of the REIT to the DRIP Agent for the account of the DRIP Participants shall not be subject to the Registration and Prospectus Requirements of the Legislation provided that:

- (a) at the time of the trade the REIT is a reporting issuer or the equivalent under the Legislation, where applicable, and is not in default of any requirements of the Legislation;
- (b) no sales charge is payable in respect of the trade;
- (c) the REIT has caused to be sent to the person or company to whom the Additional Units are traded, not more than 12 months before the trade, a statement describing:
 - (i) their right to withdraw from the DRIP and to make an election to receive cash instead of Units on the making of a distribution of income by the REIT; and
 - (ii) instructions on how to exercise the right referred to in (i);
- (d) except in Quebec, the first trade in Additional Units acquired pursuant to this Decision in a Jurisdiction shall be deemed a distribution or primary distribution to the public under the Legislation of such Jurisdiction unless the conditions in paragraphs 2 through 5 of subsections 2.6(3) of Multilateral Instrument 45-102 *Resale of Securities* are satisfied; and
- (e) in Quebec, the first trade (alienation) in Additional Units acquired pursuant to this Decision shall be deemed a distribution or primary distribution to the public unless:
 - (i) at the time of the first trade, the REIT is a reporting issuer in Quebec and is not in default of any requirement of the Legislation of Quebec;

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- (ii) no unusual effort is made to prepare the market or to create a demand for the Additional Units;
- (iii) no extraordinary commission or consideration is paid to a person or company in respect of the trade; and
- (iv) if the seller of the Additional Units is an insider of the REIT, the seller has reasonable grounds to believe that REIT is not in default of any requirement of the Legislation of Quebec.

Dated this 1st day of August, 2003.

Robert W. Korthals

Paul K. Bates