

2003 BCSECCOM 240

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Closed-end investment trust exempt from prospectus and registration requirements in connection with issuance of units to existing unitholders under a distribution reinvestment plan whereby distributions of income are reinvested in additional units of the trust, subject to certain conditions - first trade relief provided for additional units of trust, subject to certain conditions

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 ONTARIO,
ALBERTA, BRITISH COLUMBIA, SASKATCHEWAN, MANITOBA,
NEWFOUNDLAND AND LABRADOR, NEW BRUNSWICK, NOVA
SCOTIA, PRINCE EDWARD ISLAND AND QUÉBEC**

AND

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

AND

**IN THE MATTER OF ALLIED PROPERTIES REAL ESTATE
INVESTMENT TRUST**

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Ontario, Alberta, British Columbia, Saskatchewan, Manitoba, Newfoundland and Labrador, New Brunswick, Nova Scotia, Prince Edward Island and Québec (the "Jurisdictions") has received an application from Allied Properties 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 prospectus (the "Registration and Prospectus Requirements") shall not apply to the distribution of units of the REIT pursuant to a distribution reinvestment plan (the "DRIP");

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;

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

1. The REIT is an unincorporated closed-end real estate investment trust established under the laws of Ontario by a declaration of trust dated October 25, 2002, as amended on February 7, 2003.
2. The beneficial interests in the REIT are divided into a single class of units (the “Units”). The REIT is authorized to issue an unlimited aggregate number of Units. Units represent a proportionate undivided beneficial interest in the REIT. Each Unit confers the right to one vote at any meeting of the holders of Units (“Unitholders”) and to participate pro rata in any distributions made by the REIT and, in the event of termination of the REIT, in the distribution of the net assets of the REIT remaining after satisfaction of all liabilities. Units are transferable.
3. The REIT is not a “mutual fund” as defined in the Legislation because the Unitholders will not be entitled to receive, on demand, or within a specified period after demand, an amount computed by reference to the value of their proportionate interest in the whole or in a part of the net assets of the REIT.
4. The REIT filed a prospectus dated February 6, 2003 with the securities regulatory authority or regulator in each of the Jurisdictions to qualify the distribution of Units to the public in the Jurisdictions (the “Offering”). A MRRS Decision Document in respect of the prospectus was issued on February 6, 2003.
5. The REIT is a reporting issuer or the equivalent in each of the Jurisdictions and, as of the date hereof, is not in default of any requirements under the Legislation.
6. The REIT made application to list the Units distributed under the Offering for trading on the Toronto Stock Exchange (“TSX”) following the closing of the Offering. On January 29, 2003, TSX granted conditional listing approval.
7. The REIT intends to make cash distributions to Unitholders, on each monthly distribution date, equal, on an annual basis, to approximately 90% of its Distributable Income (as defined in the amended and restated preliminary prospectus).
8. Subsequent to the closing of the Offering, subject to regulatory approval, the REIT will implement the DRIP pursuant to which Unitholders resident in

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Canada may elect to have their portion of Distributable Income automatically reinvested in additional Units issued by the REIT ("Additional Units").

9. Distributable Income 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 will be applied to purchase Additional Units. All Additional Units purchased under the DRIP will be purchased by the DRIP Agent directly from the REIT.
10. Distributable Income due to a DRIP Participant will be automatically reinvested in Additional Units at a price per Additional Unit calculated by reference to the weighted average of the closing price of Units on TSX for the five trading days immediately preceding the relevant distribution date. DRIP Participants will be entitled to receive a further distribution of Additional Units equal in value to 5% of each distribution reinvested under the DRIP.
11. No commissions, service charges or brokerage fees will be payable in connection with the purchase of Additional Units under the DRIP and all administrative costs of the DRIP will be borne by the REIT.
12. The REIT may amend, suspend or terminate the DRIP at any time subject to the approval of TSX and provided that such action shall not have the retroactive effect which would prejudice the interests of DRIP Participants. Registrants acting on behalf of DRIP Participants will be provided with notice of any such amendment, suspension or termination.
13. Unitholders may terminate their participation in the DRIP at any time by written notice to the Plan Agent. Such notice, if received at least five days prior to the record date for the distribution, will have effect for such distribution.

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 by the REIT to the DRIP Agent for the account of the DRIP Participants pursuant to the DRIP shall not be subject to the Registration and Prospectus Requirements of the Legislation provided that:

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- (a) at the time of the trade the REIT is a reporting issuer or the equivalent under the Legislation 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 Québec, 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) or (4) of Multilateral Instrument 45-102 *Resale of Securities* are satisfied; and
- (e) in Québec, 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 and has been a reporting issuer in Québec for the four months immediately preceding the trade;
 - (ii) no unusual effort is made to prepare the market or to create a demand for the 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 the REIT is not in default of any requirement of the Legislation of Québec.

DATED March 26, 2003

Paul M. Moore

Robert W. Korthals