

2007 BCSECCOM 417

July 11, 2007

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-102 *Continuous Disclosure Obligations*, s. 13.1 – relief from BAR requirements - BAR – An issuer requires relief from the requirement to include certain financial statements in a business acquisition report - The issuer made a significant acquisition of several properties from separate, unrelated vendors; the issuer will include in its BAR the required financial statements for each property that exceeds 5% of the aggregate value of the acquisitions, with a limited exception for one property where the necessary information to prepare the required statement is unavailable; the BAR will contain sufficient alternative information about the acquisition of this property and the properties for which financial statements are not provided

Applicable British Columbia Provisions

NI 51-102, ss. 8.4 and 13.1

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New
Brunswick, Nova Scotia and Newfoundland
(the Jurisdictions)

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of
InterRent Real Estate Investment Trust
(the Filer)

MRRS Decision Document

Background

The local securities regulatory authority or regulator (collectively, the Decision Makers) in each of the Jurisdictions has received an application from the Filer for

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a decision under the securities legislation of the Jurisdictions (the Legislation) that the requirements under the Legislation that (a) comparative annual financial statements for 614 Lake St. in St. Catharines, Ontario (the Lake Street Property) for the period ended December 31, 2006 include a comparative period for the year ended December 31, 2005 and (b) certain financial statements prescribed by section 8.4 of National Instrument 51-102 (the Continuous Disclosure Requirements) be included in the business acquisition report (the BAR) prepared by the Filer in connection with the Filer's acquisition of interests in 11 separate, multi-residential real estate properties do not apply to the Filer (the Requested Relief).

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

- (a) the Ontario Securities Commission (OSC) is the principal regulator for the 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 Filer:

1. The Filer is an unincorporated open-ended real estate trust established under the laws of the Province of Ontario by a declaration of trust dated October 10, 2006.
2. The Filer's head office is located at The Exchange Tower, Box 427, Suite 1800, 130 King Street West, Toronto, Ontario, M5X 1E3.
3. The Filer is a reporting issuer, or the equivalent, in each of the Jurisdictions and, to the best of its knowledge, is currently not in default of any applicable requirements under the securities legislation thereunder.
4. On January 15, 2007, the Filer announced that it had entered into purchase agreements relating to the potential acquisition of 22 properties for an aggregate purchase price of approximately \$100 million. All but two of such intended 22 acquisitions are/were subject to separate, purchase and sale agreements (the Agreements) between the Filer and 20 individual, *bona fide*

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arm's length vendors, who are not, to the best of the Filer's knowledge, related to any other vendor. Of the 22 potential acquisitions, the Filer has closed an aggregate of 19 properties (the Acquisitions) for approximately \$89.3 million, the last two of which closed on April 25, 2007 representing approximately \$17.5 million or 20% of the value of the Acquisitions. The Filer is uncertain as to the closing date of one of the properties, 51-59 Campbell Ct. in Stratford, Ontario. In addition, two properties are no longer under immediate consideration, namely, 78-76 Dalhousie Avenue in Brantford, Ontario and 118 St. Josephs Drive in Hamilton, Ontario.

5. The Filer has financed the Acquisitions through a combination of the assumption of existing or new mortgage financing of approximately \$56 million and cash generated from the issuance of new trust units of the Filer from treasury pursuant a \$50,000,500 short form prospectus offering, which closed on February 13, 2007 as well as the over-allotment option for gross proceeds of \$2,667,500, which closed on March 13, 2007. The date of the Filer's (final) short form prospectus (the Prospectus) is February 6, 2007.
6. The trust units of the Filer (Units) were formerly listed and posted on the TSX Venture Exchange under the symbol IIP.UN. On April 4, 2007, the Filer received conditional approval of the Toronto Stock Exchange (the TSX) to list its Units on the TSX, subject to the Filer satisfying the listing conditions of the TSX. On April 25, 2007, the Units were delisted from the TSXV and subsequently listed on the TSX, under the same ticker symbol. As at June 20, 2007, the Filer had 15,002,031 Units issued and outstanding, as well as 774,063 Class B units of InterRent Holdings Limited Partnership, which are exchangeable on a one-for-one basis for Units.
7. The Acquisitions are a "significant acquisition" of the Filer for the purposes of NI 51-102, requiring the Filer to file a BAR within 75 days of the completion of the Acquisitions pursuant to section 8.2 of NI 51-102. The Filer intends to file its BAR on or before July 5, 2007.
8. Pursuant to section 8.4 of NI 51-102, the BAR for the Acquisitions must be accompanied by certain financial statements, including as applicable, (i) annual financial statements for each of the two most recently completed financial years of the business acquired ended more than 45 days before the date of acquisition, the most current of which is to be audited; (ii) unaudited interim financial statements for the most recently completed interim period of the business acquired that ended before the date of acquisition together with a comparative interim financial statement for the comparative period in the preceding year of the business acquired; (iii) a *pro forma* balance sheet of the Filer as at the date of the most recent balance sheet of the Filer that gives

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effect to the Acquisition as if it had taken place at the date of the *pro forma* balance sheet; and (iv) *pro forma* income statements for the Filer for the most recently completed financial year of the Filer for which financial statements are required to have been issued and the most recently completed interim period of the Filer for which the financial statements are required to have been issued that gives effect to the acquisition as if it had taken place at the beginning of the most recently completed financial year (the BAR Financial Statements).

9. Subject to the exceptions noted below, the Filer proposes to file annual financial statements (the Annual Statements), in accordance with Part 8 of NI 51-102, only for those Acquisitions, that exceed 5% of the aggregate value of the Acquisitions (the Material Acquisitions), or eight properties in total. The Filer will file *pro forma* financial statements giving effect to the Material Acquisitions as at and for the period ended December 31, 2006. The Filer has included a financial forecast (the Alternative Financial Disclosure) in the Prospectus, which provides investors with a prospective *pro forma* view of the impact of the Acquisitions on the Filer. The Filer will provide the Alternative Financial Disclosure in its BAR for the Acquisitions.
10. For the 11 properties that fall below the 5% of the aggregate value of the Acquisitions, only Alternative Financial Disclosure will be provided in its BAR.
11. The Filer is unable to produce any financial statements for one of the Material Acquisitions, the Lake Street Property, for the year ended December 31, 2005. The Filer represents, and will disclose in its BAR, that it has exhausted every reasonable effort to obtain access to the historical accounting records from the previous owners of the property, who were individuals, for the year ended December 31, 2005, necessary to produce these financial statements but such efforts were unsuccessful. The vendor from whom the property was purchased was not in possession of historical accounting records for fiscal 2005 when it purchased the property. The previous owners who owned the property in fiscal 2005, left Ontario shortly after the sale and subsequently ceased communication with the vendor from whom the Filer purchased the property.
12. The Filer provided forecasted net income summary statements for each of the Acquisitions, including the Lake Street Property, in its Prospectus and will provide this information with the Alternative Financial Disclosure and the audited financial statements for the year ended 2006 for Lake Street Property in its BAR.

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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 Maker under the Legislation is that the Requested Relief is granted such that the BAR Financial Statements will be provided only for Material Acquisitions with the BAR to be filed by the Filer for the Acquisitions provided that Alternative Financial Disclosure be provided for such Acquisitions.

Lisa Enright
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Ontario Securities Commission