

## **2004 BCSECCOM 629**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – Securities Act s. 169 - Confidentiality - An issuer wants to keep certain information in material contracts confidential - The record provides intimate financial, personal or other information; the disclosure of the information would be detrimental to the person affected by having it disclosed; the information would be of limited value to any investment decision by the public

### **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, s. 169(3) and 169(4)

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

**AND**

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

**AND**

**IN THE MATTER OF  
PDM ROYALTIES INCOME FUND**

**MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the “Decision Makers”) in each of the provinces and territories of Canada (the “Jurisdictions”) has received an application (the “Application”) from PDM Royalties Income Fund (the “Issuer”) for a decision pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that portions of material contracts filed by the Issuer in connection with a final long form prospectus dated May 28, 2004 (the “Final Prospectus”) be kept confidential;

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “MRRS”), the Ontario Securities Commission (the “OSC”) is the principal regulator for this application;

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

1. On June 1, 2004, the Issuer filed the Final Prospectus with each of the Jurisdictions. The OSC was designated as principal regulator for the review of the Final Prospectus.
2. Under the Legislation, the Issuer was required to file copies of all material contracts with the Final Prospectus on SEDAR and is required to make such material contracts available for inspection during the distribution of the securities offered under the Final Prospectus.
3. In connection with the filing of the Final Prospectus, the Issuer filed an acquisition agreement dated May 28, 2004 (the "Acquisition Agreement") as a material contract. Although the Acquisition Agreement included several schedules, the Issuer did not file these schedules at the time it filed the Acquisition Agreement as the Issuer believed that information in Exhibit B to Schedule 1.1 of the Acquisition Agreement relating to personal guarantors of franchise agreements and expiry dates and renewal terms of franchise agreements disclosed intimate financial and personal information and would be seriously prejudicial to the interests of the Issuer (the "Confidential Information").
4. At the time of filing the Final Prospectus, the Issuer undertook to file all additional material contracts. On June 23, 2004, the Issuer filed the following additional material contracts (the "Additional Material Contracts"):
  - (a) general security agreement of Pizza Delight Corporation Ltd. ("Pizza Delight");
  - (b) general security agreement of PDM Royalties Limited Partnership;
  - (c) license and royalty agreement between PDM Royalties Limited Partnership and Pizza Delight;
  - (d) license and royalty agreement between PDM Royalties Limited Partnership and Mikes Restaurants Inc.
5. Each of the Additional Material Contracts includes schedules which set forth all or part of the Confidential Information. As a result, the schedules to the Additional Material Contracts filed with the OSC on June 23, 2004 omitted the Confidential Information.
6. On June 23, 2004, the Issuer also re-filed a copy of the Acquisition Agreement together with all completed schedules with the exception of the Confidential Information, which was omitted from Exhibit B to Schedule 1.1 to the re-filed Acquisition Agreement.

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7. The Issuer filed the Confidential Information with the Decision Makers in connection with the Application
8. The Confidential Information sets forth the identity of each individual who has personally guaranteed a franchise agreement, which is personal to the individual guarantor. Maintaining the confidentiality of such information is important with respect to franchisor/franchisee relations.
9. The Confidential Information also sets forth the expiry date and option renewal terms of each franchise agreement, which are a personal financial matter to each franchisee and is sensitive to the business operations of Pizza Delight.
10. The Issuer has filed on SEDAR a chart providing summary information about expiry dates and option renewal terms of the franchise agreements.
11. In the past 20 years, less than 5% of the franchise agreements have not been renewed upon expiry.

AND WHEREAS under the MRRS, 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 Maker with the jurisdiction to make the Decision has been met;

THE DECISION by the Decision Makers under the Legislation is that the Confidential Information will be held in confidence by the Decision Makers.

DATED October 21<sup>st</sup>, 2004.

Iva Vranic