

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications – real estate investment trust exempt from prospectus and registration requirements in connection with issuance of units to existing unit holders under a 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 Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 25, 53 and 74(1)

## Ontario Rules

Multilateral Instrument 45-102 – *Resale of Securities*

**July 29, 2005**

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
BRITISH COLUMBIA, MANITOBA, ONTARIO,  
QUÉBEC, NOVA SCOTIA, PRINCE EDWARD ISLAND AND  
NEWFOUNDLAND AND LABRADOR (the Jurisdictions)**

**AND**

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

**AND**

**IN THE MATTER OF  
KEYERA FACILITIES INCOME FUND (the Filer)**

**MRRS DECISION DOCUMENT**

## **Background**

1. The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from the dealer registration requirements and the prospectus requirements of the Legislation (the Requested Relief) for certain trades of units of the Filer issued pursuant to a distribution reinvestment and optional unit purchase plan.

## 2. Under the Mutual Reliance Review System for Exemptive Relief Applications

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

### Interpretation

3. Defined terms contained in National Instrument 14-101 – *Definitions* or Québec Commission Notice 14-101 have the same meaning in this document unless they are otherwise defined in this decision.

### Representations

4. This decision is based on the following facts represented by the Filer:

(a) The Filer is an unincorporated open-ended trust established under the laws of the Province of Alberta on April 3, 2003 pursuant to a declaration of trust (the Declaration of Trust). The head office of the Filer is located at 600, 144 – 4th Avenue S.W., Calgary, Alberta, T2P 4H2.

(b) The Filer's purpose is to hold securities or other interests in entities, directly or indirectly, that derive their value from natural gas and energy related assets and to issue trust units (the Units) to the public. The Filer holds a 100% partnership interest in Keyera Energy Partnership (the Partnership). The Partnership's business consists of natural gas gathering and processing as well as the processing, transportation, storage and marketing of natural gas liquids at its facilities located primarily in western Alberta.

(c) The Filer is administered by Keyera Energy Management Ltd. (the Administrator). Pursuant to the Declaration of Trust, the directors of the Administrator are elected by the holders of Units (Unitholders) by a majority of the votes cast at an annual or special meeting called for that purpose.

(d) The Unitholders are the sole beneficiaries of the Filer.

(e) The Filer has been a reporting issuer or the equivalent under the Legislation in each of the Jurisdictions since May 27, 2003 and is not in default of any requirements of the Legislation.

(f) The Filer is not a "mutual fund" under the Legislation as 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 Filer, as contemplated by the definition of "mutual fund" in the Legislation.

(g) The Filer is authorized to issue an unlimited number of Units, each of which represents an equal undivided beneficial interest in the Filer. All Units share equally in all distributions from the Filer and all Units carry equal voting rights at meetings of Unitholders. As of June 30, 2005, there were 58,901,247 Units issued and outstanding.

(h) The Units are listed and posted for trading on the Toronto Stock Exchange (the TSX).

(i) The Filer makes and expects to continue to make monthly cash distributions to its Unitholders in an amount per Unit equal to a pro rata share based upon cash receipts of the Filer less the amounts paid by the Filer in connection with any cash redemptions or repurchases of Units and expenses of the Filer.

(j) The Filer intends to establish a distribution reinvestment and optional unit purchase plan (the DRIP) pursuant to which eligible resident Canadian Unitholders may, at their option, direct that cash distributions paid by the Filer in respect of their existing Units be applied to the purchase of additional Units (Reinvestment Units) to be held for their account under the DRIP.

(k) The DRIP also entitles eligible Unitholders who have elected to participate in the DRIP (Participants) to make, at their discretion, optional cash payments for the purchase of Units (Optional Units), subject to the limits established under the DRIP. The aggregate number of Optional Units that may be purchased by all Participants in any financial year of the Filer will be limited to a maximum of 2% of the number of issued and outstanding Units at the start of the financial year. The Filer reserves the right to determine from time to time not to accept optional cash payments for the purchase of Optional Units under the DRIP.

(l) Reinvestment Units purchased under the DRIP will initially be purchased by the trust company that is appointed as agent under the DRIP (the Agent) directly from the Filer on the relevant distribution payment date. Under the DRIP, Reinvestment Units may be acquired from the treasury of the Filer at a price equal to 97% of the Treasury Purchase Price (as defined in the DRIP), being the arithmetic average of the daily volume weighted average trading prices of the Units on the TSX for the 15 trading days ending two Business Days (as defined in the DRIP) immediately preceding the applicable distribution payment date. Reinvestment Units may also be acquired through the facilities of the TSX at prevailing market prices at the time of purchase.

(m) Optional Units may be acquired from treasury at the Treasury Purchase Price without discount or through the facilities of the TSX at prevailing market prices at the time of purchase.

(n) Residents of any foreign jurisdiction to whom the issue of Reinvestment Units under the DRIP would not be lawful may not participate in the DRIP.

(o) Reinvestment Units purchased by the Agent for the account of Participants under the DRIP will be held under the DRIP for the account of such Participants.

(p) No commissions, brokerage fees or service charges will be payable by Participants in connection with the purchase of Reinvestment Units or Optional Units under the DRIP.

(q) No fractional Units will be purchased under the DRIP. A cheque payment in lieu of any fractional Units will be issued by the Agent, on behalf of the Filer, to The Canadian Depository for Securities or its nominee, CDS & Co. (CDS) after each applicable distribution payment date which CDS will credit to Participants via their CDS Brokers (as defined in the DRIP), being a broker, investment dealer, financial institution or other nominee, in its capacity as a participant in the CDS depository service.

(r) A Participant may terminate its participation in the DRIP by providing instructions to the CDS Broker through which they hold their Units.

(s) The Filer reserves the right to amend, suspend or terminate the DRIP at any time, provided that such action shall not have a retroactive effect that would prejudice the interests of the Participants. The Filer will publicly announce any such amendment, suspension or termination.

5. In Alberta, Saskatchewan and New Brunswick, the distribution of Reinvestment Units and Optional Units by the Filer pursuant to the DRIP can be made in reliance on dealer registration and prospectus exemptions contained in the legislation of such provinces.

6. In the Jurisdictions, the distribution of Reinvestment Units and Optional Units by the Filer under the DRIP cannot be made in reliance on certain registration and prospectus exemptions contained in the Legislation as the DRIP involves the reinvestment of distributable income distributed by the Filer and not the reinvestment of dividends or interest of the Filer.

## **Decision**

7. 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.

8. The decision of the Decision Makers pursuant to the Legislation is that:

(a) in each of the Jurisdictions, the Requested Relief is granted provided that:

(i) at the time of the trade or distribution the Filer is a reporting issuer or the equivalent in a jurisdiction listed in Appendix B of Multilateral Instrument 45-102 Resale of Securities (MI 45-102) and is not in default of any requirements of the Legislation;

(ii) no sales charge is payable by Participants in respect of the trade or distribution;

(iii) the Filer has caused to be sent to the person or company to whom the Reinvestment Units and Optional Units are distributed, not more than 12 months before the trade, a statement describing:

(1) their right to withdraw from the DRIP and to receive Cash Distributions instead of Reinvestment Units, and

(2) instructions on how to exercise the right referred to in paragraph (1) above;

(iv) the aggregate number of Optional Units issued under the DRIP in any financial year of the Filer shall not exceed 2% of the aggregate number of Units outstanding at the start of that financial year;

(b) in each of the Jurisdictions except Québec, the first trade of Reinvestment Units and Optional Units will be a distribution or primary distribution to the public under the Legislation unless the conditions in subsection 2.6(3) of MI 45-102 are satisfied; and

(c) in Québec, the first trade in Reinvestment Units and Optional Units will be a distribution unless:

(i) at the time of the first trade, the Filer is a reporting issuer in Québec and has been a reporting issuer in Quebec for the four months preceding the trade and is not in default of any of the requirements of securities legislation of Québec;

(ii) no unusual effort is made to prepare the market or to create a demand for the Reinvestment Units and Optional Units that are the subject of the trade;

(iii) no extraordinary commission or other consideration is paid in respect of the first trade; and

(iv) if the selling securityholder of the Reinvestment Units and Optional Units is an insider of the Filer, the selling securityholder has no reasonable grounds to believe that the Filer is in default of any requirement of the securities legislation of Québec.

"Paul M. Moore"

"Harold P. Hands"

Ontario Securities Commission