

THE SECURITIES ACT

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Order No. 4103

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Section 20(1)

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April 23, 2003

OMERS REALTY CORPORATION

WHEREAS:

(A) Omers Realty Corporation (the "Applicant" or "ORC") has applied to The Manitoba Securities Commission (the "Commission") for an order pursuant to Subsection 20(1) of *The Securities Act*, R.S.M. 1988, c. S50 (the "Act"), exempting from the prospectus requirements of Section 37 of the Act certain trades by OMERS Realty Corporation and by BMO Nesbitt Burns, RBC Dominion Securities Inc. and other agents (collectively, the "Agents") in connection with an offering of certain Series B Debentures of ORC (the "Series B Debentures") to Portfolio Managers (as defined below) acting as agents for Managed Accounts (as defined below).

(B) The Applicant has represented to the Commission that:

1. the Ontario Municipal Employees Retirement Board ("OMERB") was constituted as a non-share capital corporation by the Ontario Municipal Employees Retirement System Act;
2. ORC was amalgamated under the *Canada Business Corporations Act*;
3. ORC is a directly wholly-owned subsidiary of OMERB;
4. ORC is a corporation which has limited its activities to acquiring, holding, maintaining, improving, leasing or managing capital property that is real property or interests therein;
5. As of December 31, 2001, OMERB and its subsidiaries, including ORC, held interests in real estate properties and other real estate assets having a total value in excess of \$8 billion;
6. OMERB, in its capacity as administrator of the Ontario Municipal Employees Retirement System and as manager of the Ontario Municipal Employees Fund ("OMERS"), is responsible for the retirement income of approximately 330,000 municipal employees;
7. OMERS proposes to offer and sell the Series B Debentures to prospective investors (the "Offering") pursuant to exemptions from prospectus requirements of applicable securities laws in the Province of Ontario and elsewhere in Canada by way of confidential offering memorandum of ORC (the "Offering Memorandum");

8. The net proceeds of the Offering will indirectly be used to repay indebtedness incurred to acquire income producing real estate assets;

9. The Series B Debentures will be issued pursuant to the Original Indenture and the Supplemental Indenture as direct obligations of ORC and will be unconditionally and irrevocably guaranteed (the "Guarantee") by OMERS as to the payment of principal, interest, premium (if any) and certain other fees and expenses, as specified in the Guarantee;

10. The minimum aggregate acquisition cost pursuant to this Offering of the Series B Debentures to each Canadian resident in Manitoba or to whom the securities laws of Manitoba extend (a "Manitoba Purchaser") will be \$97,000;

11. The Series B Debentures will not be offered to Manitoba Purchasers who are individuals.

12. Trades in the Series B Debentures pursuant to the Offering would be primary distributions to the public under Subsection 1(1) of the Act; the Offering would therefore be subject to the registration and prospectus requirements of Sections 6 and 37 of the Act, but would be entitled to the benefit of exemptions from such requirements contained in Subsection 19(3) and Clause 58 (1) (a) of the Act;

13. It is proposed that the Agents will sell the Series B Debentures to certain persons or companies ("Portfolio Managers") who are:

(i) registered under the Act as broker-dealers restricted to investment counsel or portfolio managers; or

(ii) registered to trade in securities under the Act and exempted from registration as securities advisors pursuant to Subsection 18(c) of the Act,

and who, in each case, will purchase as agents for certain third persons or companies ("Managed Accounts");

14. Each Portfolio Manager will, at the time of purchase of Series B Debentures, be solely responsible for the management of its Managed Accounts, with full power, authority and discretion to buy, sell or otherwise effect transactions in securities as agents for its Managed Accounts;

15. Each Managed Account will, at the time of each purchase of the Series B Debentures, hold assets having an aggregate net asset value or an aggregate acquisition cost of not less than \$97,000;

16. The aggregate acquisition costs of the Series B Debentures to all Managed Accounts managed by a Portfolio Manager will be not less than \$97,000; and

17. Under the Offering Memorandum, contractual rights of action, of rescission and damages to the same effect as those being offered to residents of Ontario, will be conferred in Manitoba upon Portfolio Managers and upon each beneficial purchaser for whom the Portfolio Manager is acting.

(B) The Commission is of the opinion that it would not be prejudicial to the public interest to grant the order requested.

IT IS ORDERED:

1. THAT, pursuant to subsection 20(1) of the Act, trades in the Series B Debentures in connection with the Offering to a Portfolio Manager acting as agent for Managed Accounts, shall be exempt from Section 37 of the Act, provided that:

(a) each Portfolio Manager, at the time of purchase of the Series B Debentures, has full power, authority and discretion to buy, sell or otherwise effect transactions in securities as agent for the Managed Accounts managed by it and the aggregate acquisition cost of the Series B Debentures to all Managed Accounts managed by each Portfolio Manager will not be less than \$97,000;

(b) each Managed Account will, at the time of purchase of the Series B Debentures, hold assets having an aggregate net asset value or an aggregate acquisition cost of not less than \$97,000;

(c) at or before the closing of this Offering, the Portfolio Managers who purchase Series B Debentures will be provided with a copy of this Order and ORC shall have received written confirmation from the Portfolio Managers, on behalf of their respective Managed Accounts, that they are aware of the limitations imposed by this Order;

(d) each Portfolio Manager and each beneficial purchaser of Series B Debentures for whom a Portfolio Manager is acting, shall receive the contractual rights of action for rescission and damages that are being conferred upon purchasers of Series B Debentures that are resident in Ontario, as set out in the Offering Memorandum; and

(e) within ten (10) days of the closing of this Offering, ORC shall file or shall cause to be filed with the Commission a report, in Form 8 of the Securities Regulation made under the Act, in duplicate, in respect of each Managed Account, or which includes substantially the same information as is required to be included in a report prepared in accordance with Form 8 of the Securities Regulation and in conjunction therewith ORC shall pay the fee that would be payable on the filing of such report.

2. THAT the fee for this order shall be \$1,000.

BY ORDER OF THE COMMISSION.

Deputy Director - Legal