

IN THE MATTER OF  
THE SECURITIES LEGISLATION  
OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA,  
ONTARIO, QUEBEC, NEW BRUNSWICK, NOVA SCOTIA,  
PRINCE EDWARD ISLAND AND NEWFOUNDLAND

AND

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

AND

IN THE MATTER OF  
BOREALIS INFRASTRUCTURE TRUST

MRRS DECISION DOCUMENT

**WHEREAS** the local securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland (the "Jurisdictions") has received an application from Borealis Infrastructure Trust (the "Issuer") for a decision pursuant to section 4.5 of Canadian Securities Administrators' National Policy Statement No. 47 ("NP 47") - *Prompt Offering Qualification System* and pursuant to the applicable securities legislation of Quebec, including but not limited to, those set forth in Title II and Title III of the *Securities Act and Regulation* (Quebec) (the "POP Requirements") (and together with Canadian Securities Administrators' National Policy Statement No. 44 ("NP 44") - *Rules for Shelf Prospectus Offerings* and the applicable securities legislation of Quebec, including but not limited to those set forth in Title II and Title III of the *Securities Act and Regulation* (Quebec) (the "Shelf Requirements"), collectively, the POP Requirements and the Shelf Requirements are referred to as the "Policies") that the eligibility requirements (the "Eligibility Requirements") contained in the Policies for participation in the Prompt Offering Qualification System (the "POP System"), participation in the shelf system (the "Shelf System"), use of the Shelf Procedures (as defined in the Shelf Requirements) with an Approved Rating by an Approved Rating Organization (all as defined in the POP Requirements), and for the utilization of annual information forms (each, an "AIF"), a preliminary short form base shelf prospectus ("preliminary Shelf Prospectus") or a preliminary short form prospectus ("preliminary Short Form Prospectus"), a final short form base shelf prospectus ("final Shelf Prospectus") or a final short form prospectus ("final Short Form Prospectus"), shelf prospectus supplements (each a "Prospectus Supplement") and any necessary supporting documents shall not apply to the Issuer and that the Issuer may participate in the POP System and the Shelf System with respect to the issuance of Asset-Backed Securities (as defined below) from time to time to the public.

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

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

1. The Issuer is a special purpose trust established by Borealis Infrastructure Trust Management Inc. (the "Issuer Trustee") pursuant to a declaration of trust, dated April 29, 1999, governed by the laws of the province of Ontario (the "Declaration of Trust"). The Issuer's principal office is located at One University Avenue, Suite 802, Toronto, Ontario, M5J 2P1.
2. Pursuant to the Declaration of Trust, the business activities of the Issuer are specifically limited to the financing, acquisition and administration of interests in infrastructure projects and related programs, for the purpose of producing income therefrom, and the funding of such activities through the issuance of Asset-Backed Securities (as defined below) evidencing indebtedness of the Issuer pursuant to the terms of a trust indenture, dated June 8, 1999, (the "Trust Indenture") between the Issuer and The Trust Company of Bank of Montreal, as indenture trustee. The Issuer does not carry on any activities other than those permitted under the Declaration of Trust.
3. The Issuer proposes to offer (the "Offerings") under the POP System or the Shelf System, from time to time to the public in Canada, securities ("Asset-Backed Securities") having an Approved Rating that are primarily serviced by the cash flows of discrete pools of receivables that by their terms convert into cash within a finite time period, and any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders, to finance the purchase by the Issuer from time to time of certain payment rights or other income-producing interests ("Payment Interests") in infrastructure projects and related programs.
4. The Issuer currently has no assets or liabilities other than the Payment Interests purchased in connection with the Nova Scotia Learning Centres Program (described in paragraph 5 below), the liability in respect of the Series 1 Bonds (described in paragraph 5 below) and the other rights and obligations of the Issuer under certain of the material contracts relating to the Nova Scotia Learning Centres Program.
5. The Series 1 Bonds are the first series of Asset-Backed Securities issued under the Trust Indenture and a Supplemental Indenture. The Issuer used the proceeds of the offering of the Series 1 Bonds to purchase from Borealis Penco (Nova Scotia) Inc., a real estate company incorporated under the *Companies Act* (Nova Scotia) ("Penco"), certain Payment Interests in respect of the construction, development and maintenance of learning centres in the province of Nova Scotia (the "Nova Scotia Learning Centres Program"). The amounts received by the Issuer in respect of such Payment Interests are applied to the payment of the principal of, interest on and any other amounts due in respect of the Series 1 Bonds. The Series 1 Bonds were assigned a final rating of A- from each of CBRS Inc. ("CBRS") and Standard and Poor's Rating Services ("S&P"), the same rating assigned by each of CBRS and S&P to the long-term, unsecured debt obligations of the Province of Nova Scotia.

6. As a special purpose trust, the Issuer will have no assets other than the Payment Interests purchased in connection with the Nova Scotia Learning Centres Program and the Payment Interests to be purchased from time to time in connection with any future Offering and the Issuer will not carry on any activities other than purchasing and holding such Payment Interests and issuing Asset-Backed Securities in connection therewith.

7. Holders of Asset-Backed Securities of the Issuer will only have recourse to a specific and segregated pool of assets and undertaking of the Issuer identified in a Supplemental Indenture and will not have any further recourse to the Issuer.

8. The Issuer would not be eligible to participate in the POP System without this decision because it does not satisfy the 12 month reporting issuer history set out in paragraph 4.1(1)(a) of NP 47.

9. In connection with each proposed Offering by the Issuer :

(a) the Issuer will have a current AIF;

(b) at the time of the filing of its most recent AIF, preliminary Short Form Prospectus, preliminary Shelf Prospectus, final Short Form Prospectus or final Shelf Prospectus, as applicable, the Issuer will not be in default of any requirement of the Legislation;

(c) if the Issuer is filing a preliminary Short Form Prospectus more than 90 days after the end of its most recently completed financial year, the Issuer will have filed financial statements for that year;

(d) in the case of an Offering made under the POP System that is not an Offering under the Shelf System, the Asset-Backed Securities to be distributed will have:

(i) received an Approved Rating, on a provisional basis;

(ii) not been the subject of an announcement by an Approved Rating Organization of which the Issuer is or ought to be aware that the Approved Rating given by the organization may be down-graded to a rating category that would not be an Approved Rating; and

(iii) not received a provisional or final rating lower than an Approved Rating from any Approved Rating Organization; and

(e) in the case of an Offering under the Shelf System, at the respective times of the filing of its preliminary Shelf Prospectus and final Shelf Prospectus, the Issuer will have reasonable grounds for believing that:

(i) all Asset-Backed Securities that it may distribute under the final Shelf Prospectus will receive an Approved Rating from at least one Approved Rating Organization; and

(ii) no Asset-Backed Securities that it may distribute under the final Shelf Prospectus will receive a rating lower than an Approved Rating from any Approved Rating Organization.

10. Each AIF of the Issuer will be prepared in accordance with Appendix A of NP 47, with the following additional amendments:

(a) the disclosure in AIFs filed by the Issuer will be modified to reflect the special purpose nature of its business;

(b) if the Issuer has not completed its first financial year, the Issuer may present the information contained in its initial AIF as at a date within 30 days before the date that the initial AIF is filed; and

(c) if the Issuer has Asset-Backed Securities outstanding that were issued pursuant to a prospectus, the AIF filed by the Issuer will disclose:

(i) a description of any events, covenants, standards or preconditions that are dependent or based on the economic performance of the underlying pool of financial assets and that may impact on the timing or amount of payments or distributions to be made under the Asset-Backed Securities;

(ii) for the Issuer's two most recently completed financial years or such lesser period commencing on the first date on which the Issuer had Asset-Backed Securities outstanding, information on the underlying pool of financial assets relating to:

(A) the composition of the pool as of the end of the financial year or partial period;

(B) income and losses from the pool, on at least a quarterly basis;

(C) the payment, prepayment and collection experience of the pool on a quarterly basis; and

(D) any significant variances experienced in the matters referred to in subclauses (A), (B) and (C);

(iii) if any of the information disclosed under clause (ii) has been audited, the existence and results of the audit;

- (iv) the investment parameters applicable to investments of any cash flow surpluses;
- (v) the amount of payments made in respect of principal and interest or capital and yield, each stated separately, on its Asset-Backed Securities outstanding during the most recently completed financial year or partial period;
- (vi) the occurrence of any events that have led or with the passage of time could lead to the accelerated payment of principal or capital of Asset-Backed Securities; and
- (vii) the identity of any principal obligors for the outstanding Asset-Backed Securities of the Issuer at the end of the most recent financial year or partial period, the percentage of the underlying pool of financing assets represented by obligations of each principal obligor and whether the principal obligor, if any, has filed an AIF in any jurisdiction or a Form 10-K or Form 20-F in the United States.

11. Each preliminary Short Form Prospectus, preliminary Shelf Prospectus, final Short Form Prospectus and final Shelf Prospectus, as applicable, filed by the Issuer will be prepared in accordance with Appendix B of NP 47 and Schedule IV to the regulation made under the *Securities Act* (Quebec), with such amendments in connection with the Shelf System as are specified in subsection 2.3(b), Section 3 and Appendix B of NP 44 and Section III.1 of Division III, Chapter 1, Title II of the regulation made under the *Securities Act* (Quebec), with the following additional amendments:

- (a) the disclosure in the preliminary Short Form Prospectus, preliminary Shelf Prospectus, final Short Form Prospectus and final Shelf Prospectus filed by the Issuer will be modified to reflect the special nature of its business;
- (b) the preliminary Short Form Prospectus, preliminary Shelf Prospectus, final Short Form Prospectus and final Shelf Prospectus will describe or set out:
  - (i) the material attributes and characteristics of the Asset-Backed Securities to be offered, including details on:
    - (A) the rate of interest or stipulated yield and any premium;
    - (B) the date for repayment of principal or return of capital and any circumstances in which payments of principal or capital may be made before such date, including any redemption or pre-payment obligations or privileges of the Issuer and any

events that may trigger early liquidation or amortization of the underlying pool of financial assets;

(C) provisions for the accumulation of cash flows to provide for the repayment of principal or return of capital;

(D) provisions permitting or restricting the issuance of additional securities and any other material negative covenants applicable to the Issuer;

(E) the nature, order and priority of the entitlements of holders of Asset-Backed Securities and any other entitled persons or companies to receive cash flows generated from the underlying pool of financial assets; and

(F) any events, covenants, standards or preconditions that are dependant or based on the economic performance of the underlying pool of financial assets and that may impact on the timing or amount of payment or distributions to be made under the Asset-Backed Securities;

(ii) information on the underlying pool of financial assets for the period from the date as at which the following information was presented in the Issuer's current AIF to a date not more than 90 days before the date of the issuance of a receipt for the preliminary Short Form Prospectus or preliminary Shelf Prospectus, as the case may be, relating to:

(A) the composition of the pool as of the end of the period;

(B) income and losses from the pool for the period, on at least a quarterly basis; and

(C) the payment, prepayment and collection experience of the pool for the period on at least a quarterly basis;

(iii) the type or types of the financial assets, the manner in which the financial assets originated or will originate and, if applicable, the mechanism and terms of the agreement governing the transfer

of the financial assets comprising the underlying pool to or through the Issuer, including the consideration paid for the financial assets;

(iv) any person or company who:

(A) originated, sold or deposited a material portion of the financial assets comprising the pool, or has agreed to do so;

(B) acts, or has agreed to act, as a trustee, custodian, bailee or agent of the Issuer or any holder of the Asset-Backed Securities, or in a similar capacity;

(C) administers or services a material portion of the financial assets comprising the pool or provides administrative or managerial services to the Issuer, or has agreed to do so, on a conditional basis or otherwise, if finding a replacement provider of the services at a cost comparable to the cost of the current provider is not reasonably likely, a replacement provider of the services is likely to achieve materially worse results than the current provider, the current provider of the services is likely to default in its service obligations because of its current financial condition, or the disclosure is otherwise material;

(D) provides a guarantee, alternative credit support or other credit enhancement to support the obligations of the Issuer under the Asset-Backed Securities or the performance of some or all of the financial assets in the pool, or has agreed to do so; or

(E) lends to the Issuer in order to facilitate the timely payment or repayment of amounts payable under the Asset-Backed Securities, or has agreed to do so;

(v) the general business activities and material responsibilities under the Asset-Backed Securities of a person or company referred to in paragraph (b)(iv) of this paragraph 11;

(vi) the terms of any material relationships between:

(A) the persons or companies referred to in paragraph (b)(iv) of this paragraph 11 or any of their respective affiliates; and

(B) the Issuer or any of its affiliates;

(vii) any provisions relating to termination of services or responsibilities of any of the persons or companies referred to in paragraph (iv) and the terms on which a replacement may be appointed; and

(viii) any risk factors associated with the Asset-Backed Securities, including disclosure of material risks associated with changes in interest rates or prepayment levels, and any circumstances where payments on the Asset-Backed Securities could be impaired or disrupted as a result of any reasonably foreseeable event that may delay, divert or disrupt the cash flows dedicated to service the Asset-Backed Securities,

provided that, if any of the foregoing information will be disclosed in a Prospectus Supplement, it may be omitted from the corresponding Shelf Prospectus;

(c) each preliminary Shelf Prospectus and final Shelf Prospectus will contain a statement that the Issuer has filed an undertaking that it will not distribute Asset-Backed Securities of a type that, at the time of distribution, have not previously been distributed by prospectus ("Novel Asset-Backed Securities") without pre-clearing with the applicable Decision Maker the disclosure to be contained in a Prospectus Supplement pertaining to the distribution of such Novel Asset-Backed Securities; and

(d) each preliminary Short Form Prospectus, preliminary Shelf Prospectus, final Short Form Prospectus and final Shelf Prospectus will disclose any factors or considerations previously identified by the Approved Rating Organization as giving rise to unusual risks associated with the securities to be distributed.

12. Prospectus Supplements will be prepared in accordance with the Shelf Requirements and will include all of the shelf information pertaining to the distribution of Asset-Backed Securities that was omitted from the Shelf Prospectus.

**AND WHEREAS** under the System, 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** of the Decision Makers pursuant to the Policies is that the Eligibility Requirements set forth in the POP Requirements shall not apply to the Issuer in connection with the Offerings and that the Issuer may participate in the POP System and the Shelf System to distribute Asset-Backed Securities with an Approved Rating from time to time, and for the purposes of any such distribution to utilize AIF's, a preliminary Shelf Prospectus or preliminary Short Form Prospectus, as the case may be, a final Shelf Prospectus or final Short Form Prospectus, as the case may be, Prospectus Supplements and any necessary supporting documents, with such amendments from the form requirements of the Policies, as applicable, as are set forth herein, provided that:

(a) the Issuer complies with paragraphs 9, 10, 11 and 12 hereof;

(b) the Issuer complies with all of the filing requirements and procedures set out in the POP Requirements and the Shelf Requirements, except as such requirements are varied by this Decision;

(c) the Issuer files an undertaking before or concurrently with each preliminary Shelf Prospectus which states that:

(i) the Issuer will not distribute under the final Shelf Prospectus Novel Asset-Backed Securities without pre-clearing the disclosure pertaining to the distribution of such Novel Asset-Backed Securities in any Prospectus Supplement with the applicable Decision Maker; and

(ii) the Issuer shall not distribute such Novel Asset-Backed Securities in any Jurisdiction unless:

(A) the draft Prospectus Supplements pertaining to the distribution of such Novel Asset-Backed Securities have been delivered to the applicable Decision Maker in substantially final form; and

(B) either:

(1) the applicable Decision Maker has confirmed his or her acceptance of each draft Prospectus Supplement in substantially final form or in final form; or

(2) 21 days has elapsed since the date of delivery of each draft Prospectus Supplement in substantially final form to the applicable Decision Maker and the

applicable Decision Maker has not provided written comments on the draft Prospectus Supplement.

(d) the Issuer files with each AIF for each director and executive officer of the Issuer Trustee for whom the Issuer has not previously delivered to the Decision Makers the following information, a statement containing such individual's:

- (i) full name;
- (ii) position with or relationship to the Issuer;
- (iii) employer's name and address, if other than the Issuer;
- (iv) full residential address;
- (v) date and place of birth; and
- (vi) citizenship; and

an authorization of such individual for the collection of personal information;

(e) the Issuer files with each AIF an eligibility certificate, executed on behalf of the Issuer by an officer of its trustee certifying that the Issuer satisfies the eligibility requirements set out in subparagraphs 9(b) and 9(d) or 9(e), as applicable, hereof, and which makes reference to this Decision;

(f) in the case of an Offering made under the POP System that is not an Offering under the Shelf System, at the time of filing its preliminary Short Form Prospectus the Asset-Backed Securities to be distributed have

- (i) received an Approved Rating, on a provisional basis,
- (ii) not been the subject of an announcement by an Approved Rating Organization of which the Issuer is or ought to be aware that the Approved Rating given by the organization may be downgraded to a rating category that would not be an Approved Rating, and
- (iii) not received a provisional or final rating lower than an Approved Rating from any Approved Rating Organization;

(g) in the case of an Offering under the Shelf System, at the time of the filing of its preliminary Shelf Prospectus and final Shelf Prospectus, the Issuer has reasonable grounds for believing that:

(i) all Asset-Backed Securities that it may distribute under the final Shelf Prospectus will receive an Approved Rating from at least one Approved Rating Organization; and

(ii) no Asset-Backed Securities that it may distribute under the final Shelf Prospectus will receive a rating lower than an Approved Rating from any Approved Rating Organization;

(h) the Issuer files with its preliminary Short Form Prospectus or preliminary Shelf Prospectus an eligibility certificate, executed on behalf of the Issuer by one of the senior officers of the Issuer Trustee certifying that the Issuer satisfies all of the criteria on which the Issuer is relying in order to be qualified to file a prospectus in the form of a short form prospectus, and which makes reference to this Decision; and

(i) this Decision will automatically expire upon the latter of proposed National Instrument 44-101 and proposed National Instrument 44-102 coming into force and being adopted as a rule in Ontario.

DATED at Toronto this 25th day of April, 2000.

"Margo Paul"

Margo Paul

#### Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Waiver granted pursuant to section 4.5 of National Policy Statement No. 47 (and equivalent Quebec legislation) to enable issuer to participate in the POP System and the Shelf System (as contemplated in National Policy Statement No. 44 (and equivalent Quebec legislation) to distribute asset-backed securities in accordance with proposed National Instruments 44-101 and 44-102.

#### Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c.S.5, as am.

#### Regulations Cited

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am.,

#### Policies Cited

National Policy Statement No. 47 - Prompt Offering Qualification System.

National Policy Statement No. 44 - Rules for Shelf Prospectus Offerings and for Pricing Offerings After the Final Prospectus is Received.

Proposed National Instrument 44-101- Short Form Prospectus Distributions (1999), 22 OSCB (POP Supp 2).

Proposed National Instrument 44-102 - Shelf Distribution (1998), 21 OSCB 6206.