

Headnote

Mutual Reliance Review System for Exemptive Relief Applications -- Take-over Bid - Offeror needs relief from the requirement in subsection 97(1) of the Act that all holders of the same class of securities must be offered identical consideration -- Under the take-over bid, Canadian resident securityholders will receive trust units; US securityholders will receive substantially the same value as Canadian securityholders, in the form of cash paid to the US securityholders based on the proceeds from the sale of their shares; the number of shares held by US residents is de minimis; the US does not have an identical consideration requirement.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 97(1), 104(2).

Citation: Liquor Stores Income Fund, 2007 ABASC 305

May 23, 2007

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,
MANITOBA, ONTARIO, QUÉBEC, NOVA SCOTIA,
NEW BRUNSWICK 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
LIQUOR STORES 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 requirement in the Legislation to offer identical consideration

to all holders of the class of securities subject to a take-over bid (the **Identical Consideration Requirement**) in connection with the securities exchange take-over bid (and related merger transaction) made by the Filer for all of the issued and outstanding trust units (the **Liquor Barn Units**) of Liquor Barn Income Fund (**Liquor Barn**) (collectively, the **Requested Relief**).

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

(a) the Alberta 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 in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined differently in this decision.

Representations

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

(a) The Filer is a public trust formed under the laws of the Province of Alberta that is administered by Liquor Stores GP Inc., an indirect wholly-owned subsidiary of the Filer. The head and registered offices of the Filer and Liquor Stores GP Inc. are located in Edmonton, Alberta.

(b) The Filer is a reporting issuer or the equivalent in each of the provinces of Canada.

(c) The trust units of the Filer (the **Liquor Stores Units**) are listed and posted for trading on the Toronto Stock Exchange (the **TSX**).

(d) Liquor Barn is a public trust formed under the laws of the Province of Alberta that is administered by Liquor Barn GP Inc., a direct wholly-owned subsidiary of Liquor Barn. The head and registered offices of Liquor Barn and Liquor Barn GP Inc. are located in Edmonton, Alberta.

(e) Liquor Barn is a reporting issuer or the equivalent in each of the provinces of Canada.

(f) The Liquor Barn Units are listed and posted for trading on the TSX.

(g) On April 10, 2007, the Filer: (i) publicly announced an offer (the **Offer**) to purchase all of the issued and outstanding Liquor Barn Units on the basis of 0.53 of a Liquor Stores Unit of the Filer for each one Liquor Barn Unit; (ii) formally commenced the Offer by way of advertisements published in the Globe and Mail and La Presse; and (iii) filed the Offer and take-over bid circular (the **Offer and Circular**) with Canadian securities regulatory authorities.

(h) The Offer includes a merger transaction option (the **Merger Transaction**, and together with the Offer, the **Take-Over Bid**) pursuant to which holders (**Liquor Barn Unitholders**) of Liquor Barn Units have the opportunity to exchange their Liquor Barn Units for Liquor Stores Units pursuant to the Merger Transaction on a tax-deferred "roll-over" basis for Canadian income tax purposes so as to defer the recognition of any gain (or loss) for Canadian income tax purposes. The Filer will complete the Merger Transaction immediately following and conditional on the take-up under the Offer.

(i) Approximately 7.25% of the issued and outstanding Liquor Barn Units on a non-diluted basis (approximately 4.62% on a fully diluted basis) are currently beneficially held by Liquor Barn Unitholders who are resident in the United States (**US Unitholders**).

(j) Because the Liquor Stores Units issuable pursuant to the Take-Over Bid to the US Unitholders have not been registered under the 1933 Act and are not eligible for sale under the securities laws of a substantial number of states in the United States without registration, the offer, sale and delivery of such Liquor Stores Units to US Unitholders without further action by the Filer would constitute a violation of United States securities laws.

(k) Rule 802 under the 1933 Act (Rule 802) provides an exemption from the registration requirements of the 1933 Act for offers and sales in any exchange offer for a class of securities of a foreign private issuer or in any exchange of securities for the securities of a foreign private issuer in any business combination if the holders of the foreign subject company resident in the United States hold no more than 10% of the securities that are the subject of the exchange offer or business combination. Rule 802 provides that for the purposes of this calculation, securities held by persons who hold more than 10% of the subject securities are to be excluded, as are securities held by the offeror. In order for this exemption to apply, holders resident in the United States must participate in the

exchange offer or business combination on terms at least as favourable as those offered to the other holders of the subject securities, subject to an exception which allows the offeror to offer cash consideration to securityholders resident in states of the United States that do not have an applicable state "blue sky" exemption from the registration or qualification requirements of state securities laws.

(l) The Filer is a "foreign private issuer" within the meaning of Rule 405 of Regulation C adopted by the SEC under the 1933 Act.

(m) As the 10% ownership condition and the other conditions of Rule 802 have been met, the offer and sale of the Liquor Stores Units is exempt from the registration requirements of the 1933 Act.

(n) There is no general exemption from state "blue sky" laws that coordinates with Rule 802. As a result, the securities laws of a significant number of states would prohibit delivery of the Liquor Stores Units to US Unitholders without registration of the Liquor Stores Units to be issued to US Unitholders resident in such states unless such holders are otherwise exempt investors under the laws of such states. The Multijurisdictional Disclosure System does not provide relief from the registration or qualification requirements of United States state securities laws.

(o) Registration under the 1933 Act and/or applicable state securities laws of the Liquor Stores Units deliverable to US Unitholders would be costly and burdensome to the Filer.

(p) For US Unitholders (and Liquor Barn Unitholders who appear to the Filer or to the depositary (the Depositary) designated under the Take-Over Bid to be US Unitholders) who are resident in one of the subject states with no available registration exemption and who are not exempt investors, the Filer proposes to deliver to the Depositary the Liquor Stores Units that those US Unitholders would otherwise be entitled to receive under the Take-Over Bid, and the Depositary will then sell (or cause to be sold) the Liquor Stores Units on behalf of those US Unitholders and through the facilities of the TSX. As soon as possible after the completion of the sale, the Depositary or selling agent will deliver to each such holder their respective pro rata share of the cash proceeds of sale, less commissions and applicable withholding taxes.

(q) Any sale of Liquor Stores Units described in the paragraph (p) above will be completed as soon as commercially reasonable following (i) the date on which the Filer takes up the Liquor Barn

Units tendered by the US Unitholders under the Offer, and (ii) the date on which the Filer acquires the remainder of the Liquor Barn Units held by US Unitholders under the Merger Transaction, as applicable.

(r) The Offer and Circular sent to all holders of Liquor Barn Units discloses the procedure described in paragraph (p) above to be followed for US Unitholders who tender their Liquor Barn Units to the Offer or have their Liquor Barn Units acquired pursuant to the Merger Transaction.

(s) Except to the extent that relief from the Identical Consideration Requirement is granted, the Take-Over Bid will otherwise be made in compliance with the requirements under the Legislation governing take-over bids.

Decision

5. 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.

6. The decision of the Decision Makers under the Legislation is that, in connection with the Take-Over Bid, the Requested Relief is granted so that US Unitholders who would otherwise receive Liquor Store Units under the Take-Over Bid instead receive cash proceeds from the sale of those Liquor Stores Units in accordance with the procedure set out in paragraph (p) above.

"Glenda A. Campbell"
QC, Vice-Chair
Alberta Securities Commission

"Stephen R. Murison"
Vice-Chair
Alberta Securities Commission