

July 5, 2006

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, MANITOBA, ONTARIO, QUÉBEC,
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
MACQUARIE INFRASTRUCTURE GROUP
(the Filer or MIG)**

MRRS DECISION DOCUMENT

Background

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) exempting the Filer from the prospectus requirements (the **Prospectus Requirements**) and the dealer registration requirements (the **Registration Requirements**) of the Legislation in respect of the proposed distribution of dual stapled securities (each dual stapled security an SRG Security) of Sydney Roads Group (**SRG**) to securityholders of the Filer (the **MIG Securityholders**) resident in the Jurisdictions by way of a dividend in specie distribution (the **In Specie Distribution**) by the Filer as part of the Filer's spin-off of SRG (the **Requested Relief**).

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

Defined terms contained in National Instrument 14-101 – *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

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

1. Filer is an entity consisting of the units of Macquarie Infrastructure Trust (I), the units of Macquarie Infrastructure Trust (II); and the shares of Macquarie Infrastructure Group International Limited. One security of each of the entities comprising MIG are stapled together to form one MIG security which can only be sold as a single unit.
2. The Filer is currently listed on the Australian Stock Exchange (the **ASX**) with this triple stapled security. The Filer is not and has no current intention of listing on any Canadian stock exchange.
3. The Filer is not and has no current intention of becoming a reporting issuer or the equivalent under the Legislation.
4. Immediately prior to the In Specie Distribution, all SRG Securities will be held by MIG.
5. As part of a restructuring of its current assets and investments, the Filer is preparing to spin-off SRG (the Spin-off). Each SRG Security will be a dual stapled security comprised of one share of a new Australian company (Sydney Roads Limited) and one unit of a new Australian unit trust (**Sydney Roads Trust**). It is anticipated that SRG will be listed on the ASX and that each SRG Security will be treated as a single security for ASX trading purposes.
6. To effect the Spin-off, the Filer is planning to make the In Specie Distribution of SRG Securities to all MIG Securityholders on a one-for-three basis for no cost to the MIG Securityholders.
7. The initial step of the Spin-off is a successful initial public offering (the **Offering**) of SRG Securities in Australia. The In Specie Distribution is conditional upon the successful Offering. The Offering may also allow for the private placement of the SRG Securities to residents of the Jurisdictions in reliance on exemptions from the Prospectus Requirements and Registration Requirements as provided for in National Instrument 45-106 *Prospectus and Distribution Exemptions (NI 45-106)*.
8. As at May 19, 2006, there were 24 registered MIG Securityholders resident in the Jurisdictions of which approximately 10, 4, 3, 4, 1 and 2 have addresses in Ontario, British Columbia, Alberta, Québec, Prince Edward Island and Newfoundland and Labrador, respectively. Also, based on an analysis conducted by MIG's transfer agent, as of May 19, 2006, there were 65 known beneficial holders resident in Canada and Canadian institutional beneficial holders were known to be located in the provinces of Ontario, British Columbia, Manitoba and Québec. Based on this information, MIG Securityholders resident in Canada constitute approximately 0.15% of the 61,105 MIG Securityholders worldwide on May 19, 2006. As such, the proportion of MIG Securityholders resident in Canada is *de minimis*.
9. As at May 19, 2006, MIG Securityholders of record resident in the Jurisdictions held a total of 138,828 MIG securities and known Canadian beneficial holders held a total of 132,763,375 MIG securities, together being approximately 5.37% of the total 2,475,499,390 outstanding MIG

securities worldwide. Based on information provided by MIG's transfer agent, of the 132,763,375 MIG securities held on behalf of beneficial holders resident in Canada, approximately 120,429,236 were held by a single institutional pension plan investor in Ontario. As such, the proportion of issued and outstanding MIG securities held by Canadian residents is *de minimis*.

10. Subject to obtaining necessary approvals and the successful completion of the Offering, on a distribution date to be set by the Filer's board of directors, the separation of SRG from the Filer will be accomplished through the In Specie Distribution of all SRG shares held by the Filer to the MIG Securityholders. The Spin-off will consist of the following steps:

(a) the general terms and conditions relating to the In Specie Distribution will be set forth in a distribution agreement between MIG and SRG;

(b) as a result of the distribution, each MIG Securityholder will receive directly from MIG one SRG Security for every three MIG securities held;

(c) MIG Securityholders will not be required to pay for SRG Securities received in the distribution or to surrender or exchange MIG securities in order to receive SRG Securities or to take any other action in connection with the distribution. The In Specie distribution will occur automatically and without any investment decision on the part of the MIG Securityholders; and

(d) fractional SRG Securities will not be issued to MIG Securityholders as part of the In Specie Distribution nor credited to book-entry accounts.

11. MIG has determined that the Spin-off is expected to enhance the success of both MIG and SRG, and thereby is expected to maximize value for securityholders over the long term by:

(a) enabling each group to continue to pursue its unique and focused strategy; and

(b) enabling investors to evaluate the financial performance, strategies and other characteristics of each of MIG and SRG separately in comparison to companies within their sectors.

12. After the Spin-off, MIG will continue to be listed on the ASX and it is anticipated that SRG will be listed on the ASX.

13. It is not intended that SRG will be listed on any stock exchange in Canada.

14. SRG does not intend to become a reporting issuer or the equivalent in any province or territory of Canada.

15. The In-Specie Distribution will be effected in compliance with the laws of Australia.

16. MIG Securityholders will receive a disclosure document detailing the planned Spin-off and In Specie Distribution for information purposes only.
17. Under Australian law, no vote, election, confirmation or other document is required from any MIG Securityholder for the In Specie Distribution to become effective.
18. There is existing authority in the constituent documents of the entities comprising MIG that allows the distribution to occur in the manner described above.
19. All materials relating to the Spin-off and the In Specie Distribution sent by or on behalf of MIG or SRG worldwide will be sent concurrently to MIG Securityholders resident in Canada.
20. Following the In Specie Distribution, each of MIG and SRG, respectively, will send, concurrently to MIG Securityholders resident in Canada, the same disclosure material that it sends to the securityholders of MIG and SRG with addresses worldwide (as shown on its books).
21. The MIG Securityholders resident in Canada who receive the In Specie Distribution will have the benefit of the same rights and remedies in respect of the disclosure documentation received in connection with the Spin-off and the In Specie Distribution that are available under the laws of Australia to MIG Securityholders with addresses worldwide.
22. Where a MIG Securityholder is entitled to receive less than one SRG Security, fractions will be rounded up or down in MIG's discretion. A MIG Securityholder with one or two MIG Securities will receive one SRG Security. MIG Securityholders with more than three MIG securities, but not an exact multiple of three, will have their entitlement rounded to the nearest whole number.
23. The proposed distribution of SRG Securities to MIG Securityholders pursuant to the Spin-off would be exempt from the Prospectus Requirements and the Registration Requirements pursuant to subsection 2.31(2) and (3) of NI 45-106 but for the fact that SRG is not a reporting issuer or equivalent under the Legislation.

Decision

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 under the Legislation is that the Requested Relief is granted provided that the first trade of SRG Securities acquired under this decision in a Jurisdiction shall be deemed to be a distribution or primary distribution to the public under the Legislation of such Jurisdiction unless the conditions in section 2.6 or section 2.14(1) of National Instrument 45-102 – *Resale of Securities* are satisfied.

"Paul M. Moore"
Vice-Chair
Ontario Securities Commission

"Harold P. Hands"
Commissioner
Ontario Securities Commission

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief from prospectus and registration requirements for spin-off by a publicly traded Australian company to investors by issuing shares of spun off entity as dividends - reorganization technically not covered by prescribed reorganization exemptions.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 25, 35(1)(12)(i), 35(1)(13), 53, 72(1)(f)(ii), 72(1)(g), 74(1).