

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

AND

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

AND

**IN THE MATTER OF
O&Y REAL ESTATE INVESTMENT TRUST**

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland, Yukon, Nunavut and Northwest Territories (the "Jurisdictions") has received an application from O&Y Real Estate Investment Trust ("O&Y REIT") for a decision, pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the requirement contained in the Legislation to be registered to trade in a security and to file and obtain a receipt for a preliminary prospectus and a final prospectus (the "Registration and Prospectus Requirements") shall not apply to the distribution or resale of units of O&Y REIT pursuant to a distribution reinvestment plan (the "DRIP");

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

AND WHEREAS O&Y REIT has represented to the Decision Makers that:

1. O&Y REIT is an unincorporated closed-end investment trust established under the laws of the Province of Ontario by a declaration of trust dated March 8, 2001.
2. O&Y REIT is not a "mutual fund" as defined in the Legislation because the holders of Units ("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 O&Y REIT as contemplated in the definition of "mutual fund" in the Legislation.
3. O&Y REIT became a reporting issuer or the equivalent thereof in each province and territory in Canada on June 7, 2001 when it obtained a receipt for its prospectus dated June 7, 2001 (the "Prospectus"). As of the date hereof, O&Y REIT is not in default of any requirements under the Legislation.

4. The beneficial interests in O&Y REIT are divided into a single class of limited voting units (the "Units"). O&Y REIT is authorized to issue an unlimited number of Units. Units represent a Unitholder's proportionate undivided beneficial interest in O&Y REIT. As of the date hereof, 30,030,000 Units are presently issued and outstanding.

5. The Units of O&Y REIT are currently listed and posted for trading on The Toronto Stock Exchange (the "TSE").

6. O&Y REIT was established to acquire a national portfolio of AAA, A and B class multi-tenant and government office buildings (or interests therein) located across Canada from O&Y Properties Inc., a subsidiary of O&Y Properties Corporation ("OYPC"). OYPC is a reporting issuer or the equivalent thereof in each province of Canada and is not in default of any requirements under the legislation. OYPC had been a reporting issuer or the equivalent thereof in each province of Canada for more than 12 months.

7. The objectives of O&Y REIT are to (i) provide Unitholders with stable and growing cash distributions, payable monthly and to the maximum extent reasonably possible, tax-deferred; and (ii) maximize Unit value through ongoing active management of the assets of O&Y REIT and the acquisition of additional office properties or interests therein.

8. O&Y REIT currently intends to make cash distributions to Unitholders monthly, equal, on an annual basis, to approximately 85% of its Distributable Income (as such term is defined in the Declaration of Trust).

9. O&Y REIT intends to establish the DRIP pursuant to which Unitholders may, at their option, invest cash distributions paid on their Units in additional Units ("Additional Units"). The DRIP will not be available to Unitholders who are not Canadian residents.

10. Distributions due to participants in the DRIP ("DRIP Participants") will be paid to CIBC Mellon Trust Company in its capacity as agent under the DRIP (in such capacity, the "DRIP Agent") and applied to purchase Additional Units. All Additional Units purchased under the DRIP will be purchased by the DRIP Agent directly from O&Y REIT.

11. The price of Additional Units purchased with such cash distributions will be the volume weighted average of the trading price for a board lot of Units on the TSE for the five trading days immediately preceding the relevant distribution date. Unitholders who elect to participate in the DRIP will receive a further distribution of Additional Units equal to 3% of each distribution that is reinvested under the DRIP. No commissions, service charges or brokerage fees will be payable by DRIP Participants in connection with the DRIP.

12. Additional Units purchased under the DRIP will be registered in the name of the DRIP Agent, as agent for the DRIP Participants.

13. Unitholders may terminate their participation in the DRIP at any time by written notice to the DRIP Agent. Thereafter, distributions payable to such Unitholders will be by cheque. O&Y REIT has the right to amend, suspend or terminate the DRIP at any time, provided that such

action shall not have a retroactive effect which would prejudice the interests of the DRIP Participants. All DRIP Participants will be sent notice of any such amendment, suspension or termination.

14. The distribution of the Additional Units by O&Y REIT pursuant to 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 O&Y REIT and not the reinvestment of dividends or interest of O&Y REIT.

15. The distribution of the Additional Units by O&Y REIT pursuant to the DRIP cannot be made in reliance on registration and prospectus exemptions contained in the Legislation for distribution reinvestment plans of mutual funds, as O&Y REIT is not a "mutual fund" as defined in the Legislation.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each of the Decision Makers (collectively, the "Decision");

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers pursuant to the Legislation is that the trades of Additional Units by O&Y REIT to the DRIP Participants pursuant to the DRIP shall not be subject to the Registration and Prospectus Requirements of the Legislation provided that:

(a) at the time of the trade O&Y REIT is a reporting issuer or the equivalent under the Legislation and is not in default of any requirements of the Legislation;

(b) no sales charge is payable in respect of the trade;

(c) O&Y REIT has caused to be sent to the person or company to whom the Additional Units are traded, not more than 12 months before the trade, a statement describing:

(i) their right to withdraw from the DRIP and to make an election to receive cash instead of Units on the making of a distribution of income by O&Y REIT; and

(ii) instructions on how to exercise the right referred to in (i);

(d) prior to June 7, 2002 (the date on which O&Y REIT will have been a reporting issuer for 12 months), the aggregate number of Additional Units issued or issuable to beneficial holders of Units pursuant to the DRIP shall not exceed 2% of the aggregate number of Units outstanding at the time of the trade; and

(e) the first trade in Additional Units acquired pursuant to this Decision in a Jurisdiction shall be deemed a distribution or primary distribution to the public under the Legislation of such Jurisdiction (the "Applicable Legislation") unless

- (i) at the time of the first trade, O&Y REIT is a reporting issuer or the equivalent under the Applicable Legislation;
- (ii) no unusual effort is made to prepare the market or to create a demand for the Units;
- (iii) no extraordinary commission or consideration is paid to a person or company in respect of the trade;
- (iv) if the seller of the Additional Units is an insider of O&Y REIT, the seller has reasonable grounds to believe that O&Y REIT is not in default of any requirement of the Applicable Legislation;
- (v) in all jurisdictions other than Quebec, the first trade is not from the holdings of a person or company or a combination of persons or companies holding a sufficient number of Units of O&Y REIT so as to affect materially the control of O&Y REIT or more than 20% of the outstanding voting securities of O&Y REIT except where there is evidence showing that the holding of those securities does not affect materially the control of O&Y REIT; and
- (vi) disclosure of the initial distribution of the Additional Units is made to the relevant Jurisdictions by providing the particulars of the date of the distribution of such Additional Units, the number of such Additional Units and the purchase price paid or to be paid for such Additional Units in:

- (a) an information circular or take-over bid circular filed in accordance with the Legislation; or

- (b) a letter filed with the Decision Maker in the relevant Jurisdiction by a person or company certifying that the person or company has knowledge of the facts contained in the letter,

when O&Y REIT distributes such Additional Units for the first time and thereafter, not less frequently than annually, unless the aggregate number of Additional Units so traded in any month exceeds 1% of the Units outstanding at the beginning of a month in which the Additional Units were traded, in which case a separate report shall be filed in each relevant Jurisdiction (other than Quebec) in respect of that month within ten days of the end of such month.

DATED this 14th day of September, 2001.

"Howard I. Wetston"

"Stephen N. Adams"

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Closed-end investment trust exempt from prospectus and registration requirements in connection with issuance of units to existing unitholders pursuant to a distribution reinvestment plan whereby distributions of income are reinvested in additional units of the trust, subject to certain conditions – first trade relief provided for additional units of trust, subject to certain conditions – issuer relieved of certain reporting requirements, subject to certain conditions.

Statutes Cited

Securities Act, R.S.O. 1990, c.S.5, as am., ss.25, 53, 72(5), 74(1)

Rules Cited

Rule 45-502 Dividend or Interest Reinvestment and Stock Dividend Plans 21 OSCB 3685

Rule 81-501 Mutual Fund Reinvestment Plans 20 OSCB 5163