

Securities Act (Nova Scotia) s. 79 - Exemption from s. 58 requirement to file a prospectus in connection with a distribution – Trades by a real estate investment trust in connection with a joint distribution reinvestment plan (DRIP) adopted by the issuer and a subsidiary – Special voting units of the issuer (Special Voting Units) are only issued to accompany class B limited partnership units of the subsidiary (Exchangeable LP Units) - The subsidiary can rely on the exemption in s. 2.2 of National Instrument 45-106 *Prospectus Exemptions* (the DRIP Exemption) to distribute Exchangeable LP Units to its securityholders in respect of distributions paid on earnings of the Partnership, but the issuer cannot rely on the DRIP Exemption in connection with the distribution of Special Voting Units in respect of distributions paid on earnings of the subsidiary.

Applicable Legislative Provisions

Securities Act, R.S.N.S. 1989, c. 418, sections 58 and 79

January 11, 2017

IN THE MATTER OF THE SECURITIES LEGISLATION OF NOVA SCOTIA

AND

IN THE MATTER OF CROMBIE REAL ESTATE INVESTMENT TRUST (the Filer)

DECISION

Background

The Nova Scotia Securities Commission (the “**Decision Maker**”) has received an application from the Filer for a decision pursuant to subsection 79(1) of the Securities Act (Nova Scotia) (the “**Act**”) that section 58 of the Act (the “**Prospectus Requirement**”) does not apply to the distribution by the Filer of Special Voting Units (defined below) to holders of Exchangeable LP Units (defined below) under the DRIP (defined below) (the “**Requested Relief**”).

Interpretation

Terms defined in National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. The Filer is an unincorporated open-ended real estate investment trust established pursuant to a declaration of trust dated January 1, 2006, as amended and restated, formed under, and governed by, the laws of Ontario. The principal, registered and head office of the Filer is located at 610 East River Road, Suite 200, New Glasgow, Nova Scotia, B2H 3S2.
2. The Filer is authorized to issue an unlimited number of Trust Units (“**Units**”) and an unlimited number of special voting units (the “**Special Voting Units**”). As at November 28,

2016 there were 87,645,856 Units and 60,604,802 Special Voting Units issued and outstanding. The Units are currently listed and posted for trading on the TSX under the symbol “CRR.UN”. All of the issued and outstanding Special Voting Units are held by ECL Developments Limited (“**ECL**”), a company incorporated under the laws of Nova Scotia and with its head office in Nova Scotia.

3. Special Voting Units are only issued to accompany Exchangeable LP Units and the number of Special Voting Units outstanding at any point in time is equivalent to the number of Exchangeable LP Units outstanding. There are no certificates representing the Special Voting Units other than those representing the Exchangeable LP Units to which they attach.
4. The Filer is a reporting issuer, or has equivalent status, under securities legislation in all provinces of Canada and is not in default of any of the requirements of such legislation.
5. The Filer invests in income-producing retail, office and mixed use properties in Canada. As at November 28, 2016, the Filer owned a portfolio of 284 investment properties in 10 provinces comprising approximately 19.4 million square feet of gross leasable area.
6. Crombie Limited Partnership (“**Crombie LP**”) is a limited partnership formed under the laws of Nova Scotia and governed by a second amended and restated limited partnership agreement dated March 23, 2006 (the “**Crombie LP Agreement**”) among Crombie General Partner Limited (“**Crombie GP**”), ECL (as successor in interest to ECL Properties Limited) and Crombie Subsidiary Trust (“**CS Trust**”) and is the operating entity through which the Filer conducts its business.
7. Under the Crombie LP Agreement, Crombie LP is authorized to issue an unlimited number of class A limited partnership units (the “**Class A LP Units**”) and an unlimited number of class B limited partnership units (the “**Exchangeable LP Units**” and collectively with the Class A LP Units, the “**LP Units**”), as well as an unlimited number of general partnership units.
8. Crombie LP is not a reporting issuer in any jurisdiction and none of its securities have ever been traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*.
9. All the outstanding Class A LP Units are held by CS Trust (a wholly-owned subsidiary of the Filer), all the Exchangeable LP Units are held by ECL, and all the outstanding general partnership units are held by Crombie GP.
10. ECL holds 60,604,802 Exchangeable LP Units which together with 909,090 Units it holds, represents an approximately 41.5% economic interest in the Filer.
11. The Exchangeable LP Units are, in all material respects, equivalent to the Units on a per unit basis. Each Exchangeable LP Unit is exchangeable at the option of the holder for one Unit. Upon the exchange of an Exchangeable LP Unit for a Unit, the Special Voting Unit attached to such Exchangeable LP Unit will automatically be redeemed and cancelled for no consideration. Each Exchangeable LP Unit also has effectively the same economic rights and entitlements to distributions as a Unit, and is accompanied by one Special Voting Unit, which provides for the same voting rights in the Filer as a Unit.
12. The Exchangeable LP Units effectively represent part of the equity value of the Filer and are equivalent to the Units in all material respects in that:

- (a) they are exchangeable into Units on a one for one basis;
 - (b) they have the same economic rights as Units;
 - (c) they are each accompanied by a Special Voting Unit that carry the same voting rights as a Unit; and
 - (d) any additional rights attached to the Exchangeable LP Units either: (i) treat the Exchangeable LP Units and Units on the same basis, or (ii) arise solely by virtue of the Exchangeable LP Units being limited partnership units and are customary rights associated with limited partnership units.
13. Except as required by law and in certain specified circumstances in which the rights of a holder of Exchangeable LP Units are affected, holders of Exchangeable LP Units are not entitled to vote at meetings of the holders of LP Units.
14. The Exchangeable LP Units and the accompanying Special Voting Units are not listed and posted for trading on the TSX or any other stock exchange, and are not freely tradeable.
15. The Filer intends to make monthly cash distributions on or about the 15th day of a given month to persons who are holders of Units at the close of business on the last business day of the immediately preceding calendar month. Similarly, the Crombie LP Agreement provides that the Crombie LP will make identical monthly cash distributions on the same terms and conditions to holders of Exchangeable LP Units.
16. The Filer and Crombie LP have instituted a joint Distribution Reinvestment Plan (“**DRIP**”).
17. Under the DRIP, Canadian resident Unit holders may elect to automatically have their cash distributions out of earnings, surplus, capital, or other sources payable by the Filer in respect of the Units reinvested in additional Units. Units to be issued under the DRIP will be issued directly from treasury of the Filer at a three percent (3%) discount to market prices as determined under the DRIP.
18. The DRIP also permits ECL, as owner of the outstanding Exchangeable LP Units, to automatically have its cash distributions out of earnings, surplus, capital, or other sources payable by Crombie LP in respect of Exchangeable LP Units reinvested in additional Exchangeable LP Units on substantially the same terms. ECL participates in the DRIP *pro rata* with the Unit holders, so that it maintains its percentage ownership interest in the Filer. Upon the issuance by Crombie LP of an Exchangeable LP Unit under the DRIP, an accompanying Special Voting Unit is automatically issued by the Filer to accompany the Exchangeable LP Unit.
19. DRIP participants may terminate their participation in the DRIP by providing written notice under the DRIP prior to the applicable record date, subject to additional restrictions on employees and insiders (including ECL). After such termination is processed, distributions by the Filer or Crombie LP, as the case may be, will be payable to such holders of Units or Exchangeable LP Units in cash or otherwise in the form declared by the Filer or Crombie LP, as the case may be.
20. Under the terms of the DRIP, the Filer will reserve the right to amend, suspend, or terminate the DRIP at any time in its sole discretion, subject to TSX approval. The Filer

will send DRIP participants written notice of an amendment, suspension, or termination of the DRIP in accordance with its terms.

21. The issuance of Units by the Filer is exempt from the Prospectus Requirement under Section 2.2 of National Instrument 45-106 – *Reinvestment plan* (“**DRIP Exemption**”), being in respect of distributions paid on earnings of the Filer. The issuance of the Exchangeable LP Units by Crombie LP under the DRIP also qualifies under the DRIP Exemption and is exempt from the Prospectus Requirement, being in respect of distributions paid on earnings of Crombie LP.
22. The DRIP Exemption provides that the Prospectus Requirement does not apply to a distribution of a security **of the issuer’s own issue** to a security holder of the issuer if a dividend or distribution out of earnings, surplus, capital or other sources payable **in respect of the issuer’s securities** is applied to the purchase of the security, if the distributions are permitted by a plan of the issuer. Although the Special Voting Units are attached to the Exchangeable LP Units and not represented by a separate certificate, it is not clear that the issuance of the Special Voting Units along with the Exchangeable LP Units pursuant to the DRIP falls within the DRIP Exemption because the Special Voting Units are securities of the Filer, but the distribution is to accompany the Exchangeable LP Units in respect of earnings of Crombie LP.

Decision

The Decision Maker is satisfied that the Requested Relief would not be prejudicial to the public interest.

The decision of the Decision Maker is that the Requested Relief is granted provided that:

- (a) the issuance of the Exchangeable LP Units by Crombie LP under the DRIP continues to be exempt from the Prospectus Requirement under the DRIP Exemption; and
- (b) the first trade of any Special Voting Units acquired under this decision will be deemed to be a distribution unless the conditions in subsection 2.6(3) of National Instrument 45-102 *Resale of Securities* are satisfied at the time of such first trade.

(signed) “*Paul Radford*”

Paul Radford, Q.C.
Chair
Nova Scotia Securities Commission

(signed) “*Shirley P. Lee*”

Shirley P. Lee, Q.C.
Vice-Chair
Nova Scotia Securities Commission