

CITATION:

DATE OF DECISION DOCUMENT: 190307

IN THE MATTER OF THE SECURITIES LEGISLATION OF
ALBERTA, ONTARIO AND NOVA SCOTIA
(THE “**JURISDICTIONS**”)

AND

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

AND

IN THE MATTER OF
HOLLOWAY LODGING REAL ESTATE INVESTMENT TRUST
(THE “**FILER**”)

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**”) for an exemption from the dealer registration requirements of the Legislation (the “**Registration Requirements**”) and the prospectus requirements of the Legislation (the “**Prospectus Requirements**”) (collectively, the “**Registration and Prospectus Requirements**”) as follows: (A) that the Registration and Prospectus Requirements of the Legislation shall not apply to the grant of Options by the Filer to the Non-Exempt Participants under the Plan (as such terms are defined below), nor to the issuance of Units of the Filer to the Non-Exempt Participants upon the exercise of such Options pursuant to the Plan, and (B) that the Prospectus Requirements of the Legislation shall not apply to first trades in Units acquired upon the exercise of Options under the Plan (the “**Requested Relief**”).

Under the Mutual Reliance Review System for Exemptive Relief Applications

- (a) the Nova Scotia 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.

For the purpose of the Representations contained below, “**REIT**” shall mean Holloway Lodging Real Estate Investment Trust.

Representations

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

1. The REIT is an unincorporated real estate investment trust created pursuant to an amended and restated declaration of trust dated July 5, 2006 and governed by the laws of the Province of Ontario. The REIT's registered and head office is in Halifax, Nova Scotia.
2. The REIT is authorized to issue an unlimited number of trust units ("**Units**") and special voting units, of which 16,185,677 Units and 460,000 special voting units are issued and outstanding as at February 8, 2007.
3. The REIT was created for the purpose of acquiring, through Holloway Lodging Limited Partnership ("**Holloway Lodging LP**") and its holding companies, hotel properties for the benefit of holders of Units (the "**Unitholders**"). Presently, the REIT's hotel portfolio consists of nine hotel properties located across Canada.
4. Pacrim Hospitality Services Inc. ("**PHSI**") is a hotel management and development services corporation incorporated under the laws of Canada. The registered and head office of PHSI is in Halifax, Nova Scotia.
5. There is common management of the REIT and PHSI as follows: W. Glenn Squires is a trustee and officer of the REIT and a director and officer of PHSI; Edward C. Good is a trustee of the REIT and a director of PHSI; and Tracy Sherren is an officer of both the REIT and PHSI. In addition, W. Glenn Squires and Edward C. Good jointly have a 47.75% interest in PHSI through their holding company, Holloway Investments Inc.
6. PHSI provides advisory and property management services in respect of all of the properties of the REIT pursuant to a written hotel management agreement dated as of June 7, 2006 among the REIT, Holloway Lodging LP and PHSI (the "**Hotel Management Agreement**"). PHSI does not provide, and will not provide, services to the REIT in relation to the distribution or sale of securities, promotional/investor relation activities or the management of the REIT generally.
7. PHSI has been providing advisory and property management services to the REIT since the REIT acquired its first property in connection with a plan of arrangement involving Holloway Capital Corporation. PHSI spends a significant amount of time and attention on the affairs and business of the REIT.
8. Certain PHSI employees (the "**Non-Exempt Participants**"): (i) are engaged to provide services to the REIT other than in relation to a distribution; (ii) provide advisory and property management services in respect of all of the properties of the REIT pursuant to the Hotel Management Agreement; and (iii) spend a significant amount of time and attention on the affairs and business of the REIT.
9. The REIT currently expects that PHSI will continue to provide hotel management and development services for all future REIT property acquisitions. The REIT believes that the efforts of PHSI and its employees are crucial to the success of the REIT.
10. The REIT adopted a unit option plan on November 24, 2006 (the "**Plan**") for the purpose of developing the interest of employees, officers, directors and consultants of the REIT in the growth and development of the REIT.
11. Subject to regulatory approval, the trustees of the REIT have resolved to grant unit options under the Plan (the "**Options**") to the Non-Exempt Participants to purchase an aggregate of up to 62,000 Units, or approximately 0.4% of its currently issued and outstanding securities, in order to compensate the

Non-Exempt Participants in a way that more directly aligns their interests with those of the REIT and the Unitholders.

12. Under Section 2.24 of National Instrument 45-106 *Prospectus and Registration Exemptions* (“**NI 45-106**”), trades of REIT unit options to PHSI would be exempt from the registration and prospectus requirements of the Legislation since PHSI meets the Section 2.22 definition of “consultant”. Section 2.24 of NI 45-106 does not allow the REIT to issue unit options to the Non-Exempt Participants on a prospectus and registration exempt basis since the Non-Exempt Participants are not “consultants” to the REIT as defined in NI 45-106. Further, PHSI does not control the REIT for the purposes of Section 2.23 of NI 45-106 and is not a “related entity” of the REIT as defined in Section 2.2 of NI 45-106 such that the employees of PHSI may not receive unit options in reliance on Section 2.24 of NI 45-106. Accordingly, there is no exemption available under NI 45-106 for such trades to the Non-Exempt Participants.

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, for the purpose of the exemption from the Prospectus Requirements of the Legislation for first trades in Units acquired upon the exercise of Options under the Plan, the conditions of paragraphs 1 through 5 of subsection 2.6(3) of National Instrument 45-102 *Resale of Securities* are satisfied.

“H. Leslie O’Brien” (Name)

H. Leslie O’Brien

Chairman (Title)

Nova Scotia Securities Commission

“R. Daren Baxter” (Name)

R. Daren Baxter

“Vice-Chair” (Title)

Nova Scotia Securities Commission