

December 21, 2023

IN THE MATTER OF
THE SECURITIES LEGISLATION OF ONTARIO
(THE “JURISDICTION”)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF
APPLICATIONS IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
BRIDGEMARQ REAL ESTATE SERVICES INC.
(THE “FILER”)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the “**Application**”) from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the “**Legislation**”) that the Filer be granted an exemption pursuant to section 9.1 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (“**MI 61-101**”) from the minority approval and formal valuation requirements under Part 5 of MI 61-101 relating to any related party transaction of the Filer entered into indirectly through Residential Income Fund L.P. (the “**Partnership**”) or any other subsidiary entity (as such term is defined in MI 61-101) of the Partnership, if that transaction would qualify for the transaction size exemptions set out in sections 5.5(a) and 5.7(1)(a) of MI 61-101 if the indirect equity interest in the Filer, which is held by Brookfield BBP (Canada) Holdings LP (“**Brookfield**”) or any of its permitted transferees (as set out in the Partnership Agreement (as defined below)), in the form of exchangeable Class B limited partnership units of the Partnership (“**Exchangeable LP Units**”), was included in the calculation of the Filer’s market capitalization (the “**Exemption Sought**”).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

- (a) the Ontario Securities Commission is the principal regulator for the Application; and
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (“**MI 11-102**”) is intended to be relied upon in Alberta, Manitoba, New Brunswick, Quebec and Saskatchewan.

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 and MI 61-101 have the same meaning if used in this decision, unless otherwise defined herein.

Representations

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

1. The Filer is a corporation incorporated on October 28, 2010, under the laws of the Province of Ontario.
2. The Filer and its subsidiaries were originally structured as an income trust. Such structure was converted to a corporate structure on December 31, 2010 as a response to proposed tax changes for publicly traded income trusts. The restructuring was effected pursuant to an arrangement agreement. Each holder of units of Brookfield Real Estate Services Fund (the "**Fund**") received one Restricted Voting Share (as defined below) for each unit held. The rights attached to the Restricted Voting Shares are, in all material respects, identical to those that were attached to the units of the Fund. In addition, the special voting units of the Fund were redeemed by the Fund and Brookfield received one Special Voting Share (as defined below).
3. The Filer's head office is located at 39 Wynford Drive, Suite 200, Toronto, Ontario, M3C 3K5.
4. The Filer is a reporting issuer (or the equivalent thereof) in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec and Saskatchewan and, is not currently in default of any applicable requirements of the securities legislation thereunder.
5. The Filer is authorized to issue an unlimited number of restricted voting shares ("**Restricted Voting Shares**"), an unlimited number of preferred shares and one special voting share ("**Special Voting Share**"). As at the date hereof, the Filer has 9,483,850 Restricted Voting Shares, no preferred shares and one Special Voting Share issued and outstanding.
6. Brookfield holds the one Special Voting Share. The Special Voting Share is not transferable other than to affiliates of Brookfield.
7. The Restricted Voting Shares are listed and posted for trading on the Toronto Stock Exchange (the "**TSX**") under the trading symbol "BRE".
8. The Partnership is a limited partnership formed under the laws of the Province of Ontario and is governed by a second amended and restated limited partnership agreement dated as of December 31, 2012 (the "**Partnership Agreement**"). The Partnership's head office is located at 39 Wynford Drive, Suite 200, Toronto, Ontario, M3C 3K5.
9. The Partnership is not a reporting issuer (or the equivalent thereof) in any jurisdiction and none of its securities are listed or posted for trading on any stock exchange or other market.
10. The general partner of the Partnership (the "**General Partner**") is a corporation incorporated under the laws of the province of Ontario. The Filer and Brookfield own 75% and 25%, respectively, of the outstanding shares of the General Partner. The General Partner has the authority to manage the business and affairs of the Partnership.
11. The Partnership is authorized to issue (i) an unlimited number of Class A limited partnership units ("**Class A LP Units**"), of which 9,983,000 Class A LP Units are issued and outstanding

as at the date hereof and are held by the Filer and (ii) an unlimited number of Exchangeable LP Units, of which 3,327,667 Exchangeable LP Units are issued and outstanding as at the date hereof and are held by Brookfield. The Exchangeable LP Units were issued to Brookfield when the Filer was incorporated in connection with the Filer's indirect acquisition of certain assets from Brookfield.

12. The Exchangeable LP Units are, in all material respects, the economic equivalent of the Restricted Voting Shares on a per unit basis. The Exchangeable LP Units are exchangeable into Restricted Voting Shares on a one-for-one basis (subject to customary anti-dilution adjustments) at the option of the holder, at any time. In the past 5 years, the monthly distributions made on the Exchangeable LP Units have been equal to the monthly distributions made on the Class A LP Units paid to the Filer. Distributions on the Class A LP Units are used to pay income taxes and operating costs of the Filer and dividends on the Restricted Voting Shares of the Filer. The Exchangeable LP Units are voting units of the Partnership, and the Special Voting Share also entitles the holder of the Exchangeable LP Units to a number of votes at any meeting of Restricted Voting Shares (except that the holder of the Special Voting Share is not entitled to vote for the election of the elected directors) equal to the number of Restricted Voting Shares that would be obtained upon the exchange of all the Exchangeable LP Units held by the holder and/or its affiliates. The Exchangeable LP Units are transferable, subject to the satisfaction of the applicable conditions set forth in the Partnership Agreement. The Exchangeable LP Units are not exchangeable for securities other than the Restricted Voting Shares nor are they redeemable for cash.
13. The operating business of the Filer is carried on by the Partnership. The principal activity of the Partnership is to conduct the business of a franchisor of residential property brokerage franchises and to carry out all activities consistent with the strategy of the Filer and the Fourth Amended and Restated Management Services Agreement dated as of November 6, 2018, among, *inter alia*, the Filer, the Partnership and Bridgemarq Real Estate Services Manager Limited.
14. As at the date hereof, Brookfield holds an approximate 28.4% effective interest in the Filer on a fully-diluted basis through ownership of 315,000 Restricted Voting Shares and all of the 3,327,667 issued and outstanding Exchangeable LP Units.
15. It is anticipated that the Filer may from time to time enter into transactions with certain related parties (as such term is defined in MI 61-101), including Brookfield or any of its affiliates, indirectly through the Partnership or its subsidiaries.
16. If Part 5 of MI 61-101 applies to a related party transaction by an issuer and the transaction is not otherwise exempt:
 - (a) the issuer must obtain a formal valuation of the transaction in a form satisfying the requirements of MI 61-101 prepared by an independent valuator; and
 - (b) the issuer must obtain approval of the transaction by disinterested holders of the affected securities of the issuer (requirements (a) and (b) are collectively referred to as the "**Minority Protections**").
17. A related party transaction that is subject to MI 61-101 may be exempt from the Minority Protections if, at the time the transaction is agreed to, neither the fair market value of the subject matter of, nor the fair market value of the consideration for, the transaction, exceeds 25% of the issuer's market capitalization (the "**Transaction Size Exemption**").
18. The Filer may not be entitled to rely on the Transaction Size Exemption available under MI 61-101 from the requirements relating to related party transactions in MI 61-101 because the

definition of “market capitalization” in MI 61-101 does not contemplate securities of another entity that are exchangeable into equity securities of the issuer.

19. The Exchangeable LP Units represent part of the equity value of the Filer and provide the holder of the Exchangeable LP Units with economic rights which are, in all material respects, equivalent to the Restricted Voting Shares. The effect of Brookfield’s exchange right is that Brookfield will receive Restricted Voting Shares upon the exchange of the Exchangeable LP Units. Moreover, the economic interests that underlie the Exchangeable LP Units are identical to those underlying the Restricted Voting Shares; namely, the assets held directly or indirectly by the Partnership.
20. If the Exchangeable LP Units are not included in the market capitalization of the Filer, the equity value of the Filer will be understated by the value of the interest in the Partnership represented by Brookfield’s Exchangeable LP Units (approximately 25% as of the date hereof). As a result, related party transactions by the Filer may be subject to the Minority Protections in circumstances where the fair market value of the transaction is effectively less than 25% of the fully-diluted market capitalization of the Filer.
21. Section 1.4 of MI 61-101 treats an operating entity of an “income trust”, as such term is defined in National Policy 41-201 *Income Trusts and Other Indirect Offerings* (“**NP 41-201**”), on a consolidated basis with its parent trust entity for the purpose of determining which entities are related parties of the issuer and which transactions MI 61-101 should apply. Section 1.2 of NP 41-201 provides that references to an “income trust” refer to a trust or other entity (including corporate and non-corporate entities) that issues securities which provide for participation by the holder in net cash flows generated by an underlying business owned by the trust or other entity. Therefore, it is consistent with MI 61-101 that securities of the operating entity, such as the Exchangeable LP Units, be treated on a consolidated basis for the purposes of the Transaction Size Exemption.
22. The inclusion of the Exchangeable LP Units when determining the Filer’s market capitalization pursuant to MI 61-101 is consistent with the logic of including unlisted equity securities of the issuer which are convertible into listed securities of the issuer in determining an issuer’s market capitalization in that both are securities that are considered part of the equity value of the issuer whose value is measured on the basis of the listed securities into which they are convertible or exchangeable.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that:

- (a) the applicable transaction would qualify for the Transaction Size Exemption contained in MI 61-101 if the Exchangeable LP Units were considered an outstanding class of equity securities of the Filer that were convertible into Restricted Voting Shares;
- (b) there is no material change to the terms of the Exchangeable LP Units and the Special Voting Share, including the exchange rights associated therewith, as described above and in the Articles of Incorporation of the Filer, the Partnership Agreement and the Amended and Restated Exchange Agreement dated December 31, 2012, whether by amendment to such documents, contractual agreement or otherwise;

- (c) the applicable transaction is made in compliance with the rules and policies of the TSX or such other exchange upon which the Filer's securities trade; and
- (d) any material change report filed in respect of a related party transaction in which the Exemption Sought is applicable and any annual information form or equivalent of the Filer that is filed or required to be filed in accordance with applicable Canadian securities law, contains the following disclosure, with any immaterial modifications as the context may require:

"Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* ("MI 61-101") provides a number of circumstances in which a transaction between an issuer and a related party may be subject to formal valuation and minority approval requirements under MI 61-101. An exemption from such requirements is available when the fair market value of the transaction does not exceed 25% of the market capitalization of the issuer. Bridgemarq Real Estate Services Inc. has been granted exemptive relief from the requirements of MI 61-101 that, subject to certain conditions, permits it to be exempt from the minority approval and formal valuation requirements for transactions that would have a value of less than 25% of Bridgemarq Real Estate Services Inc.'s market capitalization, if the exchangeable Class B limited partnership units of Residential Income Fund L.P. held by Brookfield BBP (Canada) Holdings LP are included in the calculation of Bridgemarq Real Estate Services Inc.'s market capitalization. As a result, the 25% threshold, above which the minority approval and formal valuation requirements would apply, is increased to include the approximately 25% indirect exchangeable equity interest in Bridgemarq Real Estate Services Inc. held by Brookfield BBP (Canada) Holdings LP in the form of exchangeable Class B limited partnership units of Residential Income Fund L.P."

By: "David Mendicino"
Manager, Office of Mergers &
Acquisitions
Ontario Securities Commission