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June 5, 2012

## **Headnote**

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions – Securities Act*, R.S.B.C. 1996, c. 418, section 76 – Other - Exemption from prospectus requirement for situations other than a corporate acquisition or reorganization; distributions to business associates; debt settlements; or distributions involving employee investment plans and consultants - A not-for-profit issuer issues its securities to investors who acquire them for reasons other than the anticipation of financial gain; the security holders will receive an offering document that contains disclosure about the terms and conditions of the securities, the history and operations of the issuer, the organizational structure of the Filer, and audited financial statements of the issuer for its most recently completed fiscal year

## **Applicable Legislative Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, s. 61 and 76

In the Matter of  
the Securities Legislation of  
British Columbia  
(the Jurisdiction)

and

In the Matter of  
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the matter of  
Terminal City Club Inc.  
(the Filer)

## **Decision**

## **Background**

- ¶ 1 The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the

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principal regulator (the Legislation) for an exemption from the prospectus requirement of the Legislation (the Exemption Sought).

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

- (a) the British Columbia Securities Commission is the principal regulator for this 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.

### **Interpretation**

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

### **Representations**

- ¶ 3 This decision is based on the following facts represented by the Filer:
- 1. it began in 1892 and was registered under the British Columbia *Societies Act* on December 10, 1953; effective December 6, 1989, the Filer converted into a British Columbia company under the *Company Act* (British Columbia); the Filer is currently a British Columbia corporation;
  - 2. it converted to a corporation in order for the Filer to effectively develop its real estate, which includes dining, meeting and recreational facilities, retail space, parking facilities, a pub and a hotel operated by the Filer, the revenues from which subsidize the Filer's operating expenses;
  - 3. its current authorized capital is 100,000 common shares, each with a par value of \$1.00;
  - 4. it is organized exclusively for recreational purposes and operates on a not for profit basis;
  - 5. upon being accepted into the club, each member of the Filer (shareholder) receives one common share of the Filer; the Filer has distributed common shares at prices in the range of between \$1.00 and \$10,000.00 per common share;
  - 6. each shareholder has access to the Filer's concierge services, fitness facilities, swimming pool, billiards room, reading room, restaurants and pub, which are

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located at the Filer's premises in downtown Vancouver; shareholders also have access to a network of affiliated clubs;

7. under its Articles
  - (a) it is prohibited from paying dividends to its shareholders;
  - (b) its common shares are non-transferable other than to the Filer for \$1.00; and in the case of the merger or similar reorganization of a corporate shareholder and then only with the consent of the directors of the Filer;
  - (c) its common shares will be redeemable by the Filer, at the par value per common share, upon the occurrence of certain events including death of a shareholder, breach of the Filer's membership agreement or the Filer's house rules, termination of the shareholder's membership, and purported transfer of a common share by a shareholder without the consent of the Filer's directors;
8. as of January 1, 2012, it has 1,510 shareholders; the majority of whom are resident in British Columbia;
9. from the Filer's conversion to a company in 1989 to October of 2010, the Filer distributed common shares to its shareholders under the "not for profit issuer" exemption under applicable securities laws; the Filer continues to operate on a not for profit basis, however, the Filer has remunerated and intends on remunerating sales staff to increase new member sales and is therefore no longer eligible to utilize the "not for profit issuer" exemption under National Instrument 45-106 – *Prospectus and Registration Exemptions*; and
10. it is not a reporting issuer and does not intend to become a reporting issuer; its common shares have never been traded on any stock exchange, there is no market for the common shares in Canada or elsewhere, the Filer does not intend to list the common shares on any exchange or market or to conduct an initial public offering of the common shares.

### Decision

- ¶ 4 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 Filer is organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit;

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- (b) no part of the net earnings of the Filer, if any, benefit any shareholder of the Filer;
- (c) the proceeds from the sale of common shares representing membership in the Filer will be used only for the repayment of debt and for general working capital purposes;
- (d) no commissions or other remuneration is paid in connection with the sale of common shares other than to directors, officers, employees or consultants of the Filer or to current shareholders for referrals to new shareholders;
- (e) the Filer has delivered a copy of this decision to each prospective shareholder;
- (f) the Filer has delivered an offering document that contains disclosure about the terms and conditions of the common shares, the history and operations of the Filer, the organizational structure of the Filer, the restrictions on transfer of the common shares, that the common shares do not represent the possibility of profit or provide dividends, distributions, tax or other benefits to the shareholders that are typically associated with other securities, and audited financial statements of the Filer for its most recently completed fiscal year;
- (g) the Filer maintains a website on which it posts certain information, including information regarding obtaining a membership through the acquisition of a common share of the Filer; and
- (h) the common shares are non-transferable other than in accordance with the Filer's Articles.

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British Columbia Securities Commission