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July 27, 2012

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* - National Instrument 51-102, s. 13.1 Continuous Disclosure Obligations - Information circular - An issuer wants relief from the requirement to include prospectus-level disclosure in an information circular to be circulated in connection with an arrangement, reorganization, acquisition or amalgamation - The issuer is only internally restructuring, not adding or removing any assets or changing the shareholders' proportionate interest in the issuer's operations; the issuer will provide sufficient information about the transaction for shareholders to understand the restructuring

National Instrument 44-101, s. 8.1 Short Form Prospectus Distributions - An issuer wants relief from the qualification criteria in NI 44-101 so it can file a short form prospectus - The issuer is a new reporting issuer that is the continuation of an existing business; the issuer satisfies all the criteria for the exemption in s. 2.7 except that the audited comparative annual financial statements incorporated in its final prospectus are not its own, but are the financial statements of the existing business

National Instrument 44-101, s. 8.1 Short Form Prospectus Distributions - The filer wants to file its short form prospectus less than 10 days after it files its notice of intention to file a short form prospectus - The issuer is a successor issuer resulting from the conversion of an income fund under a plan of arrangement; the issuer would be entitled to rely on the exemption for successor issuers in s. 2.7(2) except that the financial statements incorporated into the information circular are not its own but are those of the existing business; the issuer is otherwise qualified to file a short form prospectus; the existing business is not required to file a notice of intention by virtue of 2.8(4); the relevant continuous disclosure for investors under the offering is the continuous disclosure of the fund, which will be incorporated by reference into the short form prospectus

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s.

National Instrument 51-102, s. 13.1

National Instrument 44-101, s. 8.1

In the Matter of
the Securities Legislation of British Columbia and Ontario
(the Jurisdictions)

and

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

and

In the Matter of
WesternOne Equity Income Fund
(the Fund)
and
WesternOne Equity Inc.
(New WesternOne, and together with the Fund, the Applicants)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Applicant for a decision under the securities legislation of the Jurisdictions (the Legislation):
- (a) exempting the Fund from the requirement under Item 14.2 of Form 51-102F5 *Information Circular* (the Circular Form) of the Legislation to include in the management information circular (Information Circular) to be prepared by the Fund and delivered to the holders (Unitholders) of Fund units (Units) in connection with a special meeting (Meeting) of Unitholders expected to be held on or about September 5, 2012 for the purposes of considering a plan of arrangement under the *Canada Business Corporations Act* (the CBCA) resulting in the internal reorganization of the Fund's trust structure into a corporate structure (the Conversion Transaction):
 - (i) the financial statements of WEQ Deerfoot Rental LP (WEQ Deerfoot LP), WEQ Britco LP, WEQ Production Equipment LP, WEQ Old Country Rentals LP, WEQ C&N Rentals LP and WEQ Heat & Propane LP (collectively, the Operating Partnerships) for the financial years ended December 31, 2011, December 31, 2010 and December 31, 2009;
 - (ii) the financial statements New WesternOne for the period from the date New WesternOne was formed to a date not more than 90 days before the date of the Information Circular;

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- (iii) the corresponding management's discussion and analysis for the financial years ended December 31, 2011 and December 31, 2010 and the three month period ended March 31, 2012 (the Circular Relief);
- (b) exempting New WesternOne from the qualification criteria for short form prospectus eligibility contained in Section 2.2(d) of National Instrument 44-101 *Short Form Prospectus Distributions* (NI 44-101) following completion of the Conversion Transaction until the earlier of:
 - (i) March 31, 2013; and
 - (ii) the date upon which New WesternOne has filed both its annual financial statements and annual information form for the year ended December 31, 2013 pursuant to NI 51-102 *Continuous Disclosure Obligations* (NI 51-102) (the Qualification Relief); and
- (c) exempting New WesternOne from the requirement to file a notice declaring its intention to be qualified to file a short form prospectus at least 10 business days prior to the filing of its first preliminary short form prospectus after the notice (the Prospectus Relief).

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

- (a) the British Columbia Securities Commission is the principal regulator for this Application;
- (b) the Applicants have provided notice that sub-section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador; and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Intpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 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 Applicant:

The WesternOne Entities

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1. the Fund is an unincorporated, open-ended limited purpose trust established under the laws of the Province of British Columbia on June 14, 2006;
2. the Fund's head office is located at Suite 910, 925 West Georgia Street, Vancouver, British Columbia V6C 3L2;
3. the Fund is a reporting issuer (or the equivalent thereof) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador and is currently not in default of the securities legislation of any jurisdiction;
4. the Fund is authorized to issue an unlimited number of Fund units (Units) and special voting units (Special Voting Units); as at June 27, 2012, the Fund had 19,932,770 units issued and outstanding and no special voting units issued and outstanding; the Units are listed and posted for trading on the TSX under the trading symbol "WEQ.UN";
5. the Fund has two series of convertible debentures issued and outstanding; in February 2010, the Fund issued a total of \$27,600,000 principal amount of 8.5% convertible unsecured subordinated debentures at an issue price of \$1,000 (Series B Debentures); as at June 27, 2012, \$13,601,000 principal amount of Series B Debentures remained issued and outstanding; the Series B Debentures are listed and posted for trading on the TSX under the trading symbol "WEQ.DB.B";
6. in June 2011, the Fund issued a total of \$86,250,000 principal amount of 8.0% convertible unsecured subordinated debentures at an issue price of \$1,000 (Series C Debentures, together with the Series B Debentures, Debentures); as at June 27, 2012, \$86,250,000 principal amount of Series C Debentures remained issued and outstanding; the Series C Debentures are listed and posted for trading on the TSX under the trading symbol "WEQ.DB.C";
7. the Fund has filed an "AIF" and has "current financial statements" (as such terms are defined in NI 44-101) for the financial year ended December 31, 2011;
8. the Fund holds all of the trust units of WesternOne Equity Operating Trust (Trust), an unincorporated, open-ended limited purpose trust established under the laws of the Province of British Columbia on June 14, 2006, and holds all of the outstanding common shares of WesternOne Equity GP Inc. (WesternOne GP);

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9. the Trust holds all of the limited partnership units of WesternOne Equity LP (WesternOne LP); WesternOne LP is a limited partnership formed under the laws of the Province of Manitoba on June 15, 2006; WesternOne GP is the general partner of WesternOne LP and administrator of the Fund; it is a corporation incorporated under the laws of Canada on June 8, 2006;
10. WesternOne LP holds, either directly or indirectly, all of the limited partnership units of the Operating Partnerships. Collectively, the Operating Partnerships hold substantially all of the assets and properties of, and carry on the business of, the Fund;
11. Big Bash Inc. (Big Bash) holds all of the exchangeable units of WEQ Deerfoot LP (the Exchangeable Units). Big Bash may exchange its 125,000 Exchangeable Units into Units on a one-for-one basis in accordance with the terms of the WEQ Deerfoot LP limited partnership agreement dated January 25, 2008 and the exchange agreement between the Fund, the Trust, WesternOne LP, WesternOne GP, WEQ Deerfoot LP, WEQ Deerfoot Rentals GP Inc. and Big Bash dated February 15, 2008; the Exchangeable Units are not listed or posted for trading on any exchange or quotation and trade reporting system;
12. WesternOne LP and the Operating Partnerships are not reporting issuers (or the equivalent thereof) in any jurisdiction;
13. New WesternOne is a direct wholly-owned subsidiary of the Fund and will have conducted no business prior to the effective date of the Conversion Transaction;
14. pursuant to the Conversion Transaction: (i) the Units and Exchangeable Units will be cancelled; (ii) common shares of New WesternOne (WesternOne Shares) will be distributed to holders of Units on a one-for-one basis; (iii) WesternOne Shares will be distributed to holders of Exchangeable Units on a one-for-one basis; (iv) the Fund and the Trust will be dissolved; (v) the Operating Partnerships will continue to carry on the business presently carried out on behalf of the Fund; (vi) New WesternOne will own, directly or indirectly, all of the existing assets and assume all of the exiting liabilities of the Fund and the Trust, effectively resulting in the internal reorganization of the Fund's trust structure into a corporate structure;
15. following the completion of the Conversion Transaction: (i) the business of New WesternOne will be the current business of the Fund; (ii) New WesternOne will be a reporting issuer or the equivalent under the securities legislation in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario,

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New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador; (iii) all Unitholders of the Fund will own WesternOne Shares, rather than Units; and (iv) the WesternOne Shares and the Debentures will, subject to approval by the TSX, be listed on the TSX;

16. the Conversion Transaction will not result in a change in beneficial ownership of the assets and liabilities of the Fund and New WesternOne will continue to carry on the business of the Operating Partnerships following the Conversion Transaction; the Conversion Transaction will be an internal reorganization undertaken without dilution to the Unitholders. The Unitholders will, following completion of the Conversion Transaction, be the shareholders of New WesternOne;
17. under the Fund's constating documents, the CBCA and applicable securities laws, Unitholders will be required to approve the Conversion Transaction at the Meeting; the Conversion Transaction must be approved by not less than two-thirds of the votes cast by Unitholders at the Meeting; the Meeting is anticipated to take place on or about September 5, 2012 and the Information Circular is expected to be mailed by end of July 2012;
18. the Conversion Transaction will be accounted for on a continuity of interest basis and accordingly, following the Conversion Transaction, the comparative consolidated financial statements for New WesternOne prior to the Conversion Transaction will reflect the financial position, results of operation of cash flows as if New WesternOne had always carried on the business formerly carried on by the Fund;
19. the Conversion Transaction will be a "restructuring transaction" under NI 51-102 in respect of the Fund and therefore will require compliance with Section 14.2 of the Circular Form;
20. Item 14.2 of the Circular Form requires, among other items, that the Information Circular contain the disclosure (including financial statements and management's discussion and analysis) prescribed under securities legislation and described in the form of prospectus that New WesternOne would be eligible to use immediately prior to the sending and filing of the Information Circular for a distribution of its securities; therefore, the Information Circular must contain the disclosure in respect of New WesternOne prescribed by Form 41-101F1 - *Information Required in a Prospectus* (the Prospectus Form) and by NI 41-101;
21. as New WesternOne will not have been in existence for three years on the date of the Information Circular, Item 32.1(a) of the Prospectus Form requires that

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the financial statements of the Operating Partnerships be included as the Operating Partnerships are the predecessor entities that will form the business of New WesternOne;

22. items 8.2(1)(a) and 8.2(2) of the Prospectus Form require the Fund to include management's discussion and analysis corresponding to each of the financial years ended December 31, 2011 and December 31, 2010 and the interim period ended March 31, 2011 of the Operating Partnerships (the MD&A) in the Information Circular;
23. item 32.2 of the Prospectus Form requires the Fund to include certain annual financial statements of the Operating Partnerships and New WesternOne in the Information Circular, including: (i) a statement of comprehensive income, a statement of changes in equity, a statement of cash flows and a statement of financial position of the Operating Partnerships for the financial year ended December 31, 2011; (ii) the opening IFRS statements of financial position of the Operating Partnerships as at January 1, 2011; (iii) a statements of income, retained earnings and cash flows of the Operating Partnerships for each of the financial years ended December 31, 2010 and December 31, 2009; (iv) a statement of comprehensive income, a statement of changes in equity, a statement of cash flows and a statement of financial position of New WesternOne for a period from the date New WesternOne was formed to a date not more than 90 days before the date of the Information Circular; and (v) a balance sheet of the Operating Partnerships as at the end of December 31, 2010 (the Annual Financial Statements); in addition, Item 32.3 of the Prospectus Form requires the Applicant to include certain comparative statements of the Operating Partnerships and New WesternOne in the Information Circular (the Interim Financial Statements), including: a statement of financial position, a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for each of New WesternOne and the Operating Partnerships as at the end of the most recent interim period ended more than 45 days before the date of the Information Circular (collectively, the Financial Statements);
24. sub-section 4.2(1) of NI 41-101 requires that the Annual Financial Statements required to be included in the Information Circular must be audited in accordance with National Instrument 52-107 - *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (NI 52-107);
25. New WesternOne was established by the Fund for the exclusive purpose of effecting the Conversion Transaction and will have no material assets (other than a nominal amount of cash) or business operations prior to the Effective

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Date. An audited statement of financial position of New WesternOne as at July 1, 2012 will be included in the Information Circular;

26. the financial statements of the Fund are reported on a consolidated basis, which includes the Fund's proportionate share of the financial results of the Operating Partnerships; the Operating Partnerships do not report financial results independently from the consolidated financial statements of the Fund; the Financial Statements and the MD&A, if prepared, would include the full income of the Operating Partnerships, not the appropriate Fund's proportionate share of the income of the Operating Partnerships; management believes that the Financial Statements are not relevant and could be misleading since there are transactions related to income taxes, the share of WEQ Deerfoot LP partnership income allocated to the Exchangeable Units and unitholders' equity which are not reflected in the Operating Partnerships financial statements; these transactions are presented in the Fund's financial statements when consolidation of the Fund and the Operating Partnerships is performed; to present the Financial Statements and the MD&A in the Information Circular, which would exclude these transactions, would present a significantly different income statement when compared with the consolidated financial statements of the Fund; as a result, the presentation of these financial statements would present a confusing (and potentially misleading) picture of financial performance;
27. the Financial Statements and the MD&A are not relevant to the Unitholders for the purposes of considering the Conversion Transaction since New WesternOne has no assets or liabilities and the Financial Statements and the MD&A would be substantially and materially the same as the consolidated financial statements of the Fund filed in accordance with Part 4 of NI 51-102 because the financial position of the entity that exists both before and after the Conversion Transaction is substantially the same;
28. the Information Circular will contain prospectus level disclosure in accordance with the Prospectus Form (other than the Financial Statements and MD&A) and will contain sufficient information to enable a reasonable Unitholder to form a reasoned judgement concerning the nature and effect of the Conversion Transaction and the nature of the resultant public entity and reporting issuer from the Conversion Transaction, being New WesternOne;
29. the Information Circular will incorporate by reference the following:
 - (a) the Fund's AIF dated March 29, 2012;

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- (b) the audited comparative consolidated financial statements of the Fund as at and for the years ended December 31, 2011 and 2010, together with the notes thereto and the auditors' report thereon;
- (c) the unaudited comparative consolidated financial statements of the Fund as at and for the three months ended March 31, 2012 and 2011, respectively, together with the notes thereto;
- (d) management's discussion and analysis of the financial condition and results of operations of the Fund for the years ended December 31, 2011 and 2010 and for the three months ended March 31, 2012 and 2011 respectively;
- (e) the Fund's management information circular dated April 3, 2012; and
- (f) the material change report relating to the announcement of the Arrangement dated July 19, 2012

(collectively, the Fund's Information);

- 30. sub-section 2.7(2) of NI 44-101 contains an exemption for successor issuers from the qualification criteria for short form prospectus eligibility contained in Section 2.2(d) of NI 44-101, if an information circular relating to the restructuring transaction that resulted in the successor issuer was filed by the successor issuer or an issuer that was a party to the restructuring transaction, and such information circular: (i) complied with applicable securities legislation; and (ii) included disclosure in accordance with Item 14.2 or 14.5 of the Circular Form of the successor issuer; New WesternOne cannot rely on this exemption because the Financial Statements and MD&A will not be included in the Information Circular if the Circular Relief is granted;
- 31. the Fund is qualified to file a prospectus in the form of a short form prospectus pursuant to Section 2.2 of NI 44-101 and is deemed to have filed a notice of intention to be qualified to file a short form prospectus under Section 2.8(4) of NI 44-101;
- 32. the Fund anticipates that New WesternOne may wish to file a preliminary short form prospectus following the completion of the Conversion Transaction, relating to the offering or potential offering of securities (including common shares, debt securities or subscription receipts) of New WesternOne;

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33. in anticipation of the filing of a preliminary short form prospectus, and assuming the Conversion Transaction has been completed, New WesternOne intends to file a notice of intention to be qualified to file a short form prospectus (the Notice of Intention) following completion of the Conversion Transaction; in the absence of the Prospectus Relief, New WesternOne will not be qualified to file a preliminary short form prospectus until 10 business days from the date upon which the Notice of Intention is filed;
34. pursuant to the qualification criteria set forth in Section 2.2 of NI 44-101 as modified in the Qualification Relief, following the Conversion Transaction, New WesternOne will be qualified to file a short form prospectus under NI 44-101;
35. notwithstanding Section 2.2 of NI 44-101 as modified in the Qualification Relief, Section 2.8(1) of NI 44-101 provides that an issuer is not qualified to file a short form prospectus unless it has filed a notice declaring its intention to be qualified to file a short form prospectus at least 10 business days prior to the issuer filing its first preliminary short form prospectus; and
36. the short form prospectus of New WesternOne will incorporate by reference the documents that would be required to be incorporated by reference under Item 11 of Form 44-101 F1 in a short form prospectus of New WesternOne, as modified by the Qualification Relief.

Decision

- ¶ 4 Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that:

- (a) the Circular Relief is granted provided that the Information Circular:
 - (i) incorporates by reference the Fund's Information; and
 - (ii) discloses that New WesternOne is a newly incorporated entity that has no material assets, income or liabilities;
- (b) the Qualification Relief is granted provided that any short form prospectus filed by New WesternOne pursuant to NI 44-101 during the currency of the Qualification Relief specifically incorporates by reference:

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- (i) the Information Circular and any financial statements and related management's discussion and analysis of the Fund incorporated by reference therein;
- (ii) any financial statements, management's discussion and analysis, material change reports or other documents that would have to be incorporated by reference in any short form prospectus filed by the Fund; and
- (c) the Prospectus Relief is granted, provided that at the time New WesternOne files its Notice of Intention, New WesternOne meets the requirements of Section 2.2 of NI 44-101, as modified by the Qualification Relief.

Andrew S. Richardson, CA
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British Columbia Securities Commission