

Citation: 2013 BCSECCOM 479

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 – BAR – An issuer requires relief from the requirement to file a business acquisition report – The acquisition is insignificant applying the asset and investment tests; applying the income test produces an anomalous result because the filer’s financial statements for the period from formation to the end of its first fiscal year reflect only four days of operations; the filer has provided additional measures that demonstrate the insignificance of the property to the filer and that are generally consistent with the results when applying the asset and investment tests

Applicable British Columbia Legislative Provisions

National Instrument 51-102, s. 13.1

October 23, 2013

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

and

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

and

In the Matter of
FAM Real Estate Investment Trust
(the Filer)

Decision

Background

¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) granting relief from the requirement in Part 8 of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) to file a business acquisition report (BAR) in connection with the Filer's acquisition of a property located at 2655 and 2695 North Sheridan Way, Mississauga, Ontario, Canada (the Property), which was completed on August 14, 2013 (the Exemption Sought).

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 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 by the Filer in Alberta, Saskatchewan, Manitoba, Quebec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut, and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 and NI 51-102 have the same meaning if used in this decision, unless otherwise defined in this decision.

Representations

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

The Filer

1. the Filer is an unincorporated open-ended real estate investment trust established under the laws of the Province of Ontario pursuant to a declaration of trust with its head office in Richmond, British Columbia;
2. the Filer is a reporting issuer under the securities legislation of each of the provinces and territories of Canada;
3. the units of the Filer are listed and posted for trading on the Toronto Stock Exchange under the trading symbol “F.UN”;
4. the Filer completed its initial public offering (the IPO) on December 28, 2012 pursuant to a final long form prospectus dated December 17, 2012;
5. the proceeds of the IPO were used by the Filer to indirectly acquire a portfolio of 27 income-producing properties located in Manitoba (eighteen properties), Alberta (four properties), Saskatchewan (two properties), Ontario (two properties) and the Northwest Territories (one property) from Huntingdon Capital Corp.;

The Acquisition

6. on August 14, 2013, the Filer acquired the Property for a total gross purchase price of approximately \$39 million pursuant to a purchase and sale agreement entered into by an indirect wholly-owned subsidiary of the Filer;

7. the acquisition of the Property constitutes a “significant acquisition” of the Filer for purposes of Part 8 of NI 51-102, requiring the Filer to file a BAR within 75 days of the acquisition pursuant to section 8.2(1) of NI 51-102;

Significance Tests for the BAR

8. under Part 8 of NI 51-102, the Filer is required to file a BAR for any completed acquisition that is determined to be significant based on the acquisition satisfying any of the three significance tests set out in section 8.3(2) of NI 51-102;
9. the acquisition of the Property is not a significant acquisition under the asset test in section 8.3(2) of NI 51-102 as the value of the Property represented only approximately 19.22% of the consolidated assets of the Filer as of December 31, 2012;
10. the acquisition of the Property is not a significant acquisition under the investment test in section 8.3(2) of NI 51-102 as the Filer's acquisition costs represented only approximately 19.22% of the consolidated assets of the Filer as of December 31, 2012;
11. however, the acquisition of the Property would be a significant acquisition under the profit or loss test in section 8.3(2) of NI 51-102; in particular, the Filer’s proportionate share of the consolidated specified profit or loss of the Property exceeds 20% of the consolidated specified profit or loss of the Filer calculated using the audited annual financial statements of each of the Filer and the Property for the most recently completed financial year of each ended before the acquisition date;
12. on March 8, 2013, the Filer filed audited financial statements for the period from August 27, 2012 to December 31, 2012 (the 2012 Financial Statements); the 2012 Financial Statements relate to the period from the date of formation of the Filer on August 27, 2012 to the end of its first fiscal year on December 31, 2012, but reflect only four days of operations, namely from December 28, 2012 (the date of the closing of the IPO) to December 31, 2012 (the Filer’s first fiscal year end); as a result, the application of the profit or loss test produces an anomalous result for the Filer; the significance of the Property as compared to the Filer is exaggerated out of proportion to its significance on an objective basis, in comparison to the results of the asset test and the investment test and relative to annualized financials;

De Minimis Acquisition

13. the Filer does not believe (nor did it believe at the time that it made the acquisition) that the acquisition of the Property is significant to it from a practical, commercial, business or financial perspective; and
14. the Filer has provided the principal regulator with additional measures that demonstrate the insignificance of the acquisition of the Property to the Filer; the additional measures are generally consistent with the results of the asset test and the investment test.

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.

Brent W. Aitken
Vice Chair
British Columbia Securities Commission