

2003 BCSECCOM 104

Headnote

Relief from registration and prospectus requirements for certain funds in connection with issuing units to cooperative associations and non-profit organizations that are housing providers

Exemption Order

Pooled Capital Management Corp.

Sections 48 and 76 of the *Securities Act*, R.S.B.C. 1996, c. 418

Background

- ¶ 1 Pooled Capital applied for an exemption that the requirements to be registered to trade and to file and obtain receipts for a preliminary prospectus and prospectus in sections 34(1)(a) and 61 of the Act (the Registration and Prospectus Requirements) shall not apply to certain funds.

Representations

- ¶ 2 Pooled Capital represents that:
1. it is a company formed under the laws of British Columbia;
 2. it intends to create certain funds that will invest primarily in money market securities, fixed income securities issued by Canadian governments and corporations and/or in first mortgages (collectively, the funds);
 3. it will act as the manager of the funds;
 4. it is creating the funds to make investment opportunities and professional portfolio management services available to cooperative associations and non-profit organizations that are housing providers (either exclusively or non-exclusively) in British Columbia (the investors), including members of the British Columbia Non-Profit Housing Association and the Co-operative Housing Federation of British Columbia;
 5. the funds will not be reporting issuers under the Act or under the securities legislation of any other jurisdiction in Canada;
 6. each fund will be required to comply with investment restrictions substantially similar to the investment restrictions set out in:

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- (a) Part 2 of National Instrument 81-102 *Mutual Funds*, or any successor instrument, except with respect to investments by a fund in mortgages; and
 - (b) National Policy No. 29 *Mutual Funds Investing in Mortgages*, or any successor instrument, with respect to investments by a fund in mortgages;
7. the units or equivalent interests (the units) of a fund will represent equal, undivided interests in the net assets of the fund;
 8. the units will be non-transferrable (other than by operation of law), but will be redeemable periodically at the option of the investors according to procedures set out in either the fund's constating documents or offering memorandum or both;
 9. an investment adviser or advisers registered under the Act will manage the investment portfolios of the funds;
 10. the units will be offered under an offering memorandum, which will provide the investors with contractual rights of action for misrepresentations in the offering memorandum;
 11. the offering memorandum will include a certificate of the manager in substantially the same form as that required under section 4.4 of Multilateral Instrument 45-103 *Capital Raising Exemptions*, or any successor instrument;
 12. any net income earned by Pooled Capital in its role as manager or similar administrative roles for the funds is expected to be used for non-profit purposes, in connection with providing housing in British Columbia;
 13. any returns on investment earned by investors from their investments in units are expected to be used for either non-profit purposes or in accordance with cooperative principles or both; and
 14. each holder of units will be entitled to receive interim 6 month and annual financial statements of a fund and account statements setting out the holder's participation in a fund.

Order

¶ 3 Because it is not prejudicial to the public interest, the Executive Director orders:

1. under sections 48 and 76 of the Act, that a trade in a unit by a fund to an investor is exempt from the Registration and Prospectus Requirements; and

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2. under section 76 of the Act, that a trade in a unit acquired by an investor under this order is deemed to be a distribution.

¶ 4 February 4, 2003

Brenda Leong
Director