

Citation: 2012 BCSECCOM 496

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 include certain financial statements in a business acquisition report – The issuer is a real estate investment trust that acquired individual real estate properties; the issuer has been unable to obtain the information needed to prepare the required financial statements; the BAR will contain sufficient alternative information about the significant acquisition, which is consistent with industry practices and standards in real estate acquisitions

Applicable Legislative Provisions

National Instrument 51-102, ss. 8.4 and 13.1 *Continuous Disclosure Obligations*

December 20, 2012

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
Sunstone U.S. Opportunity (No.4) Realty Trust
and Sunstone (No.4) Limited Partnership
(the Filer)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) exempting the Filer

from the requirements in section 8.4 of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) to include certain financial statements in a business acquisition report (BAR) (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 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.

Interpretation

- ¶ 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 Filer:
- 1. Sunstone U.S. Opportunity (No.4) Realty Trust is an unincorporated, open-ended real estate investment trust formed pursuant to a Declaration of Trust dated February 11, 2011, under and governed by the laws of British Columbia;
 - 2. Sunstone (No.4) Limited Partnership is a limited partnership formed pursuant to and governed by the laws of Nevada and created by a Limited Partnership Agreement dated February 9, 2011;
 - 3. the Filer's head office is located at Suite 910 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2;
 - 4. the Filer's financial year end is December 31;
 - 5. on June 28, 2011, the Filer acquired its interest in Broadstone Grand Parkway (Grand Parkway) located in Katy, Texas, for \$29,250,000;

6. the Filer financed the acquisition of its interest in Grand Parkway through a combination of new mortgage financing of approximately \$20,475,000 and cash on hand;
7. the Filer is a venture issuer; the purchase price of Grand Parkway was \$29,250,000; the Filer's consolidated assets as of March 31, 2011, were \$10; the Filer's interest in Grand Parkway exceeds 40% of its consolidated assets as at March 31, 2011; accordingly, the acquisition of its interest in Grand Parkway is a significant acquisition of the Filer under section 8.3(4)(a) of NI 51-102, requiring the Filer to file a BAR under section 8.2 of NI 51-102;
8. under section 8.4 of NI 51-102, the BAR must include:
 - (a) annual financial statements for the significant acquisition for its two most recently completed financial years prior to the acquisition; the financial statements for the most recently completed financial year prior to the acquisition must be audited;
 - (b) unaudited interim financial statements for the significant acquisition for its most recently completed interim period; and
 - (c) pro forma financial statements of the Filer giving effect to the significant acquisition;
9. the vendor of Grand Parkway, a Texas limited partnership controlled by a German corporation, sold the property using a bid process; limited financial performance data is available as Grand Parkway was completed in 2010, reached stabilized occupancy in July 2010, and was listed for sale in the third quarter of 2010;
10. the Filer has made commercially reasonable good faith efforts to obtain the requisite financial information and access to the financial and other records of the vendor of Grand Parkway in order to prepare the financial statements required under section 8.4 of NI 51-102; the Filer made requests, directly to the vendor and indirectly through the property manager, by email and telephone correspondence; although some access was granted, audit level access to the financial records of the vendor was not granted; the Filer was not able to prepare the financial statements required under section 8.4 of NI 51-102 because of: (i) insufficient access to the financial records of the vendor; and (ii) the limited operating history of Grand Parkway;

11. in lieu of the financial statements required under section 8.4 of NI 51-102, the Filer will include in the BAR for Grand Parkway the following alternate financial and other disclosure:
 - (a) an audited statement of assets acquired and liabilities assumed as of the date of acquisition;
 - (b) the appraisal (the Appraisal) dated April 18, 2011, prepared by Butler Burgher Group, LLC (the Appraiser) addressed to Allstate Investments, LLC (Allstate), the Filer's mortgage lender; and
 - (c) the property condition assessment (the PCA) dated April 18, 2011, prepared by Professional Service Industries, Inc. addressed to Allstate;(collectively, (a) to (c) are referred to as the Alternate Disclosure);
12. the Filer formed its decision to purchase the property based, in part, on the information contained in the Appraisal and the PCA; the Appraisal contains additional information about Grand Parkway, including an unaudited operating statement from April 2010 to March 2011, and an operating budget summary and rent roll as of March 2011; the PCA contains additional information about Grand Parkway, including an assessment of the condition of the property, the general physical condition of improvements on the property, and a recommended needs summary with costs;
13. the reported analyses, opinions, and conclusions were developed, and the Appraisal was prepared, in conformance with the Appraiser's interpretation of the guidelines and recommendations set forth in the Uniform Standards of Professional Appraisal Practice of the Appraisal Institute, a global association of professional real estate appraisers, the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute, and the U.S. Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and Title XI Regulations; in addition, the signatories on the Appraisal have completed the requirements of the continuing education program of the Appraisal Institute and The Texas Appraiser Licensing and Certification Act;
14. the Filer's due diligence process also included working with its local counsel and property management group to prepare, analyse, and review, as applicable, among other things, title and lien reports, survey reports, IRS delinquency reports, tenant reports, local competition, rents and concessions in the immediate area, population and demographics, operating expense reports, site inspections, assessments of environmental issues, rent rolls, current

leasing packages/promotional materials, employee summaries and remuneration, and all property contracts;

15. apart from the requirement to include financial statements for the acquisition, the Filer is otherwise able to prepare and file the BAR in accordance with NI 51-102, which will include the Alternate Disclosure described above;
16. other than the failure to file the BAR and a business acquisition report for the acquisition of an interest in Embassy Suites Dallas Fort Worth, located in Irving, Texas, the Filer is not in default of any requirement of Canadian securities laws; and
17. the Filer acknowledges that any right of action available to any person, company or securities regulatory authority against the Filer for failure to file the BAR by the filing deadline of September 12, 2011, is not terminated or altered as a result of this decision.

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 the Exemption Sought is granted with respect to the BAR for Grand Parkway, provided the BAR includes the Alternate Disclosure and otherwise complies with applicable BAR requirements.

Peter Brady
Director, Corporate Finance
British Columbia Securities Commission