

2010 BCSECCOM 498

September 1, 2010

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 45-106 *Prospectus and Registration Exemptions* s. 7.1 - Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers* - An issuer wants an exemption from the requirement to deliver an offering memorandum in the required form - The issuer made a significant acquisition of properties; the vendor's financial statements are incomplete and the necessary information to prepare the required financial statements is unavailable; the financial information provided will contain sufficient reliable alternative information about the acquisition

Applicable British Columbia Provisions

National Instrument 45-106 *Prospectus and Registration Exemptions* s. 7.1
Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*

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
Clear Sky Arizona Multi Family Limited Partnership
(the Filer)

Decision

Background

- ¶ 1 The principal regulator in the Jurisdiction received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) that the Filer be exempt from the requirement in Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers* (Form 45-106F2) to

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include financial statements concerning a business acquisition in an offering memorandum of the Filer (the Offering Memorandum) to be amended and restated by the Filer in connection with the Offering (defined below) (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, Saskatchewan and Manitoba.

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. the Filer is a limited partnership formed pursuant to the *Partnership Act* (British Columbia) and its head office is located in Qualicum Beach, British Columbia;
 - 2. the Filer's securities are not listed on any exchange or quotation system and the Filer is not a reporting issuer in any jurisdiction of Canada;
 - 3. the Filer is not in default of securities legislation of any jurisdiction;
 - 4. the Filer's authorized capital consists of an unlimited number of limited partnership units (Units);
 - 5. the Filer was created for the principal purpose of raising funds by issuing Units (the Offering) and using such proceeds to invest, through an affiliated Arizona limited partnership, Clear Sky Arizona L.P. (US Parent LP) and Arizona subsidiary entities of the US Parent LP (each a US Sub), in multi-family rental properties in the State of Arizona (each a Property);
 - 6. the last closing of the Offering was completed on March 22, 2010; by that date, the Filer had raised gross proceeds of US\$450,100;

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7. the Filer intends to conduct the Offering on a continuous basis; the Filer intends to make the Offering primarily in British Columbia, Alberta, Saskatchewan and Manitoba, primarily in reliance upon sections 2.3 and 2.9 of National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106);
8. prior to continuing the Offering, the Filer will amend and restate the Offering Memorandum, currently dated June 22, 2009, to ensure that the disclosure in the Offering Memorandum is current and accurate and to ensure that the Offering Memorandum complies with applicable securities laws;
9. section 2.9 of NI 45-106 provides that the prospectus requirement does not apply in respect of a distribution by an issuer of a security of its own issue to a purchaser if, among other things, the issuer delivers an offering memorandum to the purchaser in the required form; the form of offering memorandum that is available to the Filer is Form 45-106F2;
10. item 12 of Form 45-106F2 requires the Filer to include in the Offering Memorandum the financial statements specified in the Instructions for Completing Form 45-106F2 (the Instructions); Item C of the Instructions requires certain financial statements of an acquired business to be included in an offering memorandum if the business meets certain significance thresholds (the Business Acquisition Statement Requirement);
11. the US Parent LP, through a US Sub, Clear Sky Capital Bethany Palms L.P., acquired legal title to a particular Property in Phoenix, Arizona (the Acquired Property) on July 7, 2010 by acquiring the Acquired Property from a California family trust and by acquiring the debt underlying the Acquired Property from the lender to the Acquired Property through an auction process; the US Parent LP has not acquired any other Property to date;
12. the Filer's indirect investment in the Acquired Property is a "business acquisition" for the purposes of Item C of the Instructions and triggers the Business Acquisition Statement Requirement;
13. the vendor of the Acquired Property advised the Filer that the financial statements required by the Business Acquisition Statement Requirement are not available; and
14. Vicent W. Davis (Davis) and Davis Valuation Group (DVG) in Arizona are independent from the Filer, US Parent LP and the applicable US Sub; Davis is certified as a Certified General Appraiser in the State of Arizona (#31213); the Appraisal was prepared in conformity with the requirements of the Code of

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Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute, which include the Uniform Standards of Professional Appraisal Practice.

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 the Filer includes in the amended and restated Offering Memorandum the following financial information relating to the Acquired Property before continuing the Offering:

- (a) an unaudited schedule of revenues and operating expenses for the year ended December 31, 2008;
- (b) an unaudited schedule of revenues and operating expenses for the year ended December 31, 2009;
- (c) an unaudited interim schedule of revenues and operating expenses for the interim period from July 7, 2010 to August 15, 2010, broken down by rental unit (collectively, with (a) and (b), the Operating Statements);
- (d) a summary of the Operating Statements;
- (e) a breakdown of acquisition costs, including loans secured on the Acquired Property; and
- (f) a property appraisal of the Acquired Property dated July 27, 2010 (the Appraisal) prepared by Davis of DVG for the benefit of the Filer.

Andrew S. Richardson, CA
Acting Director, Corporate Finance
British Columbia Securities Commission