

2007 BCSECCOM 686

November 16, 2007

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 44-101 *Short Form Prospectus Distributions*, s. 8.1 - Qualification – 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 the financial statements of the existing business

Applicable British Columbia Provisions

National Instrument 44-101 *Short Form Prospectus Distributions*, s. 8.1

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova
Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador
(the Jurisdictions)

and

In the Matter of
the Mutual Reliance Review System for Exemption Relief Applications

and

In the Matter of
Pure Industrial Real Estate Trust
(the Filer)

MRRS Decision Document

Background

- ¶ 1 The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from the requirement of the Legislation that an issuer have a current annual information form (AIF) and current annual financial statements in at least one

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jurisdiction in which it is a reporting issuer, in order to qualify to file a short form prospectus under National Instrument 44-101 *Short Form Prospectus Distributions* (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the British Columbia Securities Commission is the principal regulator for this application;
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

- ¶ 2 Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:
- 1. the Filer is an unincorporated, open-ended real estate investment trust created on June 24, 2007 under and governed by the laws of British Columbia;
 - 2. the Filer's financial year end is December 31;
 - 3. the Filer filed a final prospectus dated August 13, 2007, with the securities regulatory authorities for each of the Jurisdictions in order to qualify the distribution of 4,750,000 of its units (the Final Prospectus) and completed its initial public offering of those units on August 22, 2007 (the IPO);
 - 4. the proceeds from the IPO were used primarily to acquire a portfolio of 10 single-tenant industrial properties located in British Columbia, Alberta, Manitoba, Ontario and Quebec (the Initial Portfolio);
 - 5. prior to their acquisition by the Filer, the properties comprising the Initial Portfolio had been owned and operated by Sunstone Opportunity Fund (2005) Limited Partnership (Sunstone (2005) LP) for periods of between 13 and 20 months; of the ten properties comprising the Initial Portfolio, Sunstone (2005) LP acquired one property in January 2006, eight properties in March 2006 and one property in July 2006; the two directors and officers of the general partner of Sunstone (2005) LP are two of the founding trustees of the Filer and are the sole directors and officers of the entity engaged by the Filer to provide advisory and management services to the Filer concerning the operation of its business;

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6. prior to their acquisition by Sunstone (2005) LP, the properties comprising the Initial Portfolio were either (i) newly constructed (in the case of one property); (ii) owned by an entity affiliated with the tenant of the property (in the case of eight properties); or (iii) owned by a privately-held company; as a result, financial statements for the operations of the properties prior to their acquisition by Sunstone (2005) LP were not available;
7. the Final Prospectus included the following financial statements:
 - (a) an audited balance sheet of the Filer as at June 24, 2007;
 - (b) an unaudited pro forma consolidated balance sheet of the Filer as at March 31, 2007, and unaudited pro forma statements of operations of the Filer for the three months ended March 31, 2007 and for the period ended December 31, 2006;
 - (c) an audited combined balance sheet of nine of the ten properties comprising the Initial Portfolio as at March 31, 2007 and December 31, 2006, and the combined statements of earnings and owner's equity and cash flows for such properties for the three months ended March 31, 2007 and for the period from March 31, 2006 (their date of acquisition) to December 31, 2006; and
 - (d) an audited balance sheet of the remaining property comprising the Initial Portfolio as at March 31, 2007 and December 31, 2006, and the statements of earnings and owner's equity and cash flows for such property for the three months ended March 31, 2007 and for the period from January 9, 2006 to December 31, 2006.
8. the Filer's units are currently listed on the TSX Venture Exchange under the symbol "AAR.UN"; the Filer's operations have not ceased;
9. the Filer is a reporting issuer in each of the Jurisdictions and, to the best of its knowledge, is not in default of any requirement of the Legislation;
10. the Filer is an electronic filer under National Instrument 13-101 *System for Electronic Documents Analysis and Retrieval (SEDAR)*;
11. the Filer has filed with the securities regulatory authority in each Jurisdiction all periodic and timely disclosure documents that it is required to have filed in the Jurisdiction under the Legislation;

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12. the Filer wishes to file a short form prospectus under NI 44-101;
13. except for not having a current AIF and current annual financial statements in at least one jurisdiction in which it is a reporting issuer, the Filer would otherwise be qualified to file a prospectus in the form of a short form prospectus under NI 44-101;
14. the Filer has not been exempted from the requirement of the applicable continuous disclosure rule (the CD rule) to file annual financial statements and the Filer has not yet been required under the applicable CD rule to file such financial statements;
15. under section 2.7 of NI 44-101, an issuer that has filed and obtained a receipt for a prospectus that included the Filer's comparative annual financial statements for its most recently completed financial year is exempt from having a current AIF and current annual financial statements in order to be entitled to file a short form prospectus (the New Reporting Issuer Exemption); however, the comparative annual financial statements contained in the Final Prospectus:
 - (a) are those of the Initial Portfolio, which the Filer acquired with the proceeds from the IPO; and
 - (b) represent, in respect of the financial year ended December 31, 2006, being the most recently completed financial year, a period of less than 12 months, as financial information for the period prior to the acquisition of the Initial Portfolio by Sunstone (2005) LP was not available.
16. the acquisition of the Initial Portfolio by the Filer from Sunstone (2005) LP does not represent a change in the substance of the business operation of the Initial Portfolio and therefore does not prevent the Filer from presenting comparative financial information for the Initial Portfolio prior to its acquisition by the Filer; and
17. the comparative financial statements presented in the Final Prospectus should be considered as being the annual financial statements of the Filer and therefore the Filer should be entitled to rely upon the New Reporting Issuer Exemption.

Decision

- ¶ 4 Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met.

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The decision of the Decision Makers under the Legislation is that the Requested Relief is granted, provided that the Filer's business continues to be, in all material respects, the same as the business of Sunstone (2005) LP.

This decision is valid to the extent that the Filer:

- (a) is not exempt from the requirement in the applicable CD rule to file annual financial statements within a prescribed period after its financial year end;
and
- (b) has not yet been required under the applicable CD rule to file annual financial statements.

Martin Eady, CA
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British Columbia Securities Commission