

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – 1996 Securities Act s. 76 - Exemption from s. 61 requirement to file a prospectus in connection with a distribution - Trades by a non-mutual fund in connection with its distribution reinvestment plan - The issuer has established a DRIP for the benefit of its security holders; the issuer can rely on the exemption in s. 2.2 of NI 45-106 *Prospectus and Registration* exemptions to distribute units to its securityholders who are participants in its DRIP; the issuer controls a limited partnership; the issuer cannot rely on the exemption for holders of exchangeable securities through the limited partnership who wish to reinvest their distributions in the issuer's DRIP

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, sections 61, 76

March 22, 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 (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) that the prospectus requirement in the Legislation will not apply to any trade of the Filer's trust units (REIT Units) by the Filer (or by a trustee, custodian, or administrator acting for or on behalf of the Filer) to holders of Exchangeable LP Units (as defined below) of FAM Management Limited Partnership

(the Partnership) under a distribution reinvestment plan of the Filer, under which distributions out of earnings, surplus, capital, or other sources payable by the Partnership in respect of the Exchangeable LP Units are applied to the purchase of REIT Units (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 the 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, Newfoundland and Labrador, Northwest Territories, Yukon Territory, 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* 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 an unincorporated, open-ended real estate investment trust established under the laws of Ontario; the Filer was established under a declaration of trust dated August 27, 2012, as amended;
 - 2. the Filer's head office is located at 2000-5000 Miller Road, Richmond, British Columbia, V7B 1K6;
 - 3. the Filer is a reporting issuer in each of the Jurisdictions and is not in default of any requirements under the Legislation;
 - 4. the Filer is authorized to issue an unlimited number of REIT Units and an unlimited number of special voting units (Special Voting Units); as at March 18, 2013, the Filer had 5,880,000 REIT Units and 2,513,700 Special Voting Units issued and outstanding;
 - 5. the REIT Units are listed and posted for trading on the Toronto Stock Exchange (the TSX) under the trading symbol "F.UN";
 - 6. the Partnership is a limited partnership formed under the laws of Ontario and is governed by a limited partnership agreement dated October 26, 2012, as amended

(the LP Agreement); the Partnership's head office is located at 333 Bay Street, Suite 3400, Toronto, Ontario M5H 2S7;

7. the Partnership is not a reporting issuer in any jurisdiction and none of its securities have ever been traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;
8. the Partnership is authorized to issue (i) an unlimited number of Class A limited partnership units (Class A Units), of which 5,880,000 Class A Units are issued and outstanding and held by the Filer, and (ii) an unlimited number of exchangeable non-voting Class B limited partnership units (Exchangeable LP Units), of which 2,513,700 are issued and outstanding and held by Huntingdon Capital Corp. (Huntingdon); the Exchangeable LP Units were issued in connection with the Filer's initial public offering on December 28, 2012 (the IPO) to Huntingdon, the entity that indirectly sold the initial properties to the Filer in connection with the IPO;
9. the Exchangeable LP Units are intended to be, to the greatest extent practicable, the economic equivalent of the REIT Units; holders are entitled to receive distributions equal to those paid by the Filer to holders of REIT Units; the Exchangeable LP Units are not transferable but are exchangeable into REIT Units and each is accompanied by a Special Voting Unit that entitles the holder to receive notice of, attend, and to vote together with the holders of REIT Units at all meetings of voting unitholders;
10. the principal activity of the Partnership is to own income-producing real estate assets;
11. the Filer holds approximately 70% of the limited partnership units of the Partnership with the balance (being the Exchangeable LP Units) held by Huntingdon;
12. the Filer intends to make monthly cash distributions on the 15th day of a given month to persons who are holders of REIT Units (Unitholders) at the close of business on the last business day of the immediately preceding calendar month; similarly, the LP Agreement provides that the Partnership will make identical monthly cash distributions on the same terms and conditions to holders of Exchangeable LP Units (LP Unitholders);
13. the Filer proposes to establish a distribution reinvestment plan (the DRIP) to permit Unitholders and LP Unitholders, other than holders who are not eligible to participate under the laws of their jurisdiction of residency, at their discretion, to automatically reinvest cash distributions paid on their REIT Units into REIT Units, or cash distributions paid on their Exchangeable LP Units into REIT Units, as an alternative to receiving cash distributions;
14. following enrolment in the DRIP by a Unitholder or LP Unitholder (a DRIP Participant), distributions in respect of REIT Units or Exchangeable LP Units enrolled in the DRIP will be automatically paid to the agent responsible for the

administration of the DRIP (the DRIP Agent) and applied to the purchase of REIT Units directly from the Filer;

15. the purchase price for a REIT Unit (or fraction thereof) acquired under the DRIP will be the weighted average of the daily closing prices of REIT Units on the TSX for the five (5) trading days immediately preceding the applicable distribution payment date; in addition, DRIP Participants will be entitled to receive a further distribution of REIT Units equal in value to 3% of each distribution that is reinvested under the DRIP;
16. the Filer will pay the DRIP Agent's fees for administering the DRIP out of its assets and DRIP Participants will not pay any commissions, service charges, or brokerage fees in connection with the issuance of REIT Units under the DRIP;
17. DRIP Participants may terminate their participation in the DRIP by providing written notice to the DRIP Agent no later than a specified time on the day that is five (5) business days prior to the applicable record date; if received after such time, such notice will have effect for the next following distribution; after such termination is processed, distributions by the Filer or the Partnership, as the case may be, will be payable to such Unitholder or LP Unitholder in cash or otherwise in the form declared by the Filer or the Partnership, as the case may be;
18. under the terms of the DRIP, the Filer will reserve the right to amend, suspend, or terminate the DRIP at any time in its sole discretion, subject to TSX approval; the Filer will send DRIP Participants written notice of an amendment, suspension, or termination of the DRIP in accordance with its terms; and
19. the Filer would be unable to rely on the exemption from the prospectus requirement in the Legislation with respect to reinvestment plans (the DRIP Exemption) to distribute REIT Units under the DRIP to LP Unitholders enrolled in the DRIP since the DRIP Exemption only permits distributions made in respect of an issuer's securities to be applied to the purchase of the same issuer's securities; furthermore, a person who acquires a REIT Unit under the DRIP other than in reliance on the DRIP Exemption (or a prospectus) would not be able to rely on the exemption from the prospectus requirement in the Legislation with respect to the first trade or resale of such REIT Unit.

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 provided that:

- (a) at the time of the trade, the Partnership continues to be controlled by the Filer and the Filer is the beneficial owner of all the issued and outstanding voting securities of the Partnership;

- (b) the ability to purchase REIT Units under the DRIP for distributions out of earnings, surplus, capital, or other sources payable by the Partnership is available to every LP Unitholder in Canada; and
- (c) the first trade of any REIT Units acquired under this decision in the Jurisdiction will be deemed to be a distribution unless the conditions in subsection 2.6(3) of National Instrument 45-102 – *Resale of Securities* are satisfied at the time of such first trade.

Peter Brady
Director, Corporate Finance
British Columbia Securities Commission