

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 51-102 *Continuous Disclosure Obligations*, s. 13.1 – General – An issuer that is a wholly-owned subsidiary wants relief from filing specific continuous disclosure documents – The issuer is a limited partnership; the issuer's sole business is to hold interests in properties owned by a real estate investment trust; the issuer's only outstanding securities are voting units, all owned by the trust, and certain non-voting units issued to individual investors in the US for legal reasons; the trust's continuous disclosure contains all material information about the issuer and will be filed and delivered in place of the issuer's disclosure; the issuer will file material change reports for any change that is material to it but not the trust

National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*, s. 8.6 – An issuer wants relief from the requirements in Parts 4 and 5 of NI 52-109 to file annual and interim certificates – The issuer has applied for and received an exemption from filing interim and annual financial statements

Applicable Legislative Provisions

National Instrument 51-102, s. 13.1

National Instrument 52-109, s. 8.6

February 26, 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
Sunstone U.S. Opportunity (No. 2) Realty Trust
(the Trust)
and
Sunstone U.S. (No. 2) L.P.
(the LP, and together with the Trust, 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) that:

- (a) the requirements of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) (the Continuous Disclosure Requirements) do not apply to the LP; and
- (b) the requirements of National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (NI 52-109) (the Certification Requirements) do not apply to the LP.

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, Newfoundland and Labrador, Yukon, Nunavut, and the Northwest Territories; 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:

The Trust

1. the Trust is an unincorporated, open-ended investment trust formed under a Declaration of Trust (the Trust Declaration) dated August 9, 2009, and governed by the laws of British Columbia;
2. the Trust's head office is located at Suite 910 – 925 West Georgia Street, Vancouver, British Columbia;
3. the financial year end of the Trust is December 31;

4. the principal business of the Trust is to invest the proceeds from the issuance of units (Trust Units) of the Trust in the acquisition of Class A units (the LP Units) of the LP; the principal business of the LP is to issue LP Units and to invest in the units of Sunstone U.S. Opportunity (No.2) Limited Partnership (the Property LP);
5. the principal business of the Property LP is to issue limited partnership units of the Property LP and to invest the proceeds from the issuance of Property LP units in acquiring, owning, and operating a diversified portfolio of multi-family apartment properties in the United States;
6. the Trust Units are redeemable at any time on the demand of the holders of the Trust Units; the Trust Units may be redeemed for cash in a prescribed manner in accordance with certain provisions contained in the Trust Declaration; if any such conditions preclude the payment of the redemption amount in cash, the redemption price may be satisfied by a distribution in specie of, among other things, LP Units to the holders of Trust Units;
7. the Trust is a reporting issuer or the equivalent thereof in each of the Jurisdictions and an electronic filer within the meaning of National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (SEDAR) (NI 13-101);
8. the Trust complies with the Continuous Disclosure Requirements and the Certification Requirements and is not in default of securities legislation in any jurisdiction in which it is a reporting issuer;
9. the audited annual financial statements and interim financial statements filed by the Trust are prepared on a consolidated basis under International Financial Reporting Standards as issued by the International Accounting Standards Board;
10. the consolidated financial statements of the Trust comprise the financial statements of the Trust and its subsidiaries, over which the Trust has control; control exists when the Trust has the power to govern the financial and operating policies of an entity so as to obtain benefit from its activities; the consolidated financial statements of the Trust reflect the financial position, results of operations, and cash flows of the Trust and its interest in its subsidiaries (99.99% interest in the LP and the LP's 99.99% interest in the Property LP);

The LP

11. the LP is a limited partnership formed under and governed by the laws of Delaware and created by a Limited Partnership Agreement dated August 18, 2009;
12. the LP's head office is located at 6529 Preston Road, Unit 100 Plano, Texas;
13. the financial year end of the LP is December 31;

14. the authorized capital of the LP consists of an unlimited number of LP Units and 1,000 Class B units; the LP Units entitle the holder to vote at meetings of the LP, cash flow distributions, and the distribution of the assets of the LP upon liquidation, dissolution or wind-up of the LP; the Class B units entitle the holder to fixed distributions in priority to the holders of the LP Units and the distribution of the assets of the LP upon liquidation, dissolution or wind-up of the LP in priority to the holders of the LP Units, and are treated as a liability for accounting purposes in the financial statements of both the LP and the Trust;
15. Class B units do not entitle the holder to vote at any meetings of the LP or to receive any continuous disclosure; the Class B units were issued in private transactions to individual investors in the United States to satisfy the requirements for the LP to qualify as a real estate investment trust (REIT) under the United States Internal Revenue Code of 1986, as amended (the Code); as at September 30, 2012, there are 24,676 LP Units and 125 Class B units outstanding;
16. the principal business of the LP is to issue LP Units and to invest in the limited partnership units of the Property LP; the principal business of the Property LP is to issue limited property units of the Property LP and to invest the proceeds from the issuance of Property LP units in acquiring, owning, and operating a diversified portfolio of multi-family apartment properties in the United States;
17. the LP is a reporting issuer or the equivalent thereof in each of the Jurisdictions and an electronic filer within the meaning of NI 13-101;
18. the LP complies with the Continuous Disclosure Requirements and the Certification Requirements and is not in default of securities legislation in any jurisdiction in which it is a reporting issuer;
19. the audited annual financial statements and interim financial statements filed by the LP are prepared on a consolidated basis under International Financial Reporting Standards as issued by the International Accounting Standards Board;
20. the consolidated financial statements of the LP comprise the financial statements of the LP and its subsidiaries, over which the LP has control; control exists when the LP has the power to govern the financial and operating policies of an entity so as to obtain benefit from its activities; the consolidated financial statements of the LP reflect the financial position, results of operations, and cash flows of the LP and its interest in its subsidiaries (99.99% interest in the Property LP); and
21. the LP currently duplicates the filings made by the Trust with no material information being supplemented or added to the Trust's filings; further, the consolidated financial statements of the Trust reflect the financial position, results of operations, and cash flows of the Trust and its interest in its subsidiaries (99.99% interest in the LP and the LP's 99.99% interest in the Property LP); as the Trust's

sole investment is in the LP, the financial information and disclosures reflected in the Trust's consolidated financial statements are substantively the same as that reflected in the LP's consolidated financial statements; the disclosure of the terms of the Class B units and the rights of the holders of the Class B units is virtually identical in the financial statements of both the LP and the Trust.

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

1. the Continuous Disclosure Requirements do not apply to the LP provided that:
 - (a) the Trust remains a reporting issuer or the equivalent thereof in the Jurisdictions and an electronic filer within the meaning of NI 13-101;
 - (b) the Trust is the beneficial owner of all the issued and outstanding LP Units;
 - (c) the principal business of the Trust continues to be the investment of proceeds from the issuance of Trust Units in the acquisition of LP Units;
 - (d) the principal business of the LP is to issue LP Units and to invest in the limited partnership units of the Property LP, on behalf of the Trust;
 - (e) the Trust complies with the Continuous Disclosure Requirements and the Certification Requirements applicable to the Trust;
 - (f) the audited annual financial statements and interim financial statements filed by the Trust are prepared on a consolidated basis under International Financial Reporting Standards as issued by the International Accounting Standards Board or such other standards as may be permitted under the Legislation;
 - (g) if there is a material change in the affairs of the LP that is not a material change in the affairs of the Trust, the LP will comply with the requirement to issue and file a news release and file with the Decision Makers a report upon the occurrence of such material change;
 - (h) the documents required to be filed by the Trust under the Legislation are filed under the SEDAR profile for each of the Trust and the LP within the time limits and in accordance with applicable fees required for the filing of such documents;
 - (i) the LP does not issue any LP Units to the public; and
 - (j) the LP files a notice under its SEDAR profile stating that it has been granted relief from the Continuous Disclosure Requirements and the Certification Requirements

and that investors should refer to the continuous disclosure documents filed by the Trust which are also available under the LP's SEDAR profile; and

2. the Certification Requirements do not apply to the LP provided that:
 - (a) the LP is not required to, and does not, file its own Annual Filings and Interim Filings (as those terms are defined in NI 52-109);
 - (b) the LP files in electronic form under its SEDAR profile either: (i) copies of the Trust's annual certificates and interim certificates at the same time as the Trust is required under NI 52-109 to file such documents; or (ii) a notice indicating that it is relying on the Trust's annual certificates and interim certificates and setting out where those documents can be found for viewing on SEDAR; and
 - (c) the LP is exempt from or otherwise not subject to the Continuous Disclosure Requirements and the LP and the Trust are in compliance with the conditions set out in paragraph 1 above.

Peter J Brady
Director, Corporate Finance
British Columbia Securities Commission