

2010 BCSECCOM 651

November 26, 2010

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions – Securities Act*, s. 88 - *Cease to be a reporting issuer in BC* - The securities of the issuer are beneficially owned by more than 50 persons and are not traded through any exchange or market - The issuer became a wholly owned subsidiary of another company; the issuer has debt securities outstanding that are held by more than 50 holders; there is no market for the debt securities; the issuer is not required under the terms of the debt instrument to provide certain continuous disclosure to the holders of the debt securities as long as the securities are outstanding, or to remain a reporting issuer; the issuer does not intend to do a public offering of its securities to Canadian residents; the issuer will not be a reporting issuer in any Canadian jurisdiction

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 88

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

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
ING Summit Industrial Fund LP
(the “Filer”)

Decision

Background

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”) granting relief that the Filer cease to be a reporting issuer under the securities legislation in each of

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British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (the “Exemptive Relief Sought”).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a coordinated review application):

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined in this decision.

Representations

1. The Filer is a limited partnership formed pursuant to the laws of the Province of Manitoba on March 22, 2007. The general partner of the Filer is ING Summit Industrial Fund GP Inc. (“Summit GP”), a corporation formed pursuant to the laws of the Province of Ontario.
2. The Filer’s registered and head office is at 220 Bay Street, 12th Floor, Toronto, Ontario, M5J 2W4.
3. As of the date hereof, the Filer is a co-borrower under approximately \$114.6 million in 5.70% Series A Debentures due November 10, 2011 (the “Series A Debentures”) and approximately \$83.2 million in 5.38% Series B Debentures due March 1, 2012 (the “Series B Debentures”, and together with the Series A Debentures, the “Debentures”).
4. The Debentures were issued pursuant to a trust indenture (the “Trust Indenture”) made as of November 10, 2004 between the Filer’s predecessor Summit Real Estate Investment Trust (“Summit REIT”) and BNY Trust Company of Canada (the “Indenture Trustee”), as amended and supplemented by (a) the First Supplemental Indenture dated as of December 9, 2005 between Summit REIT and the Indenture Trustee, (b) the Second Supplemental Indenture dated as of November 16, 2006 between Summit REIT and the Indenture Trustee, (c) the Third Supplemental Indenture dated as of March 31, 2007 between Summit REIT and the Indenture Trustee, and (d) the Fourth Supplemental Indenture dated as of April 1, 2007 between Summit REIT,

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Summit and the Indenture Trustee, pursuant to which the Filer became a co-borrower.

5. The Filer was formed in connection with a reorganization of Summit REIT (which was completed effective April 1, 2007) which, through a series of steps, resulted in the Filer becoming the successor issuer to Summit REIT (the “Reorganization”).
6. Pursuant to the Reorganization, the Filer (i) acquired substantially all of the assets of Summit REIT and (ii) assumed all of the material obligations and liabilities of Summit REIT, including Summit REIT’s obligations and liabilities under the Debentures.
7. The Filer continues to be a reporting issuer in each of the Jurisdictions and remains subject to the continuous disclosure obligations set out under National Instrument 51-102 *Continuous Disclosure Obligations* (“NI 51-102”).
8. The Filer does not have any securities outstanding, including debt securities, other than:
 - (a) 300,000 general partnership units held by Summit GP and 340,494,885 limited partnership units held by Niagara Acquisition LP (collectively, the “Units”), and
 - (b) the Debentures.

None of the Filer’s Units are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* (“NI 21-101”). The Debentures are not traded on a marketplace as defined in NI 21-101, other than trades through certain alternative trading systems (as defined in NI 21-101). Following the Redemption Date, the Debentures will not trade on any marketplace as defined in NI 21-101.

9. Based on search results conducted as of October 7, 2010 and carried out on behalf of the Filer, (i) an aggregate principal amount of \$114,607,000 Series A Debentures remained outstanding and was beneficially held by approximately 871 residents across Canada and in other jurisdictions, and (ii) an aggregate principal amount of \$83,200,000 Series B Debentures remained outstanding and was beneficially held by approximately 867 residents across Canada and in other jurisdictions (the “Debentureholders”).
10. As of October 7, 2010, the approximate number of beneficial Debentureholders in each of the Jurisdictions in Canada is as follows:

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Jurisdiction	Series A Debenture Holders	Series B Debenture Holders
Alberta	177	151
British Columbia	139	100
Manitoba	18	4
New Brunswick	0	1
Newfoundland and Labrador	0	0
Northwest Territories	0	1
Nova Scotia	4	3
Ontario	371	473
Prince Edward Island	1	0
Québec	126	99
Saskatchewan	15	7
Yukon	0	1
Unknown	1	0

11. On November 1, 2010, the Filer provided a notice of redemption to the registered Debentureholders and the Indenture Trustee to redeem, prior to maturity, all of the outstanding Debentures on December 1, 2010 (the “Redemption Date”). The Filer has further made appropriate arrangements to obtain a legal release (referred to herein as the “defeasance”) from the covenants of the Trust Indenture, by depositing funds for the payment of the Debentures on the Redemption Date, as described below.

12. Pursuant to Section 8.02(2) of the Trust Indenture, the Filer deposited in trust with the Indenture Trustee for the sole benefit of the Debentureholders, cash, in an amount sufficient to provide for, among other things, payment of the redemption price of the Debentures to be redeemed (calculated in accordance with the terms of the Trust Indenture), including the premium and all accrued and unpaid interest on the Debentures to be redeemed to the Redemption Date. The Debentures are now deemed to be fully paid, satisfied and discharged and the covenants of the Trust Indenture are no longer binding on the Filer, except those relating to the indemnification of the Indenture Trustee. Debentureholders are entitled to payment of principal, premium and interest in accordance with the Trust Indenture on the Redemption Date.

13. The Debentures now constitute a right to receive payments of principal, premium and interest, on the Redemption Date, from the funds held in trust by the Indenture Trustee for the benefit of the Debentureholders. The Debentures are not traded on a marketplace as defined in NI 21-101, other than trades through certain alternative trading systems (as defined in NI 21-101), and are

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not convertible into or exchangeable for any other securities. Following the Redemption Date, the Debentures will not trade on any marketplace as defined in NI 21-101. Taken in this context, the Debentures no longer have the characteristics of a true security, but instead merely represent a right to receive cash which is being held in trust. From the perspective of a Debentureholder, the defeasance has, in effect, changed the Debentures from being an unsecured obligation of the Filer to being fully secured, since the money needed to satisfy the payment of principal, premium and interest, on the Redemption Date, has been irrevocably deposited by the Filer with the Indenture Trustee and is being held solely for the benefit of the Debentureholders.

14. The Filer has been released from its obligation under the Trust Indenture to file any information and reports, including annual and quarterly financials, with any securities authorities in the Jurisdictions, and there is no obligation contained in the Trust Indenture that the Filer must be a reporting issuer in the Jurisdictions.
15. The Filer does not anticipate that a market for the Debentures will develop.
16. The Filer is seeking a decision that it is not a reporting issuer from the local securities regulatory authority or regulator in each of the jurisdiction in which it is a reporting issuer.
17. The Filer is not in default of any securities legislation in any of the Jurisdictions.
18. The Filer has no plans to seek public financing by way of an offering of securities to the public in Canada.
19. During the period from the date of this decision to the Redemption Date, if a material change occurs in the affairs of the Filer, the Filer shall disclose the nature and substance of the change in accordance with the provisions of the Legislation applicable to reporting issuers.

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Makers to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemptive Relief Sought is granted.

Paulette Kennedy
Commissioner

James D. Carnwath
Commissioner