

2012 BCSECCOM 343

August 23, 2012

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203
Process for Exemptive Relief Applications in Multiple Jurisdictions

National Instrument 51-102, s. 13.1 *Continuous Disclosure Obligations* - BAR -
An issuer requires relief from the requirement to include certain financial statements in a business acquisition report – The issuer has acquired individual real estate properties from two private company vendors; the vendors have limited access to the financial information needed for the issuer to prepare all the financial statements in accordance with BAR requirements; the issuer included in its prospectus alternative financial information about the issuer and the proposed acquisition that was sufficient to enable an investor to make an informed investment decision; the BAR will contain substantially similar alternative financial information

National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* - An issuer wants relief from the requirement to prepare certain acquisition statements included in a BAR in accordance with prescribed accounting principles – The issuer has acquired individual real estate properties from two private company vendors; the vendors have limited access to the financial information needed for the issuer to prepare all the acquisition statements in accordance with prescribed accounting principles; the issuer included in its prospectus alternative financial information about the issuer and the proposed acquisition that was sufficient to enable an investor to make an informed investment decision; the BAR will contain substantially similar alternative financial information

Applicable Legislative Provisions

National Instrument 51-102, ss. 8.4 and 13.1 *Continuous Disclosure Obligations*
National Instrument 52-107 ss. 3.11 and 5.1 *Acceptable Accounting Principles and Auditing Standards*

In the Matter of
the Securities Legislation of
British Columbia and Ontario
(the Jurisdictions)

and

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

and

In the Matter of
Pure Multi-Family REIT LP
(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) exempting the Filer, under section 13.1 of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), from the requirement in section 8.4 of NI 51-102 to include certain financial statements in a business acquisition report (BAR) and, under section 5.1 of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (NI 52-107), the requirement in section 3.11 to prepare acquisition statements (as defined in NI 52-107) in accordance with prescribed accounting principles (the Exemption Sought);

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

- (a) British Columbia 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, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador; 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:

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1. Pure Multi-Family REIT LP is a limited partnership formed under the Limited Partnerships Act (Ontario);
2. the Filer's head office is located at Suite 910 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2;
3. the Filer's year end will be December 31;
4. under a pre-filing interpretation and waiver application letter submitted to the BCSC and the OSC on June 22, 2012, the Filer requested and was granted relief from items 32.2 and 32.3 of Form 41-101F1 as prescribed by National Instrument 41-101 *General Prospectus Requirements* in respect of financial statement disclosure for issuers, and section 3.2(1) of NI 52-107 in respect of the accounting principles used to prepare the financial statements included in the Prospectus (defined below); the relief was granted based on, among other things, the inclusion of the following alternative financial disclosure in the Prospectus:
 - (a) a statement of financial position in respect of the Filer as at May 8, 2012, with an audit report thereon from the Filer's independent auditor;
 - (b) an unaudited pro forma combined statement of financial position as at May 8, 2012, and an unaudited pro forma combined statement of operations for the year ended December 31, 2011, in respect of the Filer;
 - (c) an unaudited pro forma combined statement of operations in respect of the Filer for the three months ended March 31, 2012;
 - (d) a combined statement of operations for the years ended December 31, 2011 and 2010, prepared on a combined basis in accordance with the basis of presentation described in the notes thereto, in respect of the Initial Portfolio (defined below), which was under common management during the relevant periods, with an audit report thereon from the Filer's independent auditor;
 - (e) an unaudited combined statement of operations for the three-month periods ended March 31, 2012 and 2011, prepared on a combined basis in accordance with the basis of presentation described in the notes thereto, in respect of the Initial Portfolio, which was under common management during the relevant period;
 - (f) a combined schedule of assets to be acquired and liabilities to be assumed as at March 31, 2012, December 31, 2011, and December 31, 2010, with

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an audit report thereon from the Filer's independent auditor for the schedules as at December 31, 2011 and 2010; and

- (g) a financial forecast in respect of the Filer consisting of consolidated statements of forecasted net income and comprehensive income for each of the three-month periods ending June 30, 2012, September 30, 2012, December 31, 2012, March 31, 2013, and the twelve-month period ending March 31, 2013, prepared in accordance with the basis of presentation described in the notes thereto, with an audit report thereon from the Filer's independent auditor;
- 5. the Filer filed a prospectus (the Prospectus) in each of the provinces of Canada except Quebec on July 3, 2012, for which the BCSC and OSC issued a receipt on July 3, 2012, in respect of its initial public offering (the IPO) which closed on July 10, 2012;
 - 6. on July 12, 2012, the Filer completed the indirect acquisition of (i) Windscape Apartment Homes (Windscape), and (ii) Oakchase Apartments (Oakchase, and together with Windscape, the Initial Portfolio), on July 12, 2012, for an aggregate purchase price of US\$21,958,918; the Filer funded the acquisition with equity from its IPO and first mortgage loans in the aggregate amount of US\$14,030,000;
 - 7. the Filer is a venture issuer; the purchase price of the Initial Portfolio was US\$21,958,918; the Filer's consolidated assets immediately prior to the acquisition of the Initial Portfolio were US\$47,200,000, being the proceeds from the IPO less costs relating to the IPO; the Filer's interest in the Initial Portfolio exceeds 40% of its consolidated assets immediately prior to the acquisition of the Initial Portfolio; accordingly, the acquisition of the Initial Portfolio is a significant acquisition of the Filer under section 8.3(4)(a) of NI 51-102 requiring the Filer to file a BAR under section 8.2 of NI 51-102;
 - 8. under section 8.4 of NI 51-102, the BAR must include:
 - (a) annual financial statements for the significant acquisition for its two most recently completed fiscal years prior to the acquisition; the financial statements for the most recently completed financial year prior to the acquisition must be audited;
 - (b) unaudited interim financial statements for the significant acquisition for its most recently completed interim period and the comparable period in the preceding year; and

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- (c) pro forma financial statements of the Filer giving effect to the significant acquisition;
9. under section 3.11(1) of NI 52-107, the financial statements included in the BAR must be prepared in accordance with one of the following accounting principles:
- (a) Canadian GAAP applicable to publicly accountable enterprises;
 - (b) IFRS;
 - (c) U.S. GAAP;
 - (d) accounting principles that meet the disclosure requirements for foreign private issuers, as that term is defined for the purposes of the 1934 Act, if certain conditions are met;
 - (e) accounting principles that meet the foreign disclosure requirements of the designated foreign jurisdiction to which the issuer or the acquired business or business to be acquired is subject, if certain conditions are met; or
 - (f) Canadian GAAP applicable to private enterprises if certain conditions are met;
10. despite making commercially reasonable good faith efforts to obtain the requisite financial information for each property comprising the Initial Portfolio in order to prepare the financial statements required under section 8.4 of NI 51-102, the Filer was not granted complete access to the financial records of the vendors of the Initial Portfolio; as a result, the Filer is unable to prepare the required financial statements;
11. in lieu of the financial statements required under section 8.4 of NI 51-102 and the accounting principles provided under section 3.11 of NI 52-107, the Filer will include in the BAR for the Initial Portfolio the following financial disclosure prepared in accordance with the accounting principles as described below (collectively, the Alternate Financial Disclosure), which is substantially similar to the financial disclosure included in the Prospectus (except for paragraph (c) below):
- (a) a combined statement of operations for the years ended December 31, 2011 and 2010, prepared on a combined basis in accordance with the basis of presentation described in the notes thereto (as indicated in the Prospectus), in respect of the Initial Portfolio, which was under common

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management during the relevant periods, with an audit report thereon from the Filer's independent auditor;

- (b) an unaudited combined statement of operations for the three-month periods ended March 31, 2012 and 2011, prepared on a combined basis in accordance with the basis of presentation described in the notes thereto (as indicated in the Prospectus), in respect of the Initial Portfolio, which was under common management during the relevant period;
- (c) a statement of assets acquired and liabilities as at July 12, 2012, with an audit report thereon from the Filer's independent auditor;
- (d) an unaudited pro forma combined statement of operations in respect of the Filer for the three months ended March 31, 2012; and
- (e) an unaudited pro forma combined statement of financial position as at May 8, 2012, and an unaudited pro forma combined statement of operations for the year ended December 31, 2011, in respect of the Filer;

12. in addition, the Filer has conducted due diligence in respect of the properties comprising the Initial Portfolio to determine as follows:

- (a) except as included in the statement of assets acquired and liabilities assumed as at July 12, 2012, referred to above, there are no liabilities, contingent liabilities or asset retirement obligations, other than standard permitted encumbrances in real estate transactions; and
- (b) there are no liabilities present on the properties comprising the Initial Portfolio including confirmation by the Filer that there are no liens, charges, claims, encumbrances or legal notations registered against the Initial Portfolio, or any material non-compliance with environmental laws or any material remediation requirements at any properties comprising the Initial Portfolio, other than standard permitted encumbrances in real estate transactions;

13. apart from the requirement to include the financial statements required by section 8.4 of NI 51-102, which must be prepared in accordance with the accounting principles set forth in section 3.11 of NI 52-107, the Filer is otherwise able to prepare and file the BAR, which will include the Alternate Financial Disclosure described above, in accordance with NI 51-102; and

14. the Filer is, to the best of its knowledge, not in default of any requirement of Canadian securities laws.

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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 with respect to the BAR for the Initial Portfolio, provided that the BAR includes the Alternate Financial Disclosure and otherwise complies with applicable requirements.

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