

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 file a business acquisition report – The acquisition is insignificant applying the asset and investment tests; applying the profit or loss test produces an anomalous results because the significance of the acquisition under this test is disproportionate to its significance on an objective basis in comparison to the results of the other significance tests and all other business, commercial, financial and practical factors; the filer has provided additional measures that demonstrate the insignificance of the property to the filer and that are generally consistent with the results when applying the asset and investment tests

Applicable Legislative Provisions

National Instrument 51-102, s. 13.1

January 13, 2015

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
American Hotel Income Properties REIT LP
(the Filer)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) granting relief from the requirement in Part 8 of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) to file a business acquisition report (BAR) in connection with the Filer's acquisition of a portfolio of four hotel properties in Oklahoma City, Oklahoma (the Oklahoma Portfolio), which was completed on November 3, 2014 (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 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, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories 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*, MI 11-102 and NI 51-102 have the same meaning if used in this decision, unless otherwise defined in this decision.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:

The Filer

1. the Filer is an Ontario limited partnership established under the laws of the Province of Ontario pursuant to a declaration of limited partnership and its head office is located in Vancouver, British Columbia;
2. the Filer is a reporting issuer under the securities legislation of each of the provinces and territories of Canada;
3. the limited partnership units of the Filer are listed and posted for trading on the Toronto Stock Exchange under the trading symbol “HOT.UN”;
4. the Filer is not in default of securities legislation in any jurisdiction;
5. the Filer completed its initial public offering (the IPO) on February 20, 2013, pursuant to a final long form prospectus dated February 12, 2013 (the IPO Prospectus), of 9,570,000 Units (as defined in the IPO Prospectus), inclusive of 870,000 Units issued pursuant to a partial exercise of the over-allotment option, for total gross proceeds of Cdn\$95,700,000;
6. on March 1, 2013, the remaining balance of the over-allotment option associated with the IPO was exercised, resulting in the issuance of an additional 435,000 Units, for additional gross proceeds of Cdn\$4,350,000;

7. the net proceeds of the IPO were used by the Filer to, among other things, acquire a portfolio of 32 hotel properties located in 19 U.S. states;
8. the Filer closed a public offering (the October 2013 Offering) on October 31, 2013, pursuant to a short form prospectus dated October 24, 2013 (the October 2013 Prospectus) of 3,967,500 Subscription Receipts (as defined in the October 2013 Prospectus), inclusive of 517,500 Subscription Receipts issued pursuant to a partial exercise of the over-allotment option, for total gross proceeds of Cdn\$40,300,000;
9. the net proceeds of the October 2013 Offering were used by the Filer to, among other things, acquire: (i) a portfolio of four hotel properties located in metropolitan Pittsburgh, Pennsylvania; and (ii) a portfolio of four hotel properties located in Virginia;
10. the Filer closed a public offering (the June 2014 Offering) on June 4, 2014, pursuant to a short form prospectus dated May 29, 2014 (the May 2014 Prospectus), of 4,900,000 Offered Units (as defined in the May 2014 Prospectus), inclusive of 552,000 Offered Units issued pursuant to a partial exercise of the over-allotment option, for total gross proceeds of Cdn\$50,715,000;
11. the net proceeds of the June 2014 Offering were used by the Filer to, among other things, acquire: (i) a portfolio of four hotel properties located in North Carolina and Georgia; and (ii) a portfolio of three hotel properties located in Amarillo, Texas;
12. the Filer closed a public offering (the October 2014 Offering) on October 28, 2014, pursuant to a short form prospectus dated October 21, 2014 (the October 2014 Prospectus), of 4,810,000 Offered Units (as defined in the October 2014 Prospectus), inclusive of 500,000 Offered Units issued pursuant to a partial exercise of the over-allotment option, for total gross proceeds of Cdn\$50,715,000;
13. the net proceeds of the October 2014 Offering were used by the Filer to, among other things, acquire: (i) the Oklahoma Portfolio; and (ii) a portfolio of four hotel properties located in North Carolina and Florida;

The Acquisition

14. on November 3, 2014 the Filer acquired the Oklahoma Portfolio for a total gross purchase price of approximately USD\$48.0 million pursuant to a purchase and sale agreement entered into by a direct subsidiary of the Filer;
15. the acquisition of the Oklahoma Portfolio constitutes a “significant acquisition” of the Filer for purposes of Part 8 of NI 51-102, requiring the Filer to file a BAR within 75 days of the acquisition pursuant to section 8.2(1) of NI 51-102;

Significance Tests for the BAR

16. under Part 8 of NI 51-102, the Filer is required to file a BAR for any completed acquisition that is determined to be significant based on the acquisition satisfying any of the three significance tests set out in section 8.3 of NI 51-102;
17. the acquisition of the Oklahoma Portfolio is not a significant acquisition under the optional asset test in section 8.3(4)(a) of NI 51-102 as the value of the Oklahoma Portfolio represented only approximately 14.9% of the consolidated assets of the Filer as of September 30, 2014;
18. the acquisition of the Oklahoma Portfolio is not a significant acquisition under the optional investment test in section 8.3(4)(b) of NI 51-102 as the Filer's acquisition costs represented only approximately 14.9% of the consolidated assets of the Filer as of September 30, 2014;
19. the acquisition of the Oklahoma Portfolio would, however, be a significant acquisition under the optional profit or loss test in section 8.3(4)(c) of NI 51-102; in particular, the Filer's proportionate share of the consolidated specified profit or loss of the Oklahoma Portfolio exceeds 20% of the consolidated specified profit or loss of the Filer calculated using audited annual and unaudited interim financial statements of the Filer and unaudited annual and interim financial information for the Oklahoma Portfolio, in each case, for the 12 months ended on June 30, 2014 (such period representing the most recent 12-month period for which the Filer was able to derive the consolidated specified profit or loss of the Oklahoma Portfolio based on the financial information made available to the Filer by the vendors of the Oklahoma Portfolio);
20. the application of the optional profit or loss test produces an anomalous result for the Filer because it exaggerates the significance of the Acquisition out of proportion to its significance on an objective basis in comparison to the results of the optional asset test and optional investment test;

De Minimis Acquisition

21. the Filer does not believe (nor did it at the time that it made the acquisition) that the acquisition of the Oklahoma Portfolio is significant to it from a commercial, business, practical or financial perspective; and
22. the Filer has provided the principal regulator with additional operational measures that demonstrate the non-significance of the acquisition of the Oklahoma Portfolio to the Filer. These additional operational measures compared other operational information such as revenue, number of rooms and net operating income for the Oklahoma Portfolio to that of the Filer, and the results of those measures are generally consistent with the results of the optional asset test and the optional investment test.

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.

Andrew S. Richardson, CPA, CA
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British Columbia Securities Commission