

Citation: 2024 BCSECCOM 410

Headnote

National Instrument 45-106, s.7.1 - Prospectus Exemptions - a person wants an exemption from the exempt distribution reporting requirements in NI 45-106 – The Filer is an investment fund manager and the manager of certain limited partnerships (the LPs); for tax purposes, certain investors redeemed their interests in the LPs and immediately repurchased such interests for identical dollar amounts; the distributions did not materially change the investors' interest in the LPs; no additional capital was raised by the LPs as a result of the distributions; the LPs are required to file Report of Exempt Distribution (RED) for the securities distributed on the repurchase; and the LPs have already provided all of the information that would be required in the RED filings that are overdue, in the REDs that they filed on the initial distributions.

Applicable British Columbia Provisions

National Instrument 45-106, s.7.1 - Prospectus Exemptions and Form 45-106F1 British Columbia Report of Exempt Distribution

September 19, 2024

Exemption Order

Nicola Wealth Management Ltd.

and

Nicola Canadian Real Estate Limited Partnership;

and

Nicola Value Add Real Estate Limited Partnership;

and

Nicola U.S. Real Estate Limited Partnership

Section 7.1 of National Instrument 45-106

Prospectus Exemptions

Background

- ¶ 1 Nicola Wealth Management Ltd. (the Filer) has applied for an exemption from the requirement in section 6.1(1) of National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) to file a completed report on Form 45-106F1 *Report of Exempt Distribution* (Form 45-106F1) in respect of certain distributions of securities made by Nicola Canadian Real Estate Limited Partnership, Nicola Value Add Real Estate Limited Partnership and Nicola U.S. Real Estate Limited Partnership (each, an LP and collectively, the LPs) to the Investors (as defined below) on June 12, 19 and 20, 2024 (the Requested Relief).

Interpretation

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

Representations

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

1. the Filer is a corporation organized under the laws of British Columbia, with a head office in Vancouver, British Columbia;
2. the Filer is registered as a portfolio manager and exempt market dealer in all Canadian provinces and territories, and an investment fund manager in British Columbia, Ontario, Quebec and Newfoundland and Labrador;
3. the Filer is the manager of each of the LPs;
4. each of the LPs is a limited partnership established under the *Partnerships Act* (British Columbia), with a registered office in Vancouver, British Columbia;
5. none of the LPs are reporting issuers in any jurisdiction in Canada, or have securities that are listed or traded on any exchange or quotation system;
6. the issued and outstanding securities of each of the LPs consist of limited partnership units (Units) that are redeemable by investors in certain circumstances;
7. Units of the LPs were issued to certain investors in British Columbia (the Investors) on a private placement basis in reliance on the accredited investor prospectus exemption in section 2.3 of NI 45-106 (the Initial Distributions);
8. each of the LPs filed completed reports on Form 45-106F1 and paid the applicable filings fees, in relation to the Initial Distributions (the Initial Filings);
9. on April 16, 2024, the 2024 Federal Budget announced the Government of Canada's intention to amend the *Income Tax Act* (Canada) to increase the capital gains inclusion rate, which came into effect June 25, 2024;
11. on June 12, 19 and 20, 2024, the Filer initiated a number of crystallization transactions on behalf of the Investors, which involved the redemption and immediate repurchase of Units of the LPs for identical dollar amounts, for the purpose of triggering capital gains under then existing capital gains inclusion rates (the Crystallization Transactions);
12. no additional capital was raised by the LPs as a result of the Crystallization Transactions;
13. the Crystallization Transactions did not increase, decrease or otherwise materially change the net assets, or the nature of the assets, of any of the LPs, and did not materially increase or decrease the number of Units owned by any of the Investors;
13. each of the LPs relied upon the accredited investor prospectus exemption in section 2.3 of NI 45-106 for the distribution of Units to the Investors as part of the Crystallization Transactions, which required each of the LPs to file a completed report on Form 45-106F1 within 10 business days of each distribution (the Required Filings) and pay the applicable filing fees;
14. as the Crystallization Transactions involved the redemption and purchase of Units by the Investors for identical dollar amounts, the information which would be provided by the

Required Filings has already been disclosed in the Initial Filings; the filing of a new report by the LPs would only provide duplicate information previously filed by the LPs;

15. any filing fees payable in connection with the Required Filings would be payable by the LPs and indirectly borne by investors in the LPs; and
16. none of the Filer or the LPs are in default of securities legislation in any jurisdiction, except in relation to the filing of a report on Form 45-106F1 in relation to the Required Filings; the Requested Relief will not, if granted, alter the default status of the LPs for the period preceding the date of this Decision.

Order

- ¶ 4 Considering that it is not prejudicial to the public interest, the British Columbia Securities Commission orders that the Requested Relief is granted.

John Hinze
Director, Corporate Finance
British Columbia Securities Commission