

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 51-102 *Continuous Disclosure Obligations*, s. 13.1 – Filer required relief from the requirement to file a business acquisition report – The acquisition was insignificant applying the asset and investment tests, but significant based on the profit or loss test – The profit or loss test produced an anomalous result because the significance of the acquisition under that test was 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 – Filer provided additional measures demonstrating the insignificance of the property to the Filer which were generally consistent with the results when applying the asset and investment tests

Applicable Legislative Provisions

National Instrument 51-102 *Continuous Disclosure Obligations*, subss. 8.2(1), 8.4(5), s. 13

Citation: Re Melcor Real Estate Investment Trust, 2019 ABASC 180

Date: 20191210

In the Matter of
the Securities Legislation of
Alberta and Ontario (the **Jurisdictions**)

and

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

and

In the Matter of
Melcor Real Estate Investment Trust (the **Filer**)

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a **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 acquisition (the **Acquisition**) of a regional retail shopping centre (the **Target Property**) for a total gross purchase price of approximately \$54.8 million (the **Exemption Sought**).

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

- (a) the Alberta Securities Commission is the principal regulator for the application;
- (b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Prince Edward Island, Nova Scotia, 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

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 herein.

Representations

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

The Filer

1. The Filer is an unincorporated open-ended real estate investment trust established under the laws of the Province of Alberta pursuant to a declaration of trust with its head office located in Edmonton, Alberta.
2. The Filer is a reporting issuer under the securities legislation of each of the provinces and territories of Canada and is not in default of securities legislation in any jurisdiction of Canada.
3. The units of the Filer are listed and posted for trading on the Toronto Stock Exchange under the trading symbol "MR.UN".

The Acquisition

4. The Filer completed the Acquisition on November 12, 2019.
5. The Acquisition constitutes a "significant acquisition" for the purposes of Part 8 of NI 51-102, requiring the Filer to file a BAR within 75 days of the Acquisition pursuant to subsection 8.2(1) of NI 51-102.

Significance Tests for the BAR

6. The tests for determining whether an acquisition is a significant acquisition are the asset test described in paragraph 8.3(2)(a) of NI 51-102 (the **Asset Test**), the investment test described in paragraph 8.3(2)(b) of NI 51-102 (the **Investment Test**) and the profit or loss test described in paragraph 8.3(2)(c) of NI 51-102 (the **Profit or Loss Test**). An acquisition

by the Filer is a significant acquisition if any of the three foregoing tests yield a result that exceeds 20%.

7. The Acquisition is not a significant acquisition under the Asset Test, as the consolidated assets of the Target Property at the end of its most recently completed financial year represent approximately 8.0% of the Filer's consolidated assets as at December 31, 2018.
8. The Acquisition is not a significant acquisition under the Investment Test, as the consolidated investments in and advances to the Target Property on the acquisition date represent approximately 7.7% of the Filer's consolidated assets as at December 31, 2018.
9. The Acquisition is, however, a significant acquisition under the Profit or Loss Test, as the specified profit or loss of the Target Property for its most recently completed financial year represents approximately 60.1% of the Filer's consolidated specified profit or loss for the financial year ended December 31, 2018.

Non-significance of the Acquisition

10. The application of the Profit or Loss Test produces an anomalous result 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 Asset Test and the Investment Test.
11. The Filer does not believe that the Acquisition is significant to it from a commercial, business, practical or financial perspective.
12. The Filer has provided the principal regulator with additional operational measures that demonstrate the non-significance of the Acquisition to the Filer. The results of those measures are generally consistent with the results of the Asset Test and the Investment Test.
13. The Filer is of the view that the Asset Test, the Investment Test and these additional operating measures more closely reflect the actual significance of the Acquisition to the Filer from a commercial, business, practical and financial perspective.

Decision

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.

“original signed by”

Timothy Robson
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Corporate Finance
Alberta Securities Commission