

Date: September 12th, 2014

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

And

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

And

**In the Matter of
Artis Real Estate Investment Trust (the "Issuer")**

And

Canaccord Genuity Corp. (the "Agent" and, together with the Issuer, the "Filers")

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions ("**Decision Makers**") has received an application (the "**Application**") from the Filers for a decision under the securities legislation of the Jurisdictions (the "**Legislation**") for the following exemptive relief (the "**Exemptive Relief**"):

- (a) that the requirement that a dealer, not acting as agent of the purchaser, who receives an order or subscription for a security offered in a distribution to which the prospectus requirement applies send or deliver to the purchaser or its agent the latest prospectus (including the applicable prospectus supplement(s) in the case of a base shelf prospectus) and any amendment to the prospectus (the "**Delivery Requirement**") does not apply to the Agent or any other Toronto Stock Exchange ("**TSX**") participating organization or other marketplace participant acting as selling agent for the Agent (each such other organization or other marketplace participant, a "**Selling Agent**") in connection with any at-the-market distributions ("**ATM Distributions**") within the meaning of National Instrument 44-102 *Shelf Distributions* ("**NI 44-102**") to be made by the Issuer pursuant to a second amended and restated equity distribution agreement (the "**Equity Distribution Agreement**") to be entered into by the Issuer and the Agent; and
- (b) that the requirements that (i) a forward-looking issuer certificate included in a prospectus supplement be in the form specified in section 2.1 of Appendix A to NI 44-102 and (ii) a statement concerning purchasers' statutory rights of withdrawal and

remedies for rescission or damages be included in a short form prospectus in substantially the form prescribed in Item 20 of Form 44-101F1 *Short Form Prospectus* (such prescribed statement, the "**Statement of Purchasers' Rights**") (collectively, the "**Form Requirements**") do not apply to the prospectus supplement of the Issuer to be filed in respect of the sale of voting participating trust units ("**Units**") of the Issuer pursuant to ATM Distributions under the Equity Distribution Agreement (the "**Prospectus Supplement**"), provided that the alternative form of certificate and disclosure regarding a purchaser's statutory rights described below are included in the Prospectus Supplement.

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

- (a) The Manitoba Securities Commission is the principal regulator for this application,
- (b) the Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* ("**MI 11-102**") is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, Nunavut and the Yukon Territory, and
- (c) the decision is the decision of the principal regulator and evidences the decision of the Ontario Securities Commission.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined in this decision.

Representations

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

The Issuer

1. The Issuer is an unincorporated real estate investment trust constituted under and governed by the laws of the Province of Manitoba. The head office of the Issuer is located in Winnipeg, Manitoba.
2. The Issuer is currently a reporting issuer or the equivalent under the securities legislation of each of the provinces and territories of Canada and is in compliance in all material respects with the applicable requirements of such legislation.
3. The Units, one series of non-convertible debentures, two series of convertible debentures of the Issuer and four series of preferred trust units of the Issuer are listed on the TSX.

4. The Issuer has previously filed and received a receipt under the Legislation for a short form base shelf prospectus dated July 17, 2014 providing for the distribution from time to time of Units, preferred trust units, debt securities, warrants and subscription receipts in an aggregate initial offering price of up to \$2,000,000,000 (the "**Shelf Prospectus**"). The Shelf Prospectus constitutes an "unallocated shelf" within the meaning of Part 3 of NI 44-102.
5. The Shelf Prospectus contains a forward-looking issuer certificate of the Issuer in the form prescribed by method 1 as set forth in section 1.1 of Appendix A to NI 44-102. The Shelf Prospectus also contains a Statement of Purchasers' Rights in substantially the form prescribed in Item 20 of Form 44-101F1.

The Agent

6. The Agent is a corporation continued under the laws of the Province of Ontario with its head office in Vancouver, British Columbia.
7. The Agent is registered as an investment dealer under the securities legislation of each of the provinces and territories of Canada, is a member of the Investment Industry Regulatory Organization of Canada, and is a participating organization of the TSX.

Renewal of Previous ATM Distribution Arrangement

8. The Filers entered into an amended and restated equity distribution agreement dated September 18, 2012 providing for the periodic sale of Units by the Issuer through the Agent, as agent, pursuant to ATM Distributions under the shelf procedures prescribed by Part 9 of NI 44-102. The Issuer filed a prospectus supplement dated December 28, 2012 qualifying the periodic sale of Units by the Issuer through the Agent, as agent, pursuant to ATM Distributions made pursuant to such equity distribution agreement. An aggregate of 320,000 Units were sold pursuant to such equity distribution agreement. The Issuer and the Agent applied for and obtained a decision document dated November 29, 2012 issued by The Manitoba Securities Commission which provided for the same exemptive relief requested herein with respect to ATM Distributions made pursuant to the equity distribution agreement.
9. Upon receipt of the requested relief, the Filers have agreed to enter into the Equity Distribution Agreement which will amend and restate the amended and restated equity distribution agreement dated September 18, 2012 to continue the Issuer's ATM Distribution program.
10. Prior to making any ATM Distributions, the Issuer will file the Prospectus Supplement to qualify the sale of Units under the Equity Distribution Agreement in each of the provinces and territories of Canada. The Prospectus Supplement will describe the Equity Distribution Agreement and otherwise supplement the disclosure in the Shelf Prospectus.

11. Upon obtaining the relief requested herein, the Issuer will file the Prospectus Supplement and the Equity Distribution Agreement on SEDAR and issue a news release to announce the same. The news release will indicate that the Shelf Prospectus and the Prospectus Supplement have been filed on SEDAR, and will specify where and how purchasers may obtain copies. A copy of the news release will also be posted on the Issuer's website. The news release will serve as the news release contemplated by section 3.2 of NI 44-102 for an expected distribution of equity securities under an unallocated shelf.
12. The Equity Distribution Agreement will limit the number of Units that the Issuer may issue and sell pursuant to any ATM Distribution thereunder to an amount not to exceed 10% of the aggregate market value of the outstanding Units calculated in accordance with section 9.2 of NI 44-102.
13. The Issuer will sell Units in Canada through methods constituting ATM Distributions, including sales made on the TSX or any other recognized Canadian "marketplace" within the meaning of National Instrument 21-101 – Marketplace Operation upon which the Units are listed or quoted or otherwise traded (a "**Marketplace**"), through the Agent, as agent, directly or through a Selling Agent.
14. The Agent will act as the sole agent on behalf of the Issuer in connection with the sale of Units on the TSX or any other Marketplace pursuant to the Equity Distribution Agreement, and will be the only person or company paid an agency fee or commission by the Issuer in connection with such sales. The Agent will sign an agent's certificate in the Prospectus Supplement.
15. The Agent will effect ATM Distributions on the TSX or any other Marketplace, either itself or through a Selling Agent. If sales are effected through a Selling Agent, the Selling Agent will be paid a customary seller's commission for effecting the trades on behalf of the Agent. A purchaser's rights and remedies under the Legislation against the Agent, as agent of an ATM Distribution through the TSX or any other Marketplace, will not be affected by a decision to effect the sale directly or through a Selling Agent.
16. The number of Units sold on the TSX or any other Marketplace pursuant to an ATM Distribution on any trading day will not exceed 25% of the trading volume of the Units on the TSX and any other Marketplace on that day.
17. The Equity Distribution Agreement will provide that, at the time of each sale of Units pursuant to an ATM Distribution, the Issuer will represent to the Agent that the Shelf Prospectus, as supplemented by the Prospectus Supplement and any subsequent amendment or supplement to the Shelf Prospectus or the Prospectus Supplement (together, the "**Prospectus**"), contains full, true and plain disclosure of all material facts relating to the Issuer and the Units being distributed. The Issuer will therefore be unable to proceed with sales pursuant to an ATM Distribution when it is in possession of undisclosed information that would constitute a material fact or a material change in respect of the Units.

18. If, after the Issuer delivers a notice to the Agent directing the Agent to sell Units on the Issuer's behalf pursuant to the Equity Distribution Agreement (a "**Sell Notice**"), the sale of the Units specified in the Sell Notice, taking into consideration prior sales, would constitute a material fact or material change, the Issuer will be required to suspend sales under the Equity Distribution Agreement until either (i) it has filed a material change report or amended the Prospectus, or (ii) circumstances have changed so that the sales would no longer constitute a material fact or material change.
19. In determining whether the sale of the number of Units specified in a Sell Notice would constitute a material fact or material change, the Issuer will take into account a number of factors, including, without limitation (i) the parameters of the Sell Notice, including the number of Units proposed to be sold and any price or timing restrictions that the Issuer may impose with respect to the particular ATM Distribution, (ii) the percentage of outstanding Units that the number of Units proposed to be sold pursuant to the Sell Notice represents, (iii) trading volume and volatility of the Units, (iv) recent developments in the business, affairs and capital structure of the Issuer, and (v) prevailing market conditions generally.
20. The Agent will monitor closely the market's reaction to trades made on the TSX or other Marketplace pursuant to an ATM Distribution in order to evaluate the likely market impact of future trades. The Agent has experience and expertise in managing sell orders to limit downward pressure on trading prices. If the Agent has concerns as to whether a particular sell order placed by the Issuer may have a significant effect on the market price of the Units, the Agent will recommend against effecting the trade at that time. It is in the interest of both the Issuer and the Agent to minimize the market impact of sales under an ATM Distribution.
21. The agent's certificate to be signed by the Agent and included in the Prospectus Supplement will be in the form specified in section 2.2 of Appendix B to NI 44-102.

Disclosure of Units Sold

22. For each month during which Units are distributed on the TSX or any other Marketplace by the Issuer pursuant to ATM Distributions under the Prospectus, the Issuer will file on SEDAR a report disclosing the number and average price of Units so distributed during that month, as well as total gross proceeds, commission and net proceeds, within seven calendar days after the end of such month.
23. The Issuer will also disclose the number and average price of Units sold pursuant to ATM Distributions under the Prospectus, as well as total gross proceeds, commission and net proceeds, in the ordinary course in its annual and interim financial statements and management discussion and analysis filed on SEDAR.

Prospectus Delivery Requirement

24. Pursuant to the Delivery Requirement, a dealer effecting a trade of securities under a prospectus-based offering is required to deliver a copy of the prospectus (including the

applicable prospectus supplement(s) in the case of a base shelf prospectus) to the purchaser within prescribed time limits.

25. However, the delivery of a prospectus is not practicable in the circumstances of an ATM Distribution through the TSX or any other Marketplace, as neither the Agent nor any Selling Agent effecting the trade will know the purchaser's identity.
26. Although purchasers under an ATM Distribution would not physically receive a printed Prospectus, the Prospectus (together with all documents incorporated by reference) will be filed and readily available to all purchasers electronically via SEDAR. Moreover, the Issuer will issue a news release that specifies where and how copies of the Prospectus can be obtained.
27. The liability of an issuer or an agent (and others) for misrepresentation in a prospectus pursuant to the civil liability provisions of the Legislation will not be affected by the grant of an exemption from the Delivery Requirement, as a purchaser of the securities offered by a prospectus during the period of distribution has a right of action for damages or rescission if there is a misrepresentation in the prospectus, without regard to whether the purchaser relied on the misrepresentation or in fact received a copy of the prospectus.

Withdrawal Right

28. Pursuant to the Legislation, an agreement to purchase securities is not binding on the purchaser if the dealer of the securities receives, not later than midnight on the second day exclusive of Saturdays, Sundays and holidays, after receipt by the purchaser of the latest prospectus or any amendment to the prospectus, a notice in writing that the purchaser does not intend to be bound by the agreement of purchase (the "**Withdrawal Right**").
29. The Withdrawal Right is not workable in the context of an ATM Distribution because a prospectus will not be delivered to a purchaser of Units thereunder.

Right of Action for Non-Delivery

30. Pursuant to the Legislation, a purchaser of a security to whom a prospectus was required to be sent or delivered in compliance with the Delivery Requirement, but was not so sent or delivered, has a right of action for rescission or damages against the dealer who did not comply with the Delivery Requirement (the "**Right of Action for Non-Delivery**").
31. The Right of Action for Non-Delivery is not workable in the context of an ATM Distribution because a prospectus will not be delivered to a purchaser of Units thereunder.

Prospectus Form Requirements

32. Exemptive relief from the Form Requirements is required with respect to the Issuer's forward looking certificate in the Prospectus Supplement to reflect the fact that no pricing or other supplement to the Prospectus will be filed subsequent to the Prospectus Supplement. Accordingly, the Issuer will file the Prospectus Supplement with the following forward-looking issuer certificate which will supersede and replace, solely with respect to ATM Distributions contemplated by the Prospectus Supplement, the forward-looking issuer certificate contained in the Shelf Prospectus:

The short form prospectus, as supplemented by the foregoing, together with the documents incorporated in the prospectus by reference as of the date of a particular distribution of securities offered by the prospectus, will, as of that date, constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus, as required by the securities legislation of each of the provinces and territories of Canada.

33. Exemptive relief from the Form Requirements is required in order to allow the Prospectus Supplement to accurately reflect the relief granted from the Delivery Requirement. Accordingly, the Issuer will include the following language in the Prospectus Supplement in replacement of the language prescribed by the Form Requirements:

Securities legislation in certain of the provinces and territories of Canada provides purchasers with the right to withdraw from an agreement to purchase securities and with remedies for rescission or, in some jurisdictions, revision of the price, or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment are not delivered to the purchaser, provided that the remedies are exercised by the purchaser within the time limit prescribed by securities legislation. However, purchasers of Units under an at-the-market distribution by the Issuer will not have the right to withdraw from an agreement to purchase the Units and will not have remedies for rescission or, in some jurisdictions, revision of the price, or damages for non-delivery, because the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment will not be delivered as permitted under a decision dated ●, 2014 and granted pursuant to National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*.

Securities legislation in certain of the provinces and territories of Canada also provides purchasers with remedies for rescission or, in some jurisdictions, revision of the price, or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment contain a misrepresentation, provided that the remedies are exercised by the purchaser within the time limit prescribed by securities legislation. Any remedies under securities legislation that a purchaser of Units under an at-the-market distribution by the Issuer may

have against the Issuer or the Agent for rescission or, in some jurisdictions, revision of the price, or damages if the prospectus, prospectus supplements relating to the Units purchased by a purchaser and any amendment contain a misrepresentation remain unaffected by the non-delivery and the decision referred to above.

Purchasers should refer to the applicable provisions of the securities legislation and the decision referred to above for the particulars of their rights or consult with a legal advisor.

34. The modified disclosure of purchasers' rights set forth in paragraph 33 above will be explicitly disclosed in the Prospectus Supplement and, solely as regards to ATM Distributions contemplated by the Prospectus Supplement, supersede and replace the statement of purchasers' rights contained in the Shelf Prospectus.

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 Exemptive Relief is granted provided that:

- (a) as it relates to the Delivery Requirement, the representations made in sections 11, 13, 14, 15, 16, 17, 18 and 20 are complied with;
- (b) as it relates to the Form Requirements, the disclosure described in sections 22, 32, 33 and 34 is made; and
- (c) this decision will terminate 25 months after the issuance of a receipt for the Shelf Prospectus under the Legislation.



Chris Besko
Acting Director
The Manitoba Securities Commission