



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  
Marwest Apartment Real Estate Investment Trust (the **Filer**)

**Decision**

**Background**

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Makers**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that the Filer be granted an exemption pursuant to section 9.1 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**) from the minority approval and formal valuation requirements under Part 5 of MI 61-101 relating to any related party transaction of the Filer entered into indirectly through MAR REIT L.P. (the **Partnership**) or any other subsidiary entity (as such term is defined in MI 61-101) of the Partnership, if that transaction would qualify for the transaction size exemptions set out in sections 5.5(a) and 5.7(1)(a) of MI 61-101 if the indirect equity interest in the Filer in the form of Exchangeable Units (as defined below) were included in the calculation of the Filer's market capitalization (collectively, the **Exemption Sought**).

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 Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relief upon in Quebec, Alberta, Saskatchewan and New Brunswick; 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* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

## **Representations**

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

1. The Filer is an unincorporated open-ended trust established under the laws of the province of Manitoba and governed by an amended and restated declaration of trust dated as of April 30, 2021 (the **Declaration of Trust**).
2. The Filer's head office is located at Suite 500 - 220 Portage Avenue in Winnipeg, Manitoba.
3. The Filer is a reporting issuer in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba and Ontario and is not in default of any applicable requirements of the securities legislation thereunder.
4. The Filer is authorized to issue an unlimited number of Class A trust units (the **Trust Units**) and an unlimited number of special voting units (the **Special Voting Units**). As at August 11, 2021, the Filer has 8,830,964 Trust Units and 9,812,063 Special Voting Units issued and outstanding.
5. Special Voting Units are only issued in tandem with the issuance of Exchangeable Units and deferred trust units granted under the equity incentive plan of the Filer, being the only securities exchangeable into or redeemable for Trust Units. Special Voting Units are not transferable separately from the exchangeable securities to which they are attached and will be automatically transferred upon the transfer of such exchangeable securities. Upon the exchange or surrender of an exchangeable security for a Trust Unit, the Special Voting Unit attached to such exchangeable security will automatically be redeemed and cancelled for no consideration without any further action of the trustees of the Filer, and the former holder of such Special Voting Unit will cease to have any rights with respect thereto. The number of Special Voting Units outstanding at any point in time is equal to the number of securities exchangeable and redeemable for Trust Units issued and outstanding to which such Special Voting Units relate.
6. The Trust Units are listed and posted for trading on the TSX Venture Exchange under the trading symbol "MAR.UN".
7. The Filer is a real estate investment trust which holds its property interests indirectly through the Partnership, which indirectly owns two multi-family properties located in Winnipeg, Manitoba with a total of 251 suites. The



operating business of the Filer is carried on by the Partnership and/or entities owned by the Partnership.

8. The Partnership is a limited partnership formed under the laws of the province of Manitoba and is governed by a limited partnership agreement dated April 19, 2021 (the **Partnership Agreement**). The head office and registered office of the Partnership is located at Suite 500 - 220 Portage Avenue in Winnipeg, Manitoba.
9. The Partnership is not a reporting issuer in any jurisdiction and none of its securities are listed or posted for trading on any stock exchange or other market.
10. The general partner of the Partnership is MAR REIT GP Inc. (the **General Partner**), a corporation existing under *Canada Business Corporation Act* and in good standing. The head office and registered office of the General Partner is located at Suite 500 - 220 Portage Avenue in Winnipeg, Manitoba. The General Partner is wholly-owned by the Filer and manages and controls the business and affairs of the Partnership.
11. The Partnership is authorized to issue an unlimited number of Class A limited partnership units (the **Class A Units**) and an unlimited number of Class B limited partnership units (the **Exchangeable Units**). The Filer holds all of the issued and outstanding Class A Units. There are currently 9,812,063 Exchangeable Units issued and outstanding, which were issued to, and are currently directly or indirectly held by, the vendors of the limited partnership units of Marwest Apartments I L.P. and Marwest Apartments VII L.P. that were acquired by the Partnership. Assuming the exchange of all of the Exchangeable Units currently outstanding, the holders of the Exchangeable Units would hold, in the aggregate, approximately 52.63% of the outstanding Trust Units as at August 11, 2021.
12. The Exchangeable Units are, in all material respects, the economic equivalent of the Trust Units on a per unit basis. The Exchangeable Units are not transferable (except as specifically provided in the Partnership Agreement), however the Exchangeable Units are exchangeable on a one-for-one basis for Trust Units at any time at the option of the holder thereof (subject to customary anti-dilution provisions). The distributions made on the Exchangeable Units are equal to the distributions that the holder of the Exchangeable Units would have received if it were holding the Trust Units that may be obtained upon the exchange of such Exchangeable Units. The Exchangeable Units are non-voting units of the Partnership (except as specifically provided in the Partnership Agreement), however each Exchangeable Unit is accompanied by a Special Voting Unit so that the holder thereof has voting rights on matters respecting the Filer that are the same as the voting rights that the holder would have if it were holding the Trust Units that may be obtained upon the exchange of such Exchangeable Units. The Exchangeable Units are not exchangeable for securities other than Trust Units nor are they redeemable for cash.

13. It is anticipated that the Filer, indirectly through the Partnership or its subsidiaries, may from time to time enter into transactions with certain related parties (as such term is defined in MI 61-101).
14. If Part 5 of MI 61-101 applies to a related party transaction by an issuer and the transaction is not otherwise exempt:
  - (a) the issuer must obtain a formal valuation of the transaction in a form satisfying the requirements of MI 61-101; and
  - (b) the issuer must obtain approval of the transaction by disinterested holders of the affected securities of the issuer

(together, the requirements in this paragraph 14(a) and (b) are referred to as the **Minority Protections**).
15. A related party transaction that is subject to MI 61-101 may be exempt from the Minority Protections if, at the time the transaction is agreed to, neither the fair market value of the subject matter of, nor the fair market value of the consideration for, the transaction, exceeds 25% of the issuer's market capitalization (the **Transaction Size Exemption**).
16. The Filer may not be entitled to rely on the Transaction Size Exemption available under MI 61-101 from the requirements relating to related party transactions in MI 61-101 because the definition of "market capitalization" in MI 61-101 does not contemplate securities of another entity that are exchangeable into equity securities of the issuer.
17. The Exchangeable Units represent part of the equity value of the Filer and provide the holder of the Exchangeable Units with economic rights which are, in all material respects, equivalent to the Trust Units. The effect of the exchange right granted to holders of Exchangeable Units is that holders of such Exchangeable Units will receive Trust Units upon the exchange of the Exchangeable Units. Moreover, the economic interests that underlie the Exchangeable Units are identical to those underlying the Trust Units; namely, the assets held directly or indirectly by the Partnership.
18. If the Exchangeable Units are not included in the market capitalization of the Filer, the equity value of the Filer will be understated by the value of the interest in the Partnership represented by the Exchangeable Units (being approximately 52.63% as at August 11, 2021). As a result, related party transactions by the Filer may be subject to the Minority Protections in situations where the fair market value of the transaction is effectively less than 25% of the fully-diluted market capitalization of the Filer (excluding any outstanding unit based incentive awards).



19. Section 1.4 of MI 61-101 treats an operating entity of an “income trust”, as such term is defined in National Policy 41-201 *Income Trusts and Other Indirect Offerings* (NP 41-201), on a consolidated basis with its parent trust entity for the purpose of determining which entities are related parties of the issuer and to which transactions MI 61-101 should apply. Section 1.2 of NP 41-201 provides that references to an “income trust” refer to a trust or other entity (including corporate and non-corporate entities) that issues securities which provide for participation by the holder in net cash flows generated by an underlying business owned by the trust or other entity. Therefore, it is consistent with MI 61-101 that securities of the operating entity, such as the Exchangeable Units, be treated on a consolidated basis for the purposes of the Transaction Size Exemption.
20. The inclusion of the Exchangeable Units when determining the Filer’s market capitalization pursuant to MI 61-101 is consistent with the logic of including unlisted equity securities of the issuer which are convertible into listed securities of the issuer in determining an issuer’s market capitalization in that both are securities that are considered part of the equity value of the issuer whose value is measured on the basis of the listed securities into which they are convertible or exchangeable.

#### **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 provided that:

- (a) the applicable transaction would qualify for the Transaction Size Exemption contained in MI 61-101 if the Exchangeable Units were considered an outstanding class of equity securities of the Filer that were convertible into Trust Units;
- (b) there is no material change to the terms of the Exchangeable Units and Special Voting Units, including the exchange rights associated therewith, as described above and in the Declaration of Trust, the Partnership Agreement and the Exchange Agreement, whether by amendment to such documents, contractual agreement or otherwise;
- (c) the applicable transaction is made in compliance with the rules and policies of the TSX Venture Exchange or such other exchange upon which the Filer’s securities trade;
- (d) any annual information form or equivalent of the Filer that is filed or required to be filed in accordance with applicable securities laws contains the following disclosure, with immaterial modifications as the context may require:

“Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (“**MI 61-101**”) provides a number of circumstances in which a transaction between an issuer and a related party may be subject to the formal valuation and minority approval requirements under MI 61-101. An exemption from such requirements is available when the fair market value of the transaction is not more than 25% of the market capitalization of the issuer. Marwest Apartment Real Estate Investment Trust (the “**REIT**”) has been granted exemptive relief from the requirements of MI 61-101 that, subject to certain conditions, permits it to be exempt from the formal valuation and minority approval requirements for transactions that would have a value of less than 25% of the REIT’s market capitalization, if the Class B limited partnership units of MAR REIT LP (the “**Exchangeable Units**”) are included in the calculation of the REIT’s market capitalization. As a result, the 25% threshold, above which the formal valuation and minority approval requirements would apply, is increased to include the indirect exchangeable equity interest in the REIT held in the form of Exchangeable Units, which represents approximately [●]% as at the date hereof.”

**“Chris Besko”**

---

**Chris Besko**

**Director**

**The Manitoba Securities Commission**