

Headnote: Mutual Reliance Review System for Exemptive Relief Applications - relief from the requirement under securities legislation to include a formal valuation of the offeree issuer in a take-over bid circular in connection with an insider bid where the Filer had an available exemption under section 2.4(1) of OSC Rule 61-501.

Applicable Legislative Provisions:

Securities Act, R.S.A., 2000, c.S-4, section 179(2)(c)
ASC Securities Rules- sections 170 and 171

Citation: Eimskip Atlas Canada Inc. (formerly 6593640 Canada Inc.), 2006 ABASC 1580

Date: 20060808

In the Matter of
the Securities Legislation of
Alberta, British Columbia, Saskatchewan, Manitoba, Nova Scotia and
Newfoundland & Labrador
(the Jurisdictions)

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of Eimskip Atlas Canada, Inc. (formerly 6593640 Canada Inc.) (the Filer)

MRRS Decision Document

Background

1. The local securities regulatory authority or regulator (collectively, the Decision Makers) in each of Alberta, British Columbia, Saskatchewan, Manitoba, Nova Scotia and Newfoundland & Labrador (the Jurisdictions) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that:

1.1 in all of the Jurisdictions, the Filer be exempt from the requirement under the Legislation that the offer or circular in respect of an "insider bid" contain a summary of a valuation of the offeree issuer in connection with the Filer's offer (the Offer) to purchase all of the issued and outstanding trust units (the Units) of Atlas Cold Storage Income Trust (Atlas) not currently owned by the Filer or its joint offerors (the Valuation Requirement); and

1.2 in Manitoba, Nova Scotia and Newfoundland & Labrador only, from the Valuation Requirement in connection with any second step business combination or going private transaction pursued by the Filer.
(the Requested Relief).

2. Under the Mutual Reliance Review System for Exemptive Relief Applications (the System):

2.1 the Alberta Securities Commission is the principal regulator for this application; and

2.2 this MRRS decision evidences the decision of each Decision Maker.

Interpretation

3. Defined terms contained in National Instrument 14-101 have the same meaning in this decision unless they are defined in this decision.

Representations

4. The decision is based on the following facts represented by the Filer:

4.1 The Filer is a private corporation incorporated under the *Canada Business Corporations Act* solely for the purpose of making the Offer and has not otherwise carried on any business or activity. It is a wholly-owned indirect subsidiary of Avion Group HF (Avion), a limited liability company domiciled in Iceland.

4.2 The Offer will be funded through a combination of: (a) a term loan facility provided by a syndicate of Canadian chartered banks; (b) a mezzanine facility provided by KingStreet Real Estate Growth LP No. 2 (KingStreet); (c) an acquisition credit facility provided by KingStreet; and (d) an acquisition credit facility provided by Avion. KingStreet shall also acquire a bond issued by the Filer, the terms of which have not yet been finalized.

4.3 Avion and KingStreet are considered joint offerors with the Filer.

4.4 KingStreet is a private investment fund formed under the laws of Ontario. Its general partner is KingStreet Real Estate Growth GP No. 2 Inc. KingStreet's head and registered offices are located at Toronto, Ontario.

4.5 Avion and KingStreet collectively beneficially own approximately 13.7% of the outstanding Units, based on publicly available information.

4.6 Because parties who are joint offerors with the Filer beneficially own more than 10% of the Units, the Offer technically will be an "insider bid" for the purposes of the Legislation.

4.7 The Offer is an unsolicited offer and the Filer lacks access to relevant information that would enable it to satisfy the Valuation Requirement.

4.8 None of the Filer, Avion, or KingStreet has, or has ever had, any board or management representation in respect of Atlas, or, after reasonable inquiry, has knowledge of any material information concerning Atlas or its securities that has not been generally disclosed.

4.9 In making the Offer in Ontario and Québec, the Filer intends to rely on the exemption available from the equivalent of the Valuation Requirement in connection with an "insider bid" in subparagraph 2.4(1) 2 of Ontario Securities Commission Rule 61-501 Insider Bids, Issuer Bids, Business Combinations and Related Party Transactions (Rule 61-501) and subparagraph 2.4(1) 2 of Autorité des marchés financiers Regulation Q-27 Respecting Protection of Minority Shareholders in the Course of Certain Transactions (Q-27).

4.10 The Filer will provide relevant disclosure in the Circular in order to enable it to rely on the exemptions in Rule 61-501 and Q-27.

4.11 In connection with any second step business combination or going private transaction, the Filer intends to rely on the exemptions available under subparagraph 4.4(1) 5 of Rule 61-501 and subparagraph 4.4(1) 4 of Q-27 in that:

4.11.1 the second step business combination or going private transaction will be effected by an offeror following the Offer and will be in respect of Units;

4.11.2 the second step business combination or going private transaction will be completed no later than 120 days after the date of expiry of the Offer;

4.11.3 the consideration per security that security holders will be entitled to receive in the second step business combination or going private transaction will be:

4.11.3.1 at least equal in value to and in the same form as the consideration per Unit that is being paid by the Filer under the Offer; and

4.11.3.2 in cash, which is the same form as the consideration being paid by the Filer under the Offer;

4.11.4 the intent of the Filer to effect a second step business combination or going private transaction will be disclosed in the Offer and the Circular;

4.11.5 the Offer and the Circular will disclose:

4.11.5.1 that if the Filer acquires a sufficient number of Units under the Offer, the Filer intends to acquire the remainder of the outstanding Units by a second step business combination or a going private transaction; and

4.11.5.2 the expected tax consequences of the Offer and the second step business combination or going private transaction, to the extent currently known to the Filer.

4.12 The Filer intends to announce the take-over bid as soon as possible and no later than August 3, 2006.

Decision

5. Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met.

6. The decision of the Decision Makers pursuant to the Legislation is the Requested Relief is granted provided that the Filer complies with the other requirements in the Legislation applicable to formal take-over bids made by insiders.

"original signed by"

Blaine Young

Associate Director, Corporate Finance

Alberta Securities Committee