

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications -- issuer of subordinated notes (Keystone ULC) forming part of income participating securities (IPSs) previously granted relief from the continuous disclosure and certification filing requirements -- application to vary the previous decision to remove a condition that the obligations of Keystone ULC continue to be guaranteed by every other subsidiary of the issuer of the equity component of the IPSs (Keystone North America Inc.) -- relief granted subject to certain conditions, including (a) Keystone ULC's obligations under the subordinated notes continue to be guaranteed by one or more wholly-owned subsidiaries of Keystone North America Inc., and (b) Keystone North America Inc. includes prescribed financial information in the notes to its financial statements in order to enable investors to effectively "de-consolidate" the financial results of Keystone North America Inc. and Keystone ULC and determine the contribution of both the guarantor and non-guarantor subsidiaries of Keystone North America Inc. to the financial performance of Keystone North America Inc. and Keystone ULC.

## **Applicable Ontario Statutory Provisions**

Securities Act, R.S.O. 1990, c. S.5, as am., s. 144.

## **Applicable National Instruments**

National Instrument 51-102 Continuous Disclosure Obligations.

August 14, 2006

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,  
MANITOBA, ONTARIO, QUEBEC, NOVA SCOTIA,  
NEW BRUNSWICK, NEWFOUNDLAND,  
NORTHWEST TERRITORIES,  
NUNAVUT AND YUKON TERRITORY  
(the Jurisdictions)**

**AND**

**IN THE MATTER OF  
THE MUTUAL RELIANCE REVIEW SYSTEM  
FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

**IN THE MATTER OF  
KEYSTONE NORTH AMERICA INC. AND  
KEYSTONE NEWPORT ULC**

## **MRRS DECISION DOCUMENT**

### **Background**

The local securities regulatory authority or regulator (the Decision Maker), in each of the Jurisdictions has received an application from Keystone North America Inc. (KNA) and Keystone Newport ULC (Keystone ULC, and together with KNA, the Filer) for a decision under the securities legislation of the Jurisdictions (the Legislation) that the decision document dated May 13, 2005 issued by the Decision Makers, in respect of the Filer (the Original Decision Document) be varied by removing the condition contained in the Original Decision Document that Keystone ULC's obligations under its subordinated notes (the Subordinated Notes) continue to be guaranteed by every other subsidiary of KNA (the Guarantee Requirement).

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

- (a) the Ontario Securities Commission is the principal regulator for this Application, and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

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

### **Representations**

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

1. Pursuant to the Original Decision Document, Keystone ULC is exempt from:
  - (a) except in the Northwest Territories, the requirements under the Legislation to:
    - (i) issue press releases and file reports regarding material changes;
    - (ii) file annual financial statements together with an auditor's report and annual MD&A, as well as interim financial statements together with a notice regarding auditor review or a written review report, if required, and interim MD&A;
    - (iii) send annually a request form to the registered holders and beneficial owners of Keystone ULC's securities, other than debt instruments, that the registered holders and beneficial owners may use to request a copy of Keystone ULC's annual financial statements and annual MD&A, interim financial statements and interim MD&A, or both, and to send a copy of financial statements and MD&A to registered holders and beneficial owners;

(iv) send a form of proxy and information circular with a notice of meeting to registered holders of voting securities and to file the information circular, form of proxy and all other material required to be sent in connection with the meeting to which the information circular or form of proxy relates;

(v) where applicable, file a business acquisition report, including any required financial statement disclosure, if Keystone ULC completes a significant acquisition;

(vi) file a copy of any disclosure material that it sends to its securityholders;

(vii) file an annual information form; and

(viii) where applicable, file a copy of any contract that it or any of its subsidiaries is a party to, other than a contract entered into in the ordinary course of business, that is material to Keystone ULC and was entered into within the last financial year, or before the last financial year but is still in effect,

(collectively, the Continuous Disclosure Requirements); and

(b) the requirements under the Legislation except in British Columbia to:

(i) file annual certificates in accordance with section 2.1 of Multilateral Instrument 52-109 *Certification of Disclosure in Filer's Annual and Interim Filings* (MI 52-109); and

(ii) file interim certificates in accordance with section 3.1 of MI 52-109,

(collectively, the Certification Filing Requirements).

2. Pursuant to the Original Decision Document, the Continuous Disclosure Requirements and the Certification Filing Requirements do not apply to Keystone ULC, provided that, among other things, Keystone ULC complies with the Guarantee Requirement.

3. On March 14, 2006, Keystone America, Inc. formed a wholly-owned subsidiary, 2096837 Ontario Limited.

4. On April 3, 2006, 2096837 Ontario Limited closed its acquisition of Lahaie & Sullivan Cornwall Funeral Homes Limited and all of the assets of Lahaie & Sullivan Monuments Partnership.

5. On April 21, 2006, 2096837 Ontario Limited changed its name to Keystone Canada Funeral Homes Inc. (Keystone Canada).

6. Due to potential negative US tax consequences to KNA, Keystone Canada has not guaranteed Keystone ULC's obligations under the Subordinated Notes for an indefinite period.

7. The consolidated financial statements of KNA will include the financial results of Keystone Canada for so long as Keystone Canada remains a subsidiary of KNA.

8. KNA will provide investors who hold Subordinated Notes (including Subordinated Notes that are represented by Income Participating Securities of the Filer) with the information required to be included pursuant to item 13.3(ii) of Form 44-101F1 of National Instrument 44-101 Short Form Prospectus Distributions in order to enable investors to effectively "de-consolidate" the financial results of the Filer and determine the contribution of both the guarantor and the non-guarantor subsidiaries of the Filer to the Filer's financial performance.

## **Decision**

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.

The Decision of the Decision Makers pursuant to the Legislation is that the Original Decision Document be varied by removing the Guarantee Requirement, provided that:

1. KNA includes the following consolidating summary financial information in the notes to its interim and annual financial statements, presented with a separate column for each of (a) Keystone ULC, (b) each credit supporter on a combined basis, (c) the non-guarantor subsidiaries on a combined basis, (d) consolidating adjustments and (e) the total consolidated amounts:

1. Sales or revenues;
2. Income from continuing operations before extraordinary items;
3. Net earnings;
4. Current assets;
5. Non-current assets;
6. Current liabilities; and
7. Non-current liabilities;

2. The cover page of KNA's financial statements includes a statement disclosing the notes where the consolidating summary financial information can be found; and

3. Keystone ULC's obligations under the Subordinated Notes continue to be guaranteed by one or more wholly-owned subsidiaries of KNA and the guarantees are joint and several.

"Cameron McInnis"

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Ontario Securities Commission