

July 9, 2015

In the Matter of  
**the Securities Legislation of the Province of Manitoba** (the "**Jurisdiction**")

and

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

and

In the Matter of  
1037270 B.C. Ltd. (the **Parent Buyer**), 1037269 B.C. Ltd. (the **Cash Buyer**) and Compass  
Group Diversified Holdings LLC (**Compass**, and together with the **Parent Buyer** and the **Cash  
Buyer**, the **Filer**)

### Decision

#### **Background**

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the requirements of Part 2 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* (the **Instrument**) in connection with a take-over bid by the Filer for all of the outstanding common shares of Fresh Hemp Foods Ltd. (**Fresh Hemp**) (the **Exemption Sought**).

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

- (a) The Manitoba Securities Commission is the principal regulator for this application, and
- (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 relied upon in British Columbia, Alberta and Quebec.

#### **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. Parent Buyer and Cash Buyer (together with the Parent Buyer, the **Buyer**) were incorporated under the laws of British Columbia to act as private investment and holding companies for Compass Group Diversified Holdings LLC (**Compass**).

2. In February 2015, Fresh Hemp initiated a process pursuant to which it sought expressions of interest from potential investors to purchase the issued and outstanding shares of Fresh Hemp (the **Shares**). On May 12, 2015, Compass made an offer to purchase all of the Shares through one or more of its affiliates.
3. Buyer wishes to complete a transaction (the **Bid**) to acquire all of the Shares. Under the terms of the proposed Bid, Fresh Hemp security holders would receive cash from Cash Buyer, and, in the case of Fresh Hemp employee shareholders (the **Employee Shareholders**) and one of the private equity shareholders and strategic partner of Fresh Hemp (the **Private Equity Shareholder**), cash and/or securities of Parent Buyer representing a fair market value equivalent to the cash consideration, in exchange for each Share tendered thereto. The shares of Parent Buyer issued to the Employee Shareholders and the Private Equity Shareholder are issued on the same per share value as Compass in their capitalization of Parent Buyer for the funding of the purchase price, such that all shareholders will receive consideration of equal value under the Bid. Fresh Hemp and its directors are fully supportive of this Bid.
4. Fresh Hemp is a manufacturer, processor, distributor and seller of hemp-based food products incorporated under the laws of Manitoba. Fresh Hemp is not a "reporting issuer" for the purposes of securities legislation in any jurisdiction in Canada and there is no published market in respect of the Shares. The Filer and Fresh Hemp are not in default of securities legislation in any Canadian jurisdiction subject to the requested relief being granted.
5. On June 5, 2015, Buyer and 18 of the shareholders of Fresh Hemp (holding, in the aggregate, 83.8% of the issued and outstanding Shares, on a fully-diluted basis) (the **Majority Shareholders**) entered into a share purchase agreement for the purchase by Buyer from the Majority Shareholders, and the sale by the Majority Shareholders to Buyer, of the Shares held by the Majority Shareholders (the **Purchase Agreement**). Under the Purchase Agreement, the President of Fresh Hemp (who is also one of the Majority Shareholders, an Employee Shareholder and one of the Founders (as hereinafter defined)) was appointed as the representative of the Majority Shareholders of Fresh Hemp for purposes of the transactions contemplated thereby (the **Shareholders' Representative**).
6. There are a number of conditions precedent to the closing of the Bid, including (i) the execution and delivery by the remaining shareholders of Fresh Hemp (holding, in the aggregate, the remaining 16.2% of the issued and outstanding Shares, on a fully-diluted basis) (the **Remaining Shareholders**) of simplified purchase agreements with respect to the purchase of their Shares by Buyer (the **Simplified Agreements**), and (ii) the absence of any illegality of the closing of the Bid.
7. By June 17, 2015, all of the Simplified Agreements had been executed and delivered to Buyer by the Remaining Shareholders. Prior to signing the Simplified Agreements, in addition to these agreements, each Remaining Shareholder was given a summary of the principal terms and conditions of the Purchase Agreement entered into with the Majority Shareholders and the Bid, including: (a) the aggregate purchase price for the Bid; (b) the fact that shareholders of Fresh Hemp (whether Majority Shareholders or Remaining Shareholders) will receive the same fair market value per Share after all adjustments, holdbacks and closing costs; and (c) the conditions to closing. None of the Remaining

Shareholders was required to give any representation or warranty relating to Fresh Hemp or has any indemnification obligation in respect of representations and warranties relating to Fresh Hemp, and as such, have not received information with respect thereto. In the Simplified Agreements, the Remaining Shareholders also appointed the Shareholders' Representative as their representative for purposes of the transactions contemplated thereby.

8. All of the minority shareholders of Fresh Hemp are parties to shareholders' agreements with Fresh Hemp and certain of the Majority Shareholders pursuant to which such minority shareholders granted drag-along rights to the Majority Shareholders. In the Purchase Agreement, the Majority Shareholders covenanted that upon written request by Buyer, they would exercise their drag-along rights in accordance with the terms of such shareholders' agreements. Buyer has not requested that the Majority Shareholders exercise their drag-along rights because all of the minority shareholders of Fresh Hemp support the Bid and have voluntarily executed and delivered the Simplified Agreements.
9. The collateral agreements, commitments or understandings to which prohibitions in respect thereof provided for in Section 2.24 of the Instrument may apply (collectively, the **Agreements**) are as follows:
  - (a) at the closing of the Bid, a consulting services agreement (the **CSA**) will be entered into between the Private Equity Shareholder and Fresh Hemp for the provision of consulting services by the Private Equity Shareholder;
  - (b) at the closing of the Bid, a stock option plan (the **SOP**) will be approved by Parent Buyer and options to purchase shares of Parent Buyer will be granted thereunder to Employee Shareholders that will continue to be employed with Fresh Hemp;
  - (c) under the terms of the proposed Bid, as more fully described herein, the Employee Shareholders and the Private Equity Shareholder are entitled to receive cash and/or securities of Parent Buyer representing a fair market value equivalent on a per Share basis to the cash consideration otherwise payable under the Bid; and
  - (d) the Simplified Agreements contain terms and conditions that are less stringent than the terms and conditions contained in the Purchase Agreement.
10. Taking into account the context of the Bid, the fact that Fresh Hemp is fundamentally a private business closely held by persons with long standing economic and other relationships, and the comprehensive formal agreements that existed among the shareholders before the inception of the Bid, the Agreements are reasonable and are made for reasons other than to increase the value of the consideration paid to the relevant security holders under the Bid. In this respect:
  - (a) services to be provided pursuant to the CSA are and will continue to be important to the conduct of Fresh Hemp's business going forward. The entering into of the CSA does not form part of the consideration for the Shares of the Private Equity Shareholder, but rather is an agreement to continue a service relationship after closing that is strategic to Fresh Hemp;

- (b) the exercise price for the options that will be granted under the SOP to Employee Shareholders is based on the purchase price payable for the Shares under the Bid;
  - (c) the purpose of the CSA, of the options that will be granted under the SOP and of the entitlement to receive a consideration comprised of securities of Parent Buyer is solely to retain persons, which happen to be existing security holders, as key business partners and employees going forward; and
  - (d) the less stringent terms and conditions contained in the Simplified Agreements are to ensure that the exposure of the minority shareholders entering into same is limited to only what is reasonably necessary to protect the interest of the Buyer.
11. According to the securityholder information of Fresh Hemp provided to Buyer, Fresh Hemp has 93 registered and beneficial security holders:
- (a) 52 reside in Manitoba holding 39.72% of the issued and outstanding Shares;
  - (b) 6 reside in British Columbia holding 2.58% of the issued and outstanding Shares;
  - (c) 3 reside in Quebec holding 0.09% of the issued and outstanding Shares;
  - (d) 1 resides in Alberta holding 43.21% of the issued and outstanding Shares;
  - (e) 30 reside in United States holding 13.83% of the issued and outstanding Shares; and
  - (f) 1 resides in Europe holding 0.57% of the issued and outstanding Shares.
12. Of the 93 registered and beneficial security holders of Fresh Hemp:
- (a) 17 shareholders are employees or former employees of Fresh Hemp;
  - (b) 6 shareholders are directors or former directors of Fresh Hemp;
  - (c) 5 shareholders are private equity firms that are accredited investors within the meaning of NI 45-106 or principals of such private equity firms;
  - (d) 22 of the shareholders are family members or close personal friends of the current President of Fresh Hemp or one of or both of the other two founders of Fresh Hemp who along with the current President co-founded Fresh Hemp Foods (collectively, the **Founders**) and who were both directors and executive officers of Fresh Hemp at the time of investment by such shareholders;
  - (e) 26 of the shareholders are close business associates of Fresh Hemp and/or the Founders; and
  - (f) 17 of the shareholders are hemp farmers in Manitoba that, at the time they were *issued* Shares, were long time suppliers to Fresh Hemp and who have continued

to supply hemp to Fresh Hemp and whose economic interests were, and continue to be, aligned with those of Fresh Hemp.

13. Section 4.3 of the Instrument (the **NRI Exemption**), which exempts certain transactions from the formal take-over bid requirements, is available if:
- (a) the offeree issuer is not a reporting issuer;
  - (b) there is no published market for the securities that are subject to the bid; and
  - (c) the number of security holders of that class of securities at the commencement of the bid is not more than 50, exclusive of holders who:
    - (i) are in the employment of the offeree issuer or an affiliate of the offeree issuer, or
    - (ii) were formerly in the employment of the offeree issuer or in the employment of an entity that was an affiliate of the offeree issuer at the time of that employment, and who while in that employment were, and have continued after that employment to be, security holders of the offeree issuer.
14. The Filer cannot rely on the NRI Exemption because the number of security holders of Fresh Hemp exceeds the 50 security holder limit.

### **Decision**

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted.

Chris Besko  
Director  
The Manitoba Securities Commission