2006 BCSECCOM 673

October 18, 2006

Headnote
Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 114(2) Takeover Bids - Exemption from the formal take over bid requirements in Part 13 of the Act - Issuer requires relief from prohibition against certain collateral agreements in s. 107(2) of the Act - A joint offeror issuer that is a minority shareholder of the offeree issuer has entered into a collateral agreement with the offeree issuer; the agreement is entered into for valid business reasons, and not for the purpose of providing the shareholder with a benefit beyond what other shareholders of the offeree issuer will receive under the offer

Applicable British Columbia Provisions
Securities Act, R.S.B.C. 1996, c. 418, ss. 107(2), 114(2)(a)

In the Matter of
the Securities Legislation of
Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Quebéc, Nova Scotia, New Brunswick and Newfoundland and 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. (the "Offeror"), Avion Group HF ("Avion")
and King Street Real Estate Growth LP No. 2 ("Kingstreet")

MRRS Decision Document

Background
The local securities regulatory authority or regulator (the "Decision Maker") in each of the Jurisdictions has received an application from the Offeror, Avion and KingStreet (collectively, the "Filers") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the Junior Credit Facilities (defined herein) and the Avion Convertible Debentures (defined herein) entered into in connection with an offer (the "Offer") to purchase all of the issued and outstanding trust units (the "Units") of Atlas Cold Storage Income Trust ("Atlas") are made for reasons other to increase the value of consideration paid to

KingStreet for its Units and may be entered into notwithstanding the provisions of the Legislation that prohibit an offeror who makes or intends to make a take-over bid, and anyone acting jointly or in concert with the offeror, from entering into any collateral agreement, commitment or understanding with any holder or beneficial owner of securities of the offeree issuer that has the effect of providing to the holder or owner a consideration of greater value than that offered to other holders of the same class of securities (the “Requested Relief”).

Under National Policy 12-201 – *Mutual Reliance Review System for Exemptive Relief Applications*:

(i) the Ontario Securities Commission is the principal regulator for this application; and

(ii) this MRRS decision evidences the decision of each Decision Maker.

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

Representations
The decision is based on the following facts represented by the Filers:

1. The Offeror is a private company incorporated under the *Canada Business Corporations Act*. The Offeror was incorporated for the purpose of making the Offer and has not carried on any business other than that incidental to making the Offer. The Offeror is a wholly-owned indirect subsidiary of Avion. As at the date hereof, the Offeror does not beneficially own any Units or any securities convertible or exchangeable for Units.

2. Avion is a limited liability company domiciled in Iceland. As at the date hereof, Avion beneficially owns 6,177,000 Units, representing approximately 9.4% of the issued and outstanding Units on a fully-diluted basis.

3. KingStreet is a private investment fund formed under the laws of Manitoba. Its general partner is KingStreet Real Estate Growth GP No. 2 Inc. As at the date hereof, KingStreet and its affiliates beneficially own or exercise control or direction over 2,845,200 Units, representing approximately 4.3% of the issued and outstanding Units on a fully-diluted basis.

4. SITQ Industriel III Inc. (“SITQ”) is a corporation incorporated under the laws of the Province of Québec and a subsidiary of Caisse de depôt et placement du Québec.

5. Atlas is a trust established under the laws of the Province of Ontario.
6. Atlas is a reporting issuer or the equivalent in all provinces of Canada and the Units are listed on the Toronto Stock Exchange under the symbol “FZR.UN”. According to Atlas’ filings with Canadian securities regulators, as at June 30, 2006, 62,950,869 Units were issued and outstanding (65,507,326 Units on a fully-diluted basis).

7. Atlas Cold Storage Holdings Inc. (“ACSHI”) is the administrator and operating subsidiary of Atlas.

8. Pursuant to the Offer and the take-over bid circular (the “Take-over Bid Circular”) of the Filers dated August 17, 2006, the Offeror proposed to acquire all of the issued and outstanding Units, including any Units issuable upon the exercise of any options or rights to acquire Units or on the exchange or conversion of securities of ACSHI.

9. The Offer and Take-over Bid Circular was mailed to registered holders of Units on August 17, 2006 and was subsequently extended on September 22, 2006, October 6, 2006 and October 10, 2006.

10. The Offer is fully financed by:

    i. a senior term loan facility (the “Senior Term Loan Facility”) between the Offeror and a syndicate of banks in an aggregate principal amount of $255 million (or the U.S. dollar equivalent thereof);

    ii. credit facilities in an aggregate principal amount of $30 million (the “Mezzanine Facility”) between the Offeror and KingStreet as to $18 million and SITQ as to $12 million;

    iii. credit facilities in an aggregate principal amount of $80 million (the “Acquisition Facility”) between the Offeror and KingStreet as to $48 million and SITQ as to $32 million; and

    iv. a credit facility in an aggregate principal amount of $220 million (the “Avion Acquisition Facility”) between the Offeror and Avion.

11. The Senior Term Loan Facility is for a term of 36 months. The Senior Term Loan Facility will bear interest and is subject to fees at levels customary for credit facilities of this type. The Senior Term Loan Facility will be guaranteed by each of the direct and indirect subsidiaries, if any, of the Offeror excluding Atlas and its subsidiaries unless and until it becomes wholly owned by the

Offeror (the "Guarantors"). The Senior Term Loan Facility and the guarantees will be secured by a first priority security interest in the capital stock of the Offeror, all inter-company notes of the Offeror and of the capital stock and inter-company notes of each of the Guarantors and in, all of the present and after acquired tangible and intangible properties and assets of the Offeror and of the Guarantors, subject to certain exceptions (the "Security"). The facility may be prepaid prior to maturity at the option of the Offeror. Certain mandatory prepayments may also be required during the term based upon consolidated excess cash flows or earnings. The facility will include covenants, representations, warranties, conditions and events of default customary for loan facilities of this type.

12. The Junior Credit Facilities consist of (a) the Mezzanine Facility, (b) the Acquisition Facility, and (c) the Participating Bond (as described below).

13. The Mezzanine Facility will be for a term of 39 months and will bear interest at a rate of 12% per annum, payable monthly. Interest shall be payable to the extent of available net cash as described under section 18, and to the extent such net cash is not available, will be added to principal until net cash is available or until mandatory repayment.

14. The Acquisition Facility will be for a term of five years and will bear interest at a 10% cumulative return, payable monthly. Interest will be payable to the extent of available net cash as described under section 18, and to the extent such net cash is not available, will be added to principal until net cash is available or until subject to mandatory repayment. The Offeror may repay the Acquisition Facility in whole and not part, prior to the end of the third year of the term at 125% of par plus accrued interest, at the end of the fourth year of the term at 112.5% of par plus accrued interest, and at the end of the term at par plus accrued interest. Any and all repayments must occur prior to any repayment of the Participating Bond (as defined below).

15. The Offeror will issue a bond to KingStreet, for and on behalf of KingStreet and SITQ, pursuant to which KingStreet and SITQ will be entitled to a participation in the net income of the Offeror (the "Participating Bond"). The Participating Bond will have a term of five years subject to early mandatory repayment (such repayment not to be earlier than three years from the completion date of the bid), and subject to the terms of the Bond Call Right as described under section 16, should the Acquisition Facility be prepaid in accordance with its terms. The redemption value of the Participating Bond shall be: (a) the Borrower NAV (as defined below); less (b) the Borrower Cost (as defined below), multiplied by 30% (the "Redemption Price"). For the purposes of this calculation the Borrower shall include all of the North

American operations of Avion similar to those activities of Atlas. The "Borrower NAV" shall be defined as the trailing earnings before interest, taxes, depreciation, amortization and rent (EBITDAR) of Atlas for the 12 months immediately preceding the valuation date, multiplied by ten. The "Borrower Cost" shall be defined as (i) the greater of (A) the acquisition cost of Atlas and (B) trailing EBITDAR of Atlas for the 12 months immediately preceding closing multiplied by ten, plus (ii) any further acquisitions by Avion or Eimskip North America 2005 in similar businesses as Atlas in North America valued as EBITDAR at time of acquisition multiplied by ten.

16. KingStreet and SITQ will grant to Avion the right (the "Bond Call Right") to acquire the Participating Bond from them for a price equal to the Strike Price (as defined below) on any date (and immediately preceding such redemption) upon which the Participating Bond must be prepaid pursuant to the mandatory prepayment provisions described above, provided that such right will only be exercisable provided that: (a) no event of default under the Junior Credit Facilities has occurred and is continuing at such time; and (b) the Acquisition Facility, including all accrued interest thereon, has been paid in full. The "Strike Price" will be defined as: (a) $128 million if the Bond Call Right is exercised at the end of the third year following the issuance of the Participating Bond; (b) $144 million if the Bond Call Right is exercised in the fourth year following the issuance of the Participating Bond; and (c) $160 million if the Bond Call Right is exercised in the fifth year following the issuance of the Participating Bond. Immediately upon the exercise of the Bond Call Right, the transfer of the Participating Bond to Avion and the payment of the Strike Price, the Participating Bond will, on its terms, be amended such that: (a) it is non-transferable; (b) it is no longer secured by the Security; and (c) the mandatory payment thereunder of any amount in excess of the Strike Price is deferred until such time as the Mezzanine Facility and the Senior Credit Facilities and all other obligations outstanding to the lenders thereof, are repaid in full.

17. The Junior Credit Facilities will be guaranteed by the Guarantors. The Junior Credit Facilities, the guarantees and the Avion Convertible Debentures (as described below), will be secured by a second priority security interest in the Security and a guarantee by Avion pursuant to which recourse is limited to the Security. The Junior Credit Facilities will have common positive covenants, negative covenants, representations and warranties and events of default (the "Non-Financial Terms"), and except where the context does not permit same, the Non-Financial Terms will mirror those contained in the loan documents for the Senior Term Loan Facility.

18. Subject to the priorities arrangements between the lenders of the Senior Term Loan Facility and Avion, KingStreet and SITQ (the "Secured Parties"), the Secured Parties will enter into an interlender agreement (the "Interlender Agreement") which will provide, inter alia, that, subject to the terms of the Senior Term Loan Facility:

    i. no repayment of the principal or premium (whether before or after default) under the Avion Acquisition Facility, the Acquisition Facility or the Participating Bond will be made until the Mezzanine Facility (including, without limitation, all principal and interest thereunder) has been paid in full;

    ii. no repayment of the principal or premium will be made under the Avion Acquisition Facility unless the Acquisition Facility and the Participating Bond are both repaid, and no prepayment of the Acquisition Facility shall be permitted except as described above;

    iii. the net cash proceeds from the operations of the business of Atlas or the sale of any assets will be applied:

        (a) first, to repay amounts then due under the Senior Term Loan Facility ;

        (b) second, to repay interest then due under the Mezzanine Facility and to prepay principal under the Mezzanine Facility until it is fully repaid;

        (c) third, to repay all indebtedness under the Senior Term Loan Facility until it is fully repaid;

        (d) fourth, to pay the 10% cumulative return under the Acquisition Facility, until such time as the full amount of such return is received by the lender thereof;

        (e) fifth, to pay the 10% cumulative return under the Avion Acquisition Facility, until such time as the full amount of such return is received by the lender thereof; and

        (f) sixth, for the purposes of repaying the principal amount of the Acquisition Facility, the Avion Acquisition Facility and the Participating Bond, in accordance with paragraph (ii) above, provided that, if no prepayment may be permitted pursuant to paragraph (ii) due to such proceeds being insufficient, then such net cash proceeds shall not be distributed until otherwise required by the facilities, and permitted by the Interlender Agreement (provided that such prepayments shall not be prevented due to there being unpaid amounts under the Participating Bond that were deferred as described below in the description of the Bond Call Right).

19. In addition, pursuant to a subscription agreement (the "Avion Subscription Agreement") KingStreet and SITQ have severally agreed to purchase three days prior to the date upon which the initial advance of the Junior Credit Facilities is required to be made, $60 million and $40 million principal amount, respectively, of convertible debentures issued by Avion (the "Avion Convertible Debentures"). The Avion Convertible Debentures will: (a) have a five year term; (b) not be voluntarily prepayable by Avion, except on the fourth anniversary of the term; (c) bear interest at 15% per annum on the principal amount (excluding accrued interest); (d) require payment of interest only upon redemption or maturity (but not on conversion); (e) be redeemable up to $10 million ($6 million in the case of KingStreet and $4 million in the case of SITQ) at the end of each year for five years, and be redeemable in full at the end of year three and on maturity; and (f) be convertible at any time into common shares of Avion at a price of ISK 40 per share. On the date that the conversion price for the Avion Convertible Debentures was set at ISK 40 per share, the shares of Avion closed at ISK 32.9, and on the day prior, such shares closed at ISK 33. The obligations of Avion under the Avion Convertible Debentures and the Avion Subscription Agreement shall be an unconditional obligation and shall be guaranteed by the Offeror and its holding company and secured by the Security.

20. The Junior Credit Facilities and the Avion Convertible Debentures have been entered into to fund the Offer and not for the purpose of increasing the consideration payable to KingStreet for its Units.

21. CIBC World Markets and RBC Capital Markets are financial advisors to Avion and the Offeror in connection with the Offer. CIBC World Markets has provided its opinion to the Board of Directors of the Offeror, and RBC Capital Markets has provided its view to Avion, that the material financial terms of the Junior Credit Facilities and the Avion Convertible Debentures, taken as a whole, and in their experience, are commercially reasonable to the Offeror in the context of the Offer.

22. The terms of the Junior Credit Facilities and the Avion Convertible Debentures are not unusual for subordinated debt financings and the financing provided by KingStreet pursuant to the Junior Credit Facilities and the Avion Convertible Debentures is unrelated to the transfer of its Units under the Offer.

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 Requested Relief is granted.

Robert W. Davies	Suresh Thakrar
Ontario Securities Commission	Ontario Securities Commission