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## Headnote

An issuer wants relief from the issuer bid requirements for bids that will be made for tax reasons just prior to, but in connection with, an arrangement - An issuer wants relief from the valuation requirements for bids that will be made for tax reasons just prior to, but in connection with, an arrangement - The issuer bids are taking place just prior to, but as part of, an arrangement; the bids are solely for tax reasons to minimize the tax payable by the issuer resulting from the arrangement; the issuer will treat the securityholders equally and give them sufficient information to decide to tender to the bid; the issuer bid only accelerates rights the issuer and the securityholders would each have following the arrangement

## Exemption Order

### Four Seasons Hotels Inc.

#### Section 114 of the *Securities Act*, R.S.B.C. 1996, c. 418 Section 162(3) of the *Securities Rules*, B.C. Reg. 194/197

## Background

- ¶ 1 Four Seasons Hotels Inc. (the Filer) applied for an exemption under subsection 114(2) of the *Securities Act* (British Columbia) (the Act) and subsection 162(3) of the *Securities Rules* (British Columbia) (the Rules) in connection with the acquisition by the Filer (the Filer's Note Repurchase) from FS Acquisition Corp. (the Purchaser) of the US\$250 million aggregate principal amount of 1.875% convertible senior notes (the Notes) of the Filer as the first step of a plan of arrangement (the Arrangement), that the Filer be exempted from the general requirements relating to issuer bids contained in Part 13 of the Act and the valuation requirements relating to issuer bids contained in subsection 162(2) of the Rules (collectively, the Requested Relief).

## Representations

- ¶ 2 The Filer represents that:
1. the Filer is a corporation incorporated under the *Business Corporations Act* (Ontario) (the OBCA); the Filer's principal office is located at the 1165 Leslie Street, Toronto, Ontario M3C 2K8;
  2. the Filer is one of the world's leading managers of luxury hotels and resorts; the Filer has a portfolio of 74 luxury hotel and resort properties (containing approximately 18,090 guestrooms), several of which include a residential component;

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3. the Filer is a reporting issuer, or the equivalent, in each of the Provinces of Canada in which the reporting issuer or an equivalent concept exists and the Filer's 33,681,238 issued and outstanding limited voting shares (the Limited Voting Shares), as at February 23, 2007, are listed and posted for trading on the New York Stock Exchange (NYSE) and the Toronto Stock Exchange under the symbols "FS" and "FSH", respectively;
4. to the best of its knowledge, the Filer is not in default of any material applicable requirement of the Legislation and is not on the list of defaulting reporting issuers, if any, maintained pursuant to the Legislation;
5. on February 12, 2007, the Filer announced that it had entered into an acquisition agreement dated February 9, 2007 between the Filer and the Purchaser (the Acquisition Agreement) and that the Purchaser would, subject to the terms and conditions of the Acquisition Agreement, acquire all of the outstanding Limited Voting Shares (other than the Limited Voting Shares held by the Bill & Melinda Gates Foundation Trust, which will be acquired by the Filer pursuant to the Arrangement and a separate agreement for identical consideration, and the Limited Voting Shares held by affiliates of Kingdom Hotels International (Kingdom) and Cascade Investment, L.L.C. (Cascade)) at a price of US\$82.00 per share in cash pursuant to the Arrangement;
6. to the Filer's knowledge, the Purchaser is a corporation incorporated under the laws of British Columbia solely for purposes of completing the transactions contemplated by the Acquisition Agreement and is not a reporting issuer, or the equivalent, in any of the Jurisdictions; the Filer's registered office is located at Suite 1700, Park Place, 666 Burrard Street, Vancouver, BC V6C 2X8;
7. the Filer has been advised that (i) the Purchaser is wholly-owned, directly or indirectly, by Triples Holdings Limited (Triples) and an affiliate of Kingdom and an affiliate of Cascade, (ii) Kingdom is owned by a trust created by HRH Prince Alwaleed Bin Tala1 Bin Abdulaziz Alsaud (HRH Prince Alwaleed) for the benefit of HRH Prince Alwaleed and his family, (iii) Cascade is a private investment entity, the sole member of which is William H. Gates III, and (iv) all of the shares of Triples are beneficially owned by Mr. Isadore Sharp, the Chairman and Chief Executive Officer of the Filer, and members of his immediate family;
8. Kingdom has advised the Filer that, as of February 23, 2007, it beneficially owns or controls 7,389,182 Limited Voting Shares, representing approximately 22% of the outstanding Limited Voting Shares; Kingdom also has advised the Filer that HRH Prince Alwaleed may also be deemed to be the

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beneficial owner of an additional 179,322 Limited Voting Shares (representing approximately 0.5% of the outstanding Limited Voting Shares), in which he shares voting and dispositive powers;

9. Cascade has advised the Filer that, as of February 23, 2007, it beneficially owns or controls 715,850 Limited Voting Shares, being approximately 2% of the outstanding Limited Voting Shares;
10. the Arrangement was approved at a meeting of the Filer's shareholders held on April 5, 2007 and a final order of the Ontario Superior Court of Justice approving the Arrangement was obtained by the Filer on April 13, 2007;
11. if all of the other conditions to closing of the Arrangement are satisfied or waived, it is expected that the Arrangement will be implemented by way of a court-approved plan of arrangement pursuant to section 182 of the OBCA on or around April 24, 2007;
12. the Notes were issued pursuant to a short form base shelf prospectus dated April 6, 2004 and a prospectus supplement dated June 14, 2004 and are governed by a note indenture (the Note Indenture) dated as of June 18, 2004 between The Bank of Nova Scotia Trust Company of New York (BNS), as trustee, and the Filer;
13. all of the Notes are currently registered in the name of The Depository Trust Company and, based on recent reports made available to the Filer by BNS;
14. the Notes are not listed on a recognized stock exchange;
15. the Notes are convertible into Limited Voting Shares (although at the Filer's option, it may make a cash payment in lieu of all or some of the Limited Voting Shares that might be issued on conversion) in certain circumstances, including upon the occurrence of a "Fundamental Change", as defined in the Note Indenture; the Arrangement, if completed, would result in a "Fundamental Change" under the terms of the Note Indenture; as a result, holders may convert Notes during the period from and after the tenth day prior to the anticipated closing date of the Arrangement until and including the close of business on the later of the tenth day after the actual closing date of the Arrangement and the thirtieth business day after the notice of the offer to repurchase the Notes under the Filer's Note Offer (as defined below) has been mailed, as described below;

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16. upon such conversion, holders of Notes would be entitled to receive, subject to the right of the Filer to make a cash payment in lieu of some or all of the Limited Voting Shares that otherwise would be issued, the following:
  - (a) 13.9581 Limited Voting Shares for each US\$1,000 principal amount of Notes; and
  - (b) an additional number of Limited Voting Shares equal to (a) the sum of a make whole premium (the Make Whole Premium), and an amount equal to any accrued but unpaid interest to, but not including, the conversion date, divided by (b) the average of the closing sale price (or, in certain circumstances, an average of bid and ask prices) of the Limited Voting Shares of the NYSE for the ten trading days before the conversion date;
17. if the Arrangement is completed, the Filer would be required under the terms of the Note Indenture to make an offer (the Filer's Note Offer) to repurchase the Notes at a purchase price equal to the principal amount of the Notes plus the Make Whole Premium, and an amount equal to any accrued and unpaid interest to, but not including, the date of repurchase;
18. the Filer has the right to satisfy the obligations in respect of a conversion in the circumstances described in paragraph 17 above, and in respect of a repurchase of Notes as described in paragraph 18 above, with Limited Voting Shares or, at its option, in cash or a combination of Limited Voting Shares and cash;
19. on March 22, 2007, the Purchaser commenced an offer (the Purchaser's Note Offer) to acquire any or all of the outstanding US\$250 million aggregate principal amount of 1.875% convertible senior notes (the Notes) of the Filer maturing July 30, 2024 (the Purchaser's Note Offer);
20. the Purchaser's Note Offer is designed to encourage holders of the Notes to surrender their Notes prior to the effective time of the Arrangement by offering such holders an amount in cash that the Purchaser believes is substantially similar to the amount that a holder would receive if it converted US\$1,000 principal amount of Notes into Limited Voting Shares immediately prior to the effective date of the Arrangement, followed by each Limited Voting Share being converted into US\$82.00 in the Arrangement (though there are not assurances that such amounts will be equal);
21. the first step of the Arrangement will be to give effect to the Filer's Note Repurchase; pursuant to the Filer's Note Repurchase, the Filer will acquire from the Purchaser the Notes tendered to the Purchaser under the Purchaser's

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Note Offer in exchange for cash or a note with a principal amount corresponding to the aggregate Note Purchase Price paid by the Purchaser in connection with the Purchaser's Note Offer; as part of the Arrangement, the Notes acquired by the Filer from the Purchaser pursuant to the Filer's Note Repurchase will be cancelled prior to the acquisition by the Purchaser of the Limited Voting Shares pursuant to the Arrangement; and

22. the Filer's Note Repurchase would constitute an issuer bid within the meaning of the Act that would be subject to the Issuer Bid Requirements by reason of the fact that the Notes are debt securities convertible into securities other than debt securities.

### **Order**

- ¶ 3 Because it is not prejudicial to the public interest, the Executive Director orders that the Requested Relief is granted.
- ¶ 4 April 20, 2007

Martin Eady, CA  
Director, Corporate Finance  
British Columbia Securities Commission