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March 30, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Securities Act s. 114(2) Issuer Bids - Exemption from the formal issuer bid requirements in Part 13 of the Act - General - 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 - 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

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 11, 105-110, 114(2)

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New
Brunswick, Nova Scotia, Newfoundland and Labrador, the Northwest Territories,
the Yukon Territory and Nunavut (the Jurisdictions)

and

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

and

In the Matter of
Fairmont Hotels & Resorts Inc. and
3128012 Nova Scotia Limited

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 Fairmont Hotels and Resorts Inc. (Fairmont) and 3128012 Nova Scotia Limited (3128012, and together with Fairmont, the Filers) for a decision under the securities legislation of the Jurisdictions (the Legislation) that:

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- (a) the issuer bid requirements of the Legislation will not apply to any offer (the Purchaser's Note Offer) made by 3128012 and/or an affiliate thereof (collectively, the Purchaser) to acquire any or all of the outstanding US\$270 million aggregate principal amount of 3.75% convertible senior notes (the Notes) of Fairmont maturing December 1, 2023; and
- (b) this decision be kept confidential until the earlier of
 - (i) the date the Purchaser commences the Purchaser's Note Offer,
 - (ii) 90 days after the date of this decision, or
 - (iii) one business day after notice to the Filers of a Decision Maker's intention to remove confidentiality(collectively, the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) the 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 Filers:

1. Fairmont is a corporation incorporated under the *Canada Business Corporations Act*. Fairmont's principal office is located at the Canadian Pacific Tower, Suite 1600, TD Centre, P.O. Box 40, Toronto, Ontario M5K 1B7.
2. Fairmont is an owner/operator of luxury hotels and resorts. Fairmont's managed portfolio consists of 87 luxury and first-class properties with approximately 34,000 guestrooms in the United States, Canada, Mexico, Bermuda, Barbados, the United Kingdom, Monaco, Kenya and the United Arab Emirates as well as two vacation ownership properties managed by Fairmont Heritage Place. Fairmont owns Fairmont Hotels Inc., North

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America's largest luxury hotel management company, as measured by rooms under management, with 49 distinctive city center and resort hotels including The Fairmont San Francisco, The Fairmont Banff Springs and The Fairmont Scottsdale Princess. Fairmont also owns Delta Hotels, Canada's largest first-class hotel management company, which manages and franchises 38 city center and resort properties in Canada. In addition to hotel management, Fairmont holds real estate interests in 21 properties and an approximate 24% interest in Legacy Hotels Real Estate Investment Trust, which owns 24 properties. Fairmont owns FHP Management Company LLC, a private residence club management company that operates Fairmont Heritage Place, a vacation ownership business.

3. Fairmont is a reporting issuer, or the equivalent, in each of the Jurisdictions in which such concept exists and Fairmont's 72,345,487 issued and outstanding common shares (the Fairmont Shares), as at March 9, 2006, are listed and posted for trading on the New York Stock Exchange and the Toronto Stock Exchange under the symbol "FHR".
4. To the best of its knowledge, Fairmont is not in default of any applicable requirement of the Legislation and is not on the list of defaulting reporting issuers, if any, maintained pursuant to the Legislation.
5. On January 30, 2006, Fairmont announced that it had entered into an acquisition agreement dated January 29, 2006 between Fairmont and 3128012 (the Acquisition Agreement) and that 3128012 would acquire all of the outstanding the Fairmont Shares at a price of US\$45.00 per share in cash pursuant to a plan of arrangement (the Arrangement).
6. 3128012 is a corporation formed 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 Purchaser is wholly-owned, directly or indirectly, by Kingdom Hotels International (Kingdom) and Colony Capital, LLC (Colony). Kingdom is owned by a trust for the benefit of HRH Prince Alwaleed Bin Talal Bin AbdulAziz Al Saud and his family. Colony is a private, international investment firm headquartered in Los Angeles, California, focusing primarily on real estate-related assets and operating companies.
7. As of March 9, 2006, Kingdom has advised Fairmont that it beneficially owns or controls 3,548,883 Fairmont Shares, being approximately 4.9% of the outstanding Fairmont Shares, and Colony beneficially owns or controls no Fairmont Shares.

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8. If the Arrangement is approved at a meeting of Fairmont's shareholders (currently scheduled to be held on April 18, 2006) and all of the other conditions to closing of the Arrangement are satisfied or waived, the Arrangement will be implemented by way of a court approved plan of arrangement pursuant to section 192 of the *Canada Business Corporations Act* in late April or early May 2006. Pursuant to the Arrangement, among other things, the Fairmont Shares will be transferred by Fairmont's shareholders to 3128012 for US\$45.00 per Fairmont Share.
9. The Notes were issued pursuant to a note indenture (the Note Indenture) dated as of December 8, 2003 between The Bank of New York, as trustee, and Fairmont. The Notes were sold solely to institutional purchasers in the United States pursuant to Rule 144A promulgated under the 1933 Act. The Notes are no longer subject to any resale restrictions in the United States and are currently freely tradable.
10. All of the Notes are currently registered in the name of The Depository Trust Company and, based on recent reports made available to Fairmont by The Bank of New York, approximately 3.4% of the outstanding aggregate principal amount of the Notes have been allocated in the debt clearing system to a participant that maintains an address in Toronto, Ontario. Based on these reports, no other Canadian participants have been allocated any of the Notes.
11. The Notes are not listed on a recognized stock exchange.
12. The Notes are not presently convertible into Fairmont Shares. The Arrangement will constitute a "Reorganization" and a "Designated Event" under the terms of the Note Indenture. As a result, holders may convert the Notes from and after the 15th day prior to the expected effective date of the Arrangement (the Effective Date) until the date on which the Notes tendered pursuant to the Fairmont's Note Offer (defined below) are accepted for payment. The Notes will be convertible into up to an aggregate of 7,156,107 Fairmont Shares (based on the present conversion rate of 26.5041 Fairmont Shares per US\$1,000 principal amount of the Notes).
13. Following the effective time of the Arrangement, Fairmont will be entitled to satisfy any conversion of the Notes by way of a cash payment in the amount of US\$1,192.68 for each US\$1,000 principal amount of the Notes in accordance with the terms of the Note Indenture. This amount is calculated pursuant to the Note Indenture by multiplying the present conversion rate of 26.5041 Fairmont Shares per US\$1,000 principal amount of the Notes by the US\$45.00 to be paid by 3128012 per Fairmont Share pursuant to the Arrangement.

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14. The Note Indenture provides that within 30 business days following the Effective Date, Fairmont must make an offer to purchase all of the outstanding Notes at a purchase price of US\$1,000 for each US\$1,000 principal amount of the Notes plus accrued interest to the date of purchase (Fairmont's Note Offer).
15. Interest is generally payable on the Notes in semi-annual instalments. The record date fixed in the certificate representing the Notes for the next payment of interest is May 15, 2006, and June 1, 2006 is the date fixed for the payment of such interest. Therefore, holders of Notes will have an economic incentive not to convert until after June 1, 2006 (or, in certain limited circumstances under the Note Indenture, May 15, 2006) to ensure receipt of the next interest payment.
16. If the Notes are converted into Fairmont Shares by the holders prior to the acquisition by 3128012 of the Fairmont Shares as part of the Arrangement, Fairmont will be required to recognize a significant foreign exchange gain resulting in a capital gain for income tax purposes. If the Notes are purchased and retired prior to such time, a similar capital gain arises, however, Fairmont may also be entitled to a deduction for income tax purposes equal to the difference between the amount repaid and the original issue price, which would effectively offset the gain that would otherwise be recognized. If the Notes are converted or repaid after such time, Fairmont will not be able to use any of its existing capital losses to reduce the capital gain as the capital losses expire on the acquisition by 3128012 of the Fairmont Shares.
17. Pursuant to the Purchaser's Note Offer, the Purchaser would commence, on or about March 28, 2006, an offer to purchase all of the outstanding Notes at a price of US\$1,192.68 for every \$1,000 in principal amount of the Notes, plus accrued and unpaid interest to June 1, 2006 (or, if the effective date of the Arrangement is later, accrued and unpaid interest until the effective date of the Arrangement) (the Note Purchase Price). The Purchaser's Note Offer is expected to close shortly before the effective time of the Arrangement. The Note Purchase Price corresponds to the amount of cash that a holder would receive (x) in the Arrangement for any Fairmont Shares it had received upon conversion of the Notes prior to consummation of the Arrangement or (y) upon conversion of the Notes after consummation of the Arrangement, plus in either case an amount corresponding to (a) the interest payable on June 1, 2006, assuming that the Arrangement was to be completed prior to such date, or (b) the interest which may have accrued from June 1, 2006 if the Arrangement was completed after such date.

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18. 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 which is no less than, and in certain instances, may be slightly more than, the amount of cash that holders would be entitled to receive had they converted their Notes, irrespective of whether such conversion had taken place before or after the effective time of the Arrangement, and thereby removing any incentive for holding on to the Notes, as described above, and converting after the effective time of the Arrangement.
19. The Purchaser's Note Offer will be exempt from the take-over bid requirements of the Legislation because the Notes are not "voting or equity securities" and the number of Fairmont Shares issuable on conversion of the Notes, together with the Fairmont Shares owned by the Purchaser, Kingdom and Colony, constitute less than 20% of the outstanding Fairmont Shares at the date of the Purchaser's Note Offer. While the Purchaser's Note Offer will be exempt from a number of the tender offer rules under United States law, the Purchaser's Note Offer will be subject to, and be made in accordance with, Regulation 14E of the 1934 Act. The Purchaser's intention is not to acquire the underlying Fairmont Shares but rather to purchase and retire indebtedness in advance of the date that similar payments would otherwise be required to be made by Fairmont to holders of the Notes.
20. The Purchaser's Note Offer will be made to the holders of the Notes resident in Canada on the same basis, including extending to those holders identical rights and identical consideration, as to the holders of the Notes resident in the United States. All material relating to the Purchaser's Note Offer that is sent by the Purchaser to holders of the Notes resident in the United States is concurrently sent to all holders of the Notes resident in Canada and filed with Decision Makers.
21. The first step of the Arrangement will be to give effect to the subsequent acquisition by Fairmont of the Notes tendered to the Purchaser pursuant to the Purchaser's Note Offer (Fairmont's Note Repurchase). Pursuant to Fairmont's Note Repurchase, Fairmont will acquire from the Purchaser the Notes tendered to the Purchaser under the Purchaser's Note Offer in exchange for 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. The Notes acquired by Fairmont from the Purchaser pursuant to Fairmont's Note Repurchase will be cancelled prior to the acquisition by the Purchaser of the Fairmont Shares pursuant to the Arrangement.

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22. Because the Notes are debt securities convertible into securities other than debt securities, the Purchaser's Note Offer could be considered to constitute an "issuer bid" within the meaning of the Act if the Purchaser's Note Offer is considered to be an indirect offer by Fairmont to purchase the Notes (*i.e.*, in light of Fairmont's Note Repurchase). If treated as an issuer bid, the Purchaser's Note Offer would be subject to the Issuer Bid Requirements.

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 in all of the Jurisdictions under the Legislation is that the Requested Relief is granted.

Susan Wolburgh Jenah
Commissioner

Paul K. Bates
Commissioner