

2002 BCSECCOM 654

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief from registration and prospectus requirements for warrants to be issued by issuer to holders of unsecured convertible debentures of the issuer who renew the debentures for a further five-year term, with certain amendments - issuance of stand-alone warrants replaces the conversion feature of the original debentures - debentureholders who do not wish to receive the amended debentures will be paid the principal amount plus interest on maturity date - relief granted subject to conditions

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 48 and 76

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA AND ONTARIO

AND

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

AND

IN THE MATTER OF NORTHAMPTON GROUP INC.

MRRS DECISION DOCUMENT

WHEREAS the Canadian securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta and Ontario (collectively, the "Jurisdictions") has received an application (the "Application") from Northampton Group Inc. ("Northampton") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the registration requirement and the prospectus requirement in the Legislation shall not apply to the proposed issuance by Northampton of warrants (the "Warrants") to purchase up to 2,656,500 common shares in the capital of Northampton (the "Common Shares") to holders (the "Debentureholders") of unsecured debentures of Northampton (the "Debentures") in connection with a proposed renegotiation of the terms of the Debentures (the "Refinancing");

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for the Application;

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AND WHEREAS Northampton has represented to the Decision Makers that:

1. Northampton is a corporation incorporated under the *Business Corporations Act* (Ontario), and is engaged with its subsidiaries, associates and affiliates in the business of hotel ownership, management, development and construction in the mid-market hotel sector.
2. The authorized capital of Northampton consists of an unlimited number of Common Shares and an unlimited number of voting preference shares (8% non-cumulative, non-participating, redeemable and retractable at the paid up amount). As at March 31, 2002 a total of 20,830,559 Common Shares and 5,500,000 preference shares were issued and outstanding.
3. Northampton has \$3,450,000 aggregate principal amount of Debentures outstanding. The Debentures were issued on July 22, 1997 pursuant to a prospectus filed in Ontario on July 11, 1997. The Debentures mature on July 22, 2002, bear interest at 9% and are convertible into common shares at a rate of \$0.80 per common share. The Debentures are held by more than 100 Debentureholders, excluding those held by persons related to Northampton's management or major shareholder.
4. Shihasi Financial Corporation, a private company incorporated under the *Business Corporations Act* (Ontario), of which the four directors also constitute a majority of directors of Northampton, beneficially own or exercise control or direction over approximately 70.32% of the outstanding Common Shares on a non-diluted basis.
5. Northampton is a reporting issuer in each of the Jurisdictions and is not on the list of defaulting reporting issuers established pursuant to the Legislation.
6. Northampton's Common Shares and Debentures are listed on TSX Venture Exchange and trade under the symbols "YNH" and "YNH.DB", respectively. The Common Shares last traded on the TSX Venture Exchange on June 11, 2002 at \$0.52 (other than an odd lot trade on June 20, 2002 at \$0.49). The Debentures last traded on June 26, 2002 on the TSX Venture Exchange at \$98. The Debentures are in good standing.
7. Northampton filed its initial AIF on March 6, 2002. Northampton has applied to the TSX Venture Exchange to amend its current "Tier Three" trading status to "Tier One" or "Tier Two" on the TSX Venture Exchange, and upon receipt of approval for such amendment will be a "qualifying issuer" as such term is defined in Multilateral Instrument 45-102 Resale of Securities ("MI 45-102").

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8. Although Northampton has enjoyed over five years of profitable growth since the issuance of the Debentures, Northampton has reinvested its cash flow into its business and, as a result, is not in a position to repay all of the Debentures on their due date of July 22, 2002 without a new financing. In addition, Northampton would like to preserve its existing capital structure and maintain its public Debentureholder base.
9. Accordingly, Northampton proposes to amend the terms of the Debentures to provide for i) a renewal of the term for a further five years, ii) the elimination of the current conversion feature; (iii) an increase in the interest rate from 9% to 10% per annum, (iv) a modification of its leverage ratio covenant, and (v) the issuance to the Debentureholders of certain Warrants, as described below.
10. Subject to the relief requested in this Application being granted, Northampton proposes to issue to the Debentureholders 770 Warrants per \$1,000 principal amount of Debentures held, or 2,656,500 Warrants in total. Each Warrant represents the right to purchase one Common Share of Northampton at prices as follows:

\$0.65 from July 22, 2002 to January 22, 2004;
\$0.75 from January 22, 2004 to July 22, 2005; and
\$0.90 from July 22, 2005 to July 22, 2007.
11. Northampton proposes to list the Warrants on the TSX Venture Exchange.
12. Northampton estimates that the initial trading value of the Warrants will be approximately \$0.01 per Warrant, and that the aggregate value of the Warrants to be issued upon their initial distribution is approximately \$25,000 or less than one per cent of the \$3.45 million outstanding Debentures.
13. The issuance of Warrants is intended to replace the existing conversion feature of the Debentures. Consequently, the amended Debentures will not carry a conversion feature.
14. Under the terms of the restructuring, Jones, Gable & Co., a registered dealer, will receive an advisory fee equal to 4.75% of the principal amount of non-insider Debentures which are extended for a further term.
15. Debentureholders wishing to participate in the restructuring will be required to elect to receive the amended Debenture plus Warrant. Debentureholders who do not wish to receive the amended Debentures will be paid the principal amount plus interest on the Debentures to which they are entitled as of the Maturity Date.

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AND WHEREAS pursuant to the System this MRRS Decision Document evidences the decision of each of the Decision Makers (collectively, the "Decision");

AND WHEREAS 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 under the Legislation is that the registration requirement and the prospectus requirement shall not apply to the issuance of Warrants to the Debentureholders in connection with the Refinancing provided that the first trade in Warrants acquired pursuant to this Decision in a Jurisdiction shall be deemed to be a distribution under the Legislation of such Jurisdiction unless

- (i) if Northampton was a qualifying issuer, as defined in MI 45-102, at the distribution date, the conditions in subsection (3) of section 2.6 of MI 45-102 Resale of Securities are satisfied; or
- (ii) if Northampton was not a qualifying issuer at the distribution date, the conditions in subsection (4) of section 2.6 of MI 45-102 are satisfied.

DATED July 12th, 2002

Paul Moore

Robert W. Korthals