

2008 BCSECCOM 440

July 29, 2008

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* - Securities Act s. 114(2) Takeover Bids - Exemption from Part 2 of MI 62-104 - The Filer wants an exemption from the formal take-over bid requirements of Part 2 of MI 62-104 and sections 93 to 99.1 of the *Securities Act* (Ontario) in connection with certain purchases by the Filer, on behalf of client accounts, of common shares of the Target - Filer has previously acquired more than 20% of the target's shares; the Filer, on behalf of client accounts, proposes to purchase target shares in the market from time to time, as it considers appropriate; any such purchase, when aggregated with the other acquisitions of target shares by the Filer, on behalf of client accounts, in the 12 month period preceding the purchase, other than the acquisition of target shares in a specific transaction, would not exceed 5% of the Shares outstanding at the commencement of such 12 month period

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 114(2)
MI 62-104 Part 2, section 4.1

In the Matter of
the Securities Legislation of
British Columbia and Ontario
(the Jurisdictions)

and

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

and

In the Matter of
Third Avenue Management LLC
(the Filer)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) granting the Filer an

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exemption from the formal take-over bid requirements under the Legislation, in connection with certain purchases by the Filer, on behalf of client accounts, of common shares (the Shares) of Catalyst Paper Corporation (Catalyst) in the market (the Exemptive Relief Sought).

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

- (a) the British Columbia Securities Commission is the principal regulator for this application,
- (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 Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador; and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

- ¶ 2 Terms defined in MI 11-102 and National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined.

Representations

- ¶ 3 The decision is based on the following facts represented by the Filer:
- 1. Catalyst is a corporation formed under the laws of Canada; it is a reporting issuer in each of the provinces of Canada; Catalyst's outstanding Shares are listed and posted for trading on the Toronto Stock Exchange;
 - 2. Catalyst's head office is located at 3600 Lysander Lane, 2nd Floor, Richmond, British Columbia, V7B 1C3;
 - 3. the Filer is a registered investment advisor registered under the *U.S. Investment Advisers Act of 1940, as amended* that provides investment advisory services to mutual funds and private and institutional clients; Third Avenue International Value Fund (TAVIX) is a fund in the Third Avenue group of funds, and the Filer is the investment advisor of and to TAVIX;
 - 4. prior to the Rights Offering (defined below), the Filer, as portfolio manager and investment advisor, exercised control or direction over 35.46% of Catalysts' issued and outstanding Shares, of which 18.67% was owned by

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TAVIX; the Shares over which the Filer exercises control or direction are beneficially owned by client accounts;

5. on March 11, 2008, Catalyst issued rights in a rights offering (the Rights Offering) allowing holders of its Shares to subscribe for up to 167,069,361 subscription receipts, each such subscription receipt entitling the holder to receive one Share upon satisfaction of the release conditions, as set out in the subscription receipt agreement; the final short form prospectus for the Rights Offering is dated February 29, 2008; the subscription price to purchase Shares in the Rights Offering was below the market price of Shares on the Toronto Stock Exchange on the date that the Rights Offering was announced; the Rights Offering was undertaken by Catalyst for the purposes of financing an acquisition of assets; the Rights Offering expired on April 7, 2008;
6. as part of the Rights Offering, pursuant to an oversubscription agreement dated February 10, 2008 (the Oversubscription Agreement), Third Avenue Trust on behalf of TAVIX, agreed that it would exercise its basic subscription privilege in full and it would exercise its additional subscription privilege to subscribe for, after giving effect to its basic subscription privilege, up to but in no event exceeding such number of subscription receipts offered under the Rights Offering as had an aggregate purchase price of \$62,500,000 pursuant to and subject to the limitations contained in the Oversubscription Agreement;
7. following the expiry of the Rights Offering, TAVIX was issued 31,190,850 subscription receipts which were convertible into 31,190,850 common shares; the Shares issued to TAVIX in connection with the Rights Offering, when aggregated with the Shares held by the Filer prior to the Rights Offering, represent 35.58% of the issued and outstanding Shares of Catalyst, resulting in the Filer having control or direction over 135,829,481 Shares;
8. the Filer, on behalf of client accounts, proposes to purchase Shares in the market from time to time, as it considers appropriate; any such purchase (a Normal Course Purchase), when aggregated with the other acquisitions of Shares by the Filer, on behalf of client accounts, in the twelve-month period preceding the purchase, other than the acquisition of Rights Offering Shares, would not exceed 5% of the Shares outstanding at the commencement of such twelve- month period;
9. the Filer believes that the Shares represent an attractive investment; as a significant shareholder in Catalyst, the Filer believes that any purchase of Shares would demonstrate such belief, in a tangible fashion, and could provide support for the Shares, which would be of benefit to all of Catalyst's

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shareholders; the Filer has no present intention of making a bid for all of the Shares or proposing a going private transaction in respect of Catalyst;

10. since the Filer exercises control or direction over more than 20% of the outstanding Shares, any additional purchase of Shares by the Filer on behalf of its client accounts, or by persons acting jointly or in concert with the Filer, would constitute a take over bid under the applicable provisions under the Legislation (the Take Over Bid Provisions);
11. because the Filer recently acquired the Shares in the Rights Offering, the Filer cannot rely upon the exemptions from the Take Over Bid Provisions that permit the purchase in any twelve-month period of not more than 5% of the Shares outstanding at the beginning of such twelve-month period (the Normal Course Purchase Exemption);
12. the Filer is prohibited from purchasing any Shares at any time when the Filer has knowledge of any material fact or material change about Catalyst that has not been generally disclosed.

Decision

- ¶ 4 Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemptive Relief Sought is granted to the Filer provided that the purchases by the Filer, on behalf of client accounts, of Shares in the market comply with the Normal Course Purchase Exemption, except that for the purpose of determining the number of Shares acquired by the Filer, on behalf of client accounts, within the twelve-months period preceding the date of any such purchase of Shares in the market, the Filer and its client accounts will be considered as not having acquired any of the Rights Offering Shares in such twelve-month period.

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