

**Headnote**

Multilateral Instrument 11-102 *Passport System* and National Policy NP 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* - National Instrument 51-102, s. 13.1 Continuous Disclosure Obligations – BAR – An issuer requires relief from the requirement to include certain financial statements in a business acquisition report – The issuer made a significant acquisition of a private company; the necessary information to prepare the required financial statements is unavailable; the BAR will contain sufficient alternative information about the acquisition

**Applicable Legislative Provisions**

National Instrument 51-102 *Continuous Disclosure Obligations*, s. 13.1

September 22, 2017

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  
Rogers Sugar Inc.  
(the Filer)

Decision

**Background**

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the requirement set forth in subsection 8.4(7)(c) of NI 51-102 (as defined below) to construct an income statement of a business acquired that is a significant acquisition (within the meaning of NI 51-102) for a period of twelve (12) consecutive months ending no more than 93 days before or after the Filer's year-end, by adding the results for a subsequent interim period to a completed financial year of the business and deducting the comparable interim results for the immediately preceding year (the 12-Month Construction Requirement) does not apply to the Filer in connection with the Acquisition (as defined below) (hereinafter referred to as the 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, Québec, 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 National Instrument 14-101 *Definitions* and MI 11-102 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:

#### *The Filer*

1. the Filer is a corporation constituted under the *Canada Business Corporations Act* (the CBCA); the registered and head office of the Filer is located at 123 Rogers Street, Vancouver, British Columbia V6B 3V2;
2. the Filer is a “reporting issuer” (as defined in the Legislation) in all of the provinces of Canada and is not in default of any requirement of securities legislation in any jurisdiction of Canada;
3. as at the date of this application, the business of the Filer consists in holding of the common shares of Lantic Inc. (Lantic); Lantic operates cane sugar refineries in Montréal, Québec and Vancouver, British Columbia, as well as the only Canadian sugar beet processing facility in Taber, Alberta; Lantic’s sugar products are marketed under the “Lantic” trademark in Eastern Canada, and the “Rogers” trademark in Western Canada and include granulated, icing, cube, yellow and brown sugars, liquid sugars and specialty syrups (collectively, the Business);

#### *The Acquisition*

4. on July 10, 2017, Lantic and 10306835 Canada Inc., a direct wholly-owned subsidiary of Lantic formed for the purpose of the Acquisition (AcquisitionCo), entered into a share purchase agreement with Champlain Financial Corporation Inc., the former shareholders of L.B. Maple Treat Corporation (LBMT) and LBMT pursuant to which AcquisitionCo had

agreed to, subject to the terms and conditions of the Purchase Agreement, acquire all of the issued and outstanding shares of LBMT (the Acquisition);

5. the Acquisition was completed on August 5, 2017 (the Acquisition Closing Date); on the same day, AcquisitionCo and LBMT completed a vertical short-form amalgamation pursuant to the CBCA;

#### *LBMT*

6. LBMT is one of the world's largest branded and private label maple syrup bottling and distribution companies; LBMT owns the L.B. Maple Treat, Highland Sugarworks and Great Northern brands;
7. on February 3, 2016, 9581464 Canada Inc. (9581464), a corporation incorporated on January 12, 2016 by the former shareholders of LBMT, acquired all of the issued and outstanding shares of L.B. Maple Treat Corporation (Former LBMT); on the same day, 9581464 and Former LBMT completed a vertical short-form amalgamation pursuant to the CBCA, resulting in LBMT as the amalgamated entity;
8. at the time of the acquisition of Former LBMT, 9581464 did not obtain full accounting statements and financial information from the shareholders of Former LBMT;
9. in accordance with IFRS 3 – Business Combination (IFRS 3), LBMT proceeded with an evaluation of the assets and liabilities of Former LBMT as at February 3, 2016, which were established at fair value for purposes of the LBMT Financial Statements (as defined below); the LBMT Financial Statements have no predecessor as they represent LBMT since 9581464 acquired all of the issued and outstanding shares of Former LBMT;
10. including AcquisitionCo, LBMT is a combination of five companies, three of which were acquired by LBMT following the acquisition of all of the issued and outstanding shares of Former LBMT by 9581464 on February 3, 2016, namely Highland Sugarworks Inc., Great Northern Maple Products Inc. and Sucro-Bec L. Fortier Inc., respectively on August 26, 2016, December 1, 2016 and May 5, 2017;

#### *Short Form Prospectus*

11. on July 21, 2017, the Filer filed a short form prospectus dated the same date (the Short Form Prospectus) with the securities commissions and similar regulatory authorities in all of the provinces of Canada, including the BCSC and the OSC, qualifying the distribution of (i) 11,730,000 subscription receipts of the Filer, and (ii) \$57,500,000 aggregate principal amount of Sixth Series 5.00% extendible convertible unsecured subordinated debentures of the Filer (the Offering); the Offering was completed on July 28, 2017;
12. the Acquisition is a “significant acquisition” within the meaning of NI 51-102 and as determined under section 8.3 of NI 51-102 in reliance on the unaudited condensed consolidated interim financial statements of the Filer for the three and six-month periods

ended April 1, 2017 and as it satisfies the “Investment Test” and the “Optional Investment Test” set forth therein;

13. pursuant to subitem 10.2(2) of Form 44-101F1 *Short Form Prospectus* (Form 44-101F1), the Acquisition was, as of July 14, 2017 (the date of the filing of the preliminary short form prospectus relating to the Offering) and July 21, 2017 (the date of the filing of the Short Form Prospectus), a proposed acquisition that (i) had progressed to a state where a reasonable person would believe that the likelihood of the Filer completing the Acquisition was high, and (ii) would be a significant acquisition for purposes of Part 8 of NI 51-102 if completed as of the date of the Short Form Prospectus; therefore, the Filer was required to include a description of the Acquisition and LBMT in the Short Form Prospectus;
14. as required by subitem 10.2(3) of Form 44-101F1 *Short Form Prospectus*, the Filer included in the Short Form Prospectus the following financial statements about the Acquisition:
  - (a) the audited consolidated financial statements of LBMT for the year ended March 31, 2017, which comprise the consolidated balance sheet as at March 31, 2017, the consolidated statements of earnings (loss), retained earnings (deficit) and cash flows for the year then ended, and notes, comprising a summary of significant accounting policies and other explanatory information (the LBMT Financial Statements);
  - (b) the unaudited pro forma consolidated statement financial position of the Filer as at April 1, 2017;
  - (c) the unaudited pro forma consolidated statements of earnings of the Filer for the financial year ended October 1, 2016 and the six-month period ended April 1, 2017 (the Pro Forma Statements of Earnings); and
  - (d) the notes to the unaudited pro forma consolidated financial statements of the Filer set out in (b) and (c) above(collectively, the Acquisition Statements);
15. the Pro Forma Statements of Earnings included a statement of earnings of LBMT from February 3, 2016 to December 31, 2016, and therefore excluded a statement of earnings of LBMT for the period from January 1, 2016 to February 2, 2016 and therefore, did not strictly comply with the 12-Month Construction Requirement;
16. as of the date of the Short Form Prospectus the Filer believed that the inclusion of a statement of earnings of LBMT for the period from January 1, 2016 to February 2, 2016 was not necessary in order for the Short Form Prospectus to contain full, true and plain disclosure of all material facts relating to the Offering;

*The Bar Requirement and the 12-Month Construction Requirement*

17. pursuant to section 8.2 of NI 51-102, the Filer is required to prepare and file a business acquisition report (a BAR) within 75 days of the Acquisition Closing Date;
18. as set out in paragraph 12 above, the Acquisition is a “significant acquisition” within the meaning of NI 51-102 and as determined under section 8.3 of NI 51-102 as it satisfies the “Investment Test” and the “Optional Investment Test” set forth therein;
19. pursuant to subsection 8.4(7)(c) of NI 51-102, for purposes of the BAR to be prepared and filed by a reporting issuer under Section 8.2 of NI 51-102, if the financial year-end of the business being acquired differs from the reporting issuer’s year-end by more than 93 days, the reporting issuer must comply with the 12-Month Construction Requirement;
20. the last financial year-end of each of LBMT and the Filer is March 31, 2017 and October 1, 2016, respectively; therefore, the financial year-end of LBMT differs by more than 93 days from the Filer’s year-end;
21. the BAR will include the Acquisition Statements, as permitted under subsection 8.4(4) of NI 51-102 as (i) the business of LBMT does not constitute a material departure from the Business or operations of the Filer immediately before the Acquisition, and (ii) either (A) the Acquisition Closing Date will be, and the Filer will file the BAR, within 45 days after LBMT’s most recently completed period, or (B) the Filer filed the Short Form Prospectus that included the Acquisition Statements and the Acquisition Statements are for a period ending not more than one interim period before the interim period referred to in subsection 8.4(3)(a)(i) of NI 51-102 (i.e. June 30, 2017);
22. the Filer is not in a capacity to construct a statement of earnings of LBMT for a period of more than 11 months to December 31, 2016 since (i) LBMT was incorporated on January 12, 2016 and commenced its operations on February 3, 2016, the closing date of the acquisition of LBMT by the current shareholders of LBMT, and (ii) the financial and accounting information necessary to prepare the statement of earnings is limited because 9581464 did not obtain full accounting statements and financial information from the shareholders of Former LBMT at the time of the acquisition thereof;
23. in accordance with IFRS 3, LBMT proceeded with an evaluation of the assets and liabilities of Former LBMT as at February 3, 2016, which were established at fair value for purposes of the LBMT Financial Statements; the LBMT Financial Statements have no predecessor as they represent LBMT since 9581464 acquired all of the issued and outstanding shares of Former LBMT;
24. notwithstanding that a statement of earnings of LBMT for the period from January 1, 2016 to February 2, 2016 will not be included in the Pro Forma Statements of Earnings, the Acquisition Statements will contain all necessary disclosure regarding the combined businesses of the Filer and LBMT following the Acquisition for purposes of the BAR that is relevant or meaningful to an investor; and
25. the Relief Sought is not prejudicial to the public interest.

**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 Relief is granted provided that the BAR for the Acquisition includes the Acquisition Statements.

John Hinze  
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British Columbia Securities Commission