

2006 BCSECCOM 469

August 2, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications and Multilateral Instrument 11-101 *Principal Regulator System* - 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 filed a prospectus that included the financial information for the acquisition as a probable significant acquisition; the financial information in the prospectus is for a period that ended not more than one interim period before the financial information that would be required under Part 8 of NI 51-102; the issuer will include the financial information that was in the prospectus in the BAR; the acquired business did not constitute a material departure from the issuer's business or operations immediately before the acquisition; the issuer will not account for the acquired business as continuity of interests

Applicable British Columbia Provisions

National Instrument 51-102 *Continuous Disclosure Obligations*, ss. 8.4 and 13.1

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

and

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

and

In the Matter of
Gateway Casinos Income Fund
(the Filer)

MRRS Decision Document

Background

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

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from the requirement in the Legislation to include certain financial statements in a business acquisition report relating to the May 19, 2006 acquisition of substantially all of the operating assets of Gateway Langley Holdings Ltd. (the Requested Relief).

Application of the Principal Regulator System

- ¶ 2 Under Multilateral Instrument 11-101 *Principal Regulator System* (MI 11-101) and the Mutual Reliance Review System for Exemptive Relief Applications
- (a) the British Columbia Securities Commission is the principal regulator for the Filer;
 - (b) the Filer is relying on the exemption in Part 3 of MI 11-101 in Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland, and Labrador; and
 - (c) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

- ¶ 3 Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

- ¶ 4 This decision is based on the following facts represented by the Filer:
- 1. the Filer is an unincorporated, open-ended, limited-purpose trust formed under the laws of British Columbia to acquire and hold securities of Gateway Casinos Trust and to receive related distributions ;
 - 2. the Filer's head office is in Burnaby, British Columbia;
 - 3. the trust units of the Filer are listed and posted for trading on the Toronto Stock Exchange ;
 - 4. the Filer is a reporting issuer or the equivalent in all provinces of Canada ;
 - 5. to its knowledge, the Filer is not in default of any of the requirements of the applicable securities legislation in any of the provinces of Canada ;
 - 6. Gateway Langley Holdings Ltd. (Gateway Langley) was incorporated under the laws of British Columbia on February 25, 2004 and is a wholly owned subsidiary of Gateway Casinos Inc.(GCI) ;

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7. on May 19, 2006, the Filer, through its operating entity, Gateway Casinos Limited Partnership , acquired substantially all of the operating assets of Gateway Langley, which comprise the Cascades Langley Casino and Hotel in Langley, British Columbia (the Acquisition);
8. the Acquisition was partially financed with \$32.6 million in cash generated from the net proceeds of a \$35 million bought public offering of 5.35% extendible convertible debentures; on April 18, 2006 the Filer filed its final short form prospectus for the offering, which contained full, true and plain disclosure of all material facts relating to the Filer and the Acquisition;
9. to the knowledge of the Filer since the time the prospectus was filed, there has not been any change in the Gateway Langley business that is material and adverse to the Filer, taken as a whole;
10. National Instrument 44-101 *Short Form Prospectus Distributions* (NI 44-101) sets out the financial statements required to be included or incorporated by reference into a short form prospectus, including financial statements relating to significant acquisitions;
11. under NI 44-101, the Filer's prospectus included or incorporated by reference the following financial statements:
 - (a) the audited consolidated financial statements of the Fund for the years ended December 31, 2005 and 2004, together with the notes and the auditor's report ;
 - (b) the unaudited pro forma consolidated balance sheet of the Filer as at December 31, 2005;
 - (c) the unaudited pro forma consolidated statement of earnings for the year ended December 31, 2005, which includes the pro forma earnings per unit of the Filer;
 - (d) the notes to the pro forma consolidated financial statements of the Filer;
 - (e) the compilation report on the unaudited pro forma consolidated financial statements of the Filer; and
 - (f) the audited financial statements of Gateway Langley as at December 31, 2005 and 2004, together with the notes and the auditor's report ;

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(the Prospectus Financial Statements).

12. the pro forma Prospectus Financial Statements reflect the consolidated results of both the Fund and Gateway Langley;
13. the Acquisition is a significant acquisition for the Filer for the purposes of NI 51-102, so the Filer must file a business acquisition report by August 2, 2006 ;
14. the business acquisition report must include the following financial statements:
 - (a) the audited financial statements of the Fund for the years ended December 31, 2005 and 2004 together with the notes and the auditor's report ;
 - (b) the unaudited pro forma consolidated balance sheet of the Filer as at March 31, 2006;
 - (c) the unaudited pro forma consolidated statement of earnings for the year ended December 31, 2005 and for the three month period ended March 31, 2006, including the pro forma earnings per unit of the Filer;
 - (d) the compilation report on the unaudited pro forma consolidated financial statements of the Filer; and
 - (e) the unaudited financial statements of Gateway Langley for the three month periods ended March 31, 2006 and 2005;

(the BAR Financial Statements).

15. Gateway Langley is a private company and, as a wholly owned subsidiary of GCI, interim and annual financial statements in accordance with Canadian generally accepted accounting principles are not prepared for its operations as a matter of course;
16. the BAR Financial Statements would not be materially different from the Prospectus Financial Statements;
17. by August 14, 2006, the Filer will file its interim financial statements for the six month period ended June 30, 2006 , which will incorporate the results from operations of the assets acquired in the Acquisition;

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Decision

- ¶ 5 The Decision Makers being satisfied that each has the jurisdiction to make this decision and that the relevant test under the Legislation has been met, the Requested Relief is granted, provided that:
- (a) the Filer includes or incorporates by reference the Prospectus Financial Statements in its business acquisition report;
 - (b) the Gateway Langley business acquired by the Filer did not constitute a material departure from the business or operations of the Filer immediately before the Acquisition: and
 - (c) the Filer will not account for the Acquisition as continuity of interests.

Martin Eady, CA
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British Columbia Securities Commission