

**Headnote**

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – *Securities Act* s. 76 Prospectus Requirements - First trade relief for securities acquired under an exemption that are subject to a seasoning period – First trades will occur within a limited group of permitted transferees, which consist of family members of shareholders, their holding companies and family trusts established for their benefit - There is no market for the securities and none is expected to develop

**Applicable Legislative Provisions**

*Securities Act*, R.S.B.C. 1996, c.418, ss. 61 and 76.

November 28, 2014

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  
Graymont Limited and Montrose Property Holdings Ltd.  
(together, 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 trades of Montrose Shares (defined below) between Permitted Transferees (defined below) be exempt from the prospectus requirements of the Legislation (the Requested Relief), subject to certain terms and conditions.

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 and Québec; 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 as is used in this decision, unless otherwise defined.

### **Representations**

- ¶ 3 This decision is based on the following facts represented by the Filer:
1. Graymont Limited (Graymont) is a corporation existing under the *Canada Business Corporations Act* (CBCA); Graymont's registered and head office is located at 200-10991 Shellbridge Way, Richmond, British Columbia, V6X 3C6;
  2. Graymont operates a business primarily as a lime producer and also has operations in the construction materials business;
  3. through its wholly-owned subsidiary, Ecowaste Industries Ltd., Graymont also operates a landfill business and a land development business, which it intends to transfer to Montrose Property Holdings Ltd. (Montrose) pursuant to a plan of arrangement under the CBCA (the Arrangement) to be completed on or before December 31, 2014;
  4. Montrose was incorporated under the CBCA on October 9, 2014 for the purposes of completing the Arrangement; Montrose's registered office is located at Suite 1700, Park Place, 666 Burrard Street, Vancouver, British Columbia, V6C 2X8;
  5. the shareholders of Graymont are:
    - (a) members of the extended Graham family, being children, grandchildren and other descendants, whether by birth or adoption, of the late F. Ronald Graham, Graymont's founder (the Extended Graham Family);
    - (b) companies of which a majority of the voting shares are owned, directly or indirectly, by or for the benefit of persons described in paragraph (a) above and their spouses, children and siblings (the Graham Family Holdcos);
    - (c) trusts established for the benefit of the persons described in paragraph (a) above (the Graham Family Trusts and, together with the Extended Graham Family and the Graham Family Holdcos, the Graham Family Shareholders);

- (d) current or former directors, officers or employees of Graymont or its subsidiaries (Graymont Management Shareholders);
- (e) two trusts established for the benefit of a former officer of Graymont (the Graymont Officer Trusts); and
- (f) Jukes Enterprises Ltd. and Jukes Holdings Ltd. (together, the Jukes Family Holdcos), all of the voting shares of which are owned by the widow and the children, grandchildren or other descendants, whether by birth or adoption, of the late Chris Jukes, a shareholder of a predecessor company of Graymont,

(collectively, the Graymont Shareholders);

- 6. under the Arrangement, in exchange for their existing common shares and preferred shares of Graymont (Graymont Shares), Graymont Shareholders will receive new common shares of Graymont and common shares of Montrose (Montrose Shares);
- 7. accordingly, on completion of the Arrangement, all holders of Montrose Shares (Montrose Shareholders) will be, without exception, the exact same individuals, companies and trusts as the Graymont Shareholders;
- 8. the Graham Family Shareholders, Graymont and Computershare Trust Company of Canada entered into an amended and restated shareholder agreement dated October 27, 2014 (the Graham Family Shareholder Agreement), pursuant to which a Graham Family Shareholder may only transfer beneficial ownership of, or a beneficial interest in, Graymont Shares to:
  - (a) the children, grandchildren or other descendants, whether by birth or adoption, of such Graham Family Shareholder;
  - (b) trusts established for the benefit of the persons described in paragraph (a) above and the spouse of such Graham Family Shareholder;
  - (c) companies of which a majority of the voting shares are owned, directly or indirectly, by or for the benefit of persons described in paragraphs (a) and (b) above;
  - (d) other Graymont Shareholders;
  - (e) Graymont,(collectively, the Permitted Graymont Family Transferees); or
  - (d) any other buyer,
- 9. each of the Graymont Management Shareholders has entered into a management shareholder agreement with Graymont, which agreements were entered between June 3, 1994 and June 25, 2014 (collectively, the Management Shareholder Agreements),

pursuant to which a Graymont Management Shareholder may only transfer beneficial ownership of, or a beneficial interest in, Graymont Shares to:

- (a) the estate of such Graymont Management Shareholder;
- (b) other Graymont Shareholders;
- (c) Graymont,
- (collectively, the Permitted Graymont Management Transferees); or
- (d) any other buyer,

10. each of the Graymont Officer Trusts has entered into a management shareholder agreement with Graymont dated March 25, 2013 in form and substance substantially similar to the Management Shareholder Agreements (collectively, the Graymont Officer Trust Shareholder Agreements), pursuant to which a Graymont Officer Trust may only transfer beneficial ownership of, or a beneficial interest in, Graymont Shares to:

- (a) the beneficiary of such Graymont Officer Trust, being the former officer of Graymont and his current or former spouse and children;
- (b) other Graymont Shareholders;
- (c) Graymont,
- (collectively, the Permitted Graymont Officer Trust Transferees); or
- (d) any other buyer;

11. the Jukes Family Holdcos and Graymont have entered into an amended and restated shareholder agreement dated June 10, 1998 (the Jukes Shareholder Agreement), pursuant to which a Jukes Family Holdco may only transfer beneficial ownership of, or a beneficial interest in, Graymont Shares to:

- (a) the current shareholders of such Jukes Family Holdco;
- (b) the spouses and children, grandchildren or other descendants, whether by birth or adoption, of persons described in paragraph (a) above;
- (c) trusts established for the benefit of persons described in paragraphs (a) and (b) above;
- (d) the estate of a person described in paragraphs (a) or (b) above;
- (e) companies of which a majority of the voting shares are owned, directly or indirectly, by or for the benefit of persons described in paragraphs (a) and (b) above;

- (f) other Graymont Shareholders; or
  - (g) Graymont,
- (collectively, the Permitted Jukes Transferees);
12. the Permitted Graymont Family Transferees, the Permitted Graymont Management Transferees, the Permitted Graymont Officer Trust Transferees and the Permitted Jukes Transferees are referred to collectively as the Permitted Transferees;
  13. the Graham Family Shareholder Agreement, the Management Shareholder Agreements, the Graymont Officer Trust Shareholder Agreements and the Jukes Shareholder Agreement are referred to collectively as the Graymont Agreements;
  14. each of the Graymont Shareholders intends to enter into a shareholder agreement with Montrose in form and substance substantially similar to the Graymont Agreement to which such Graymont Shareholder is currently a party, including containing restrictions on the transfer of Montrose Shares that are identical to those restrictions in the Graymont Agreements on the transfer of Graymont Shares (the Montrose Shareholder Agreements);
  15. the articles of Montrose also provide that no Montrose Share may be sold, transferred or otherwise disposed of without the approval of the directors of Montrose;
  16. the Filer is not and has no current intention of becoming a reporting issuer in any jurisdiction of Canada;
  17. no securities of the Filer, including debt securities, are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported; and
  18. the Filer is not in default of any of its obligations under the Legislation.

#### **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 Requested Relief is granted, provided that:

- (a) each Graymont Shareholder enters into a Montrose Shareholder Agreement in form and substance substantially similar to the Graymont Agreement to which such Graymont Shareholder is currently a party, including containing restrictions on the transfer of Montrose Shares that are identical to those restrictions in such Graymont Agreement on the transfer of Graymont Shares;

- (b) Montrose restricts the transfer of Montrose Shares to Permitted Transferees and any transfer of Montrose Shares complies with the transfer restrictions described above in the Montrose Shareholder Agreement to which the transferor of such Montrose Shares is a party;
- (c) any certificate representing Montrose Shares contains a legend stating all applicable resale and transfer restrictions;
- (d) Montrose provides each Montrose Shareholder with annual audited financial statements consisting of a statement of net assets, a statement of operations and a statement of change in assets, together with notes to such financial statements and management discussion and analysis of Montrose's operations, for each financial year of Montrose within 120 days of the end of such financial year;
- (e) Montrose provides each Montrose Shareholder with unaudited interim financial statements consisting of a statement of net assets, a statement of operations and a statement of change in assets, together with notes to such financial statements and management discussion and analysis of Montrose's operations, for each interim period of Montrose within 60 days of the end of such interim period;
- (f) prior to any transfer of Montrose Shares to a Permitted Transferee who is not a Montrose Shareholder, Montrose provides to such Permitted Transferee a copy of the financial statements described in paragraphs (d) and (e) for its most recent financial year and interim financial period; and
- (g) the first trade in Montrose Shares other than to a Permitted Transferee is deemed to be a distribution.

Peter Brady  
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British Columbia Securities Commission