

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 62-104 *Take-Over Bids and Issuer Bids*, s. 6.1 - The Filer wants an exemption from the formal take-over bid requirements of Part 2 of NI 62-104 - Filer has previously acquired more than 20% of the target's shares; the Filer 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, in the twelve-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 twelve-month period.

Applicable Legislative Provisions

National Instrument 62-104 *Take-Over Bids and Issuer Bids*, Part 2, sections 4.1 and 6.1

October 12, 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 AHI Holdings Inc., Sven Holdings Inc. and Brian Hill
(the Filers)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the Legislation) for relief under section 6.1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* (NI 62-104) from the take-over bid requirements in Part 2 of NI 62-104 in connection with certain normal course market purchases of subordinate voting shares (SVS) of Aritzia Inc. (the Issuer) by the Filers (the Exemption 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 Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in each of the provinces and territories of Canada, other than British Columbia and Ontario, 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 Filers:

The Issuer

1. the Issuer is a corporation incorporated under the *Business Corporations Act* (British Columbia);
2. the Issuer's head office is located at Suite 118, 611 Alexander Street, Vancouver, British Columbia;
3. the Issuer is a reporting issuer in each of the provinces and territories of Canada and is not in default of any requirement of the securities legislation in any of these jurisdictions;
4. the Issuer's authorized share capital consists of: (i) an unlimited number of subordinate voting shares (the SVS), (ii) an unlimited number of multiple voting shares (the MVS), and (iii) an unlimited number of preferred shares, issuable in series (the Preferred Shares, and together with the SVS and MVS, the Shares);
5. holders of MVS are entitled to 10 votes per MVS and holders of SVS are entitled to one vote per SVS on all matters upon which holders of shares in the capital of the Issuer are entitled to vote; the SVS are not convertible into any other class of Shares; each outstanding MVS may at any time, at the option of the holder, be converted into one SVS;
6. as of October 4, 2017, 54,659,407 SVS, 55,756,002 MVS and no preferred shares were issued and outstanding; the SVS represent approximately 8.93% of the aggregate voting rights attached to all of the Issuer's outstanding Shares and the MVS represent approximately 91.07% of the aggregate voting rights attached to all of the Issuer's outstanding Shares;
7. the SVS are listed on the Toronto Stock Exchange (TSX) under the symbol "ATZ"; the MVS are not listed on any exchange;

The Filers

8. Brian Hill is the founder, Chief Executive Officer and Chairman of the Board of Directors of the Issuer;
9. AHI Holdings Inc. (AHI) is a holding investment company governed by the laws of the Cayman Islands; AHI is ultimately controlled by Brian Hill;
10. Sven Holdings Inc. (Sven) is a holding investment company governed by the laws of British Columbia; Sven is ultimately controlled by Brian Hill;
11. on October 3, 2016, in connection with the Issuer's initial public offering (the IPO), the Issuer undertook certain pre-closing capital changes (the Pre-Closing Capital Changes) which amended the Issuer's share capital to be comprised of the Shares; as a result of the Pre-Closing Capital Changes, the Filers exchanged existing equity interests for an aggregate of 40,212,593 MVS; following the Pre-Closing Capital Changes, the Filers converted an aggregate of 8,322,618 MVS into SVS and Brian Hill exercised 3,869,931 options to acquire SVS; the Filers sold all such SVS in the IPO;
12. in January 2017, AHI converted 7,352,626 MVS into an equal number of SVS (the January MVS Conversion); the SVS acquired by AHI in the January MVS Conversion were qualified for distribution and sold pursuant to a short form prospectus dated January 19, 2017 under a secondary offering of SVS (the Secondary Offering);
13. as of October 3, 2017, none of the Filers own any SVS and AHI has beneficial ownership of and control over 24,537,349 MVS (the Filers' MVS); as of such date, Brian Hill also owned 671,899 options to acquire SVS, each option exercisable for one SVS; the Filers' MVS represent approximately 44.01% of the outstanding MVS, approximately 40.08% of the votes attaching to all of the Issuer's outstanding Shares and approximately 22.22% of all of the Issuer's outstanding Shares;
14. none of the Filers have purchased any SVS of the Issuer in the last twelve months in reliance on the exemption from the formal bid requirements in NI 62-104 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);

The Proposed Purchases

15. the Filers propose to purchase SVS on the TSX or an alternative Canadian trading system from time to time, as they consider appropriate, subject to market conditions; any such purchase (a Normal Course Purchase) following the first anniversary of the IPO, when aggregated with the other acquisitions of SVS by the Filers in the twelve-month period preceding the purchase, other than the acquisitions of SVS pursuant to the January MVS Conversion, would not exceed 5% of the SVS outstanding at the commencement of such twelve-month period;

16. the Filers currently intend to make any Normal Course Purchase of SVS for investment purposes based on prevailing market conditions; the interest of the Filers in being able to acquire SVS is not to gain legal control of the Issuer, but instead to preserve their ability to purchase SVS, depending on the prices at which the SVS are trading, and to provide liquidity to the market;
17. none of the Filers have any present intention of making a bid for all of the SVS, proposing a going private transaction in respect of the Issuer or otherwise acquiring all of the issued and outstanding SVS by way of a plan of arrangement or other similar voting transaction;
18. since the Filers collectively exercise control or direction over more than 20% of the outstanding Shares (assuming conversion of the Filers' MVS for SVS), any additional purchase of Shares by any Filer, or by persons acting jointly or in concert with the Filers, would constitute a take-over bid under NI 62-104 requiring either a formal bid or compliance with an exemption from the formal bid requirements;
19. because AHI acquired SVS in the January MVS Conversion, the Filers cannot rely upon the Normal Course Purchase Exemption;
20. the Filers are prohibited from purchasing any Shares at any time when they have knowledge of any material fact or material change about the Issuer that has not been generally disclosed; and
21. the Filers have advised the Issuer that they have submitted an application to the Decision Makers for the Exemption Sought; management of the Issuer supports the Exemption Sought on the basis that normal course purchases of the SVS will provide additional liquidity in the market.

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 Exemption Sought is granted provided that the acquisition of SVS by any of the Filers in the market complies with the Normal Course Purchase Exemption, except that, for the purpose of determining the number of SVS acquired by any such Filer within the twelve-month period preceding the date of any such purchase of SVS in the market, the SVS acquired in the January MVS Conversion shall be excluded in the calculation of acquisitions of SVS otherwise made by the Filers within the previous twelve-month period.

John Hinze
Director, Corporate Finance
British Columbia Securities Commission