

## Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – issuer granted relief from the requirement to include certain financial information of an acquired business in an information circular in connection with a restructuring transaction – certain financial information was unavailable as the acquired business was acquired through bankruptcy proceedings.

## Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations. s. 13.1  
Form 51-102F5 *Information Circular*, s. 14.2

**Citation: Re Horizon North Logistics Inc., 2020 ABASC 45**

**Date: 20200414**

In the Matter of the  
Securities Legislation of  
Alberta and Ontario (the **Jurisdictions**)

and

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

and

In the Matter of  
Horizon North Logistics Inc. (the **Filer**)

Decision

## Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) granting relief from the requirement in section 14.2 of Form 51-102F5 *Information Circular* (**Form 51-102F5**) to include the Carillion Financial Statements (as defined below) in the information circular (the **Circular**) to be sent to current holders (**Shareholders**) of common shares in the capital of the Filer (the **Filer Shares**) in connection with a special meeting (the **Meeting**) of the Shareholders to consider and approve the issuance of Filer Shares pursuant to the Proposed Transaction (as defined below) (the **Exemption Sought**).

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

- (a) the Alberta Securities Commission is the principal regulator for this application;

- (b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador; and
- (c) this decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

### **Interpretation**

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

### **Representations**

This decision is based on the following facts represented by the Filer:

1. The Filer is a corporation governed by the *Business Corporations Act* (Alberta).
2. The head and registered office of the Filer is located in Calgary, Alberta.
3. The Filer is a reporting issuer under the securities legislation of each of the provinces of Canada and is not in default of securities legislation in any jurisdiction of Canada.
4. The Filer Shares are listed and posted for trading on the Toronto Stock Exchange (**TSX**).

#### *Dexterra and the Carillion Acquisition*

5. 10647802 Canada Limited, operating as Dexterra Facilities Management (**Dexterra**) was incorporated under the *Canada Business Corporations Act* (**CBCA**) on February 23, 2018 to acquire the Carillion Services Assets (as defined below), and is a wholly-owned subsidiary of 9477179 Canada Inc. (**947 Canada**).
6. Dexterra carried on no business or activities until March 7, 2018 when, pursuant to the CCAA Proceedings (as defined below), Dexterra acquired certain assets and associated liabilities (the **Carillion Services Assets**) comprising the Canadian services business carried on by Carillion Canada Inc. (the **Carillion Acquisition**).
7. Following the liquidation of its U.K. parent, Carillion plc (**Carillion UK**), by way of application to the Ontario Superior Court of Justice (the **Court**) in early 2018, Carillion Canada Inc. and certain of its affiliates, each wholly-owned subsidiaries of Carillion UK (collectively **Carillion Canada**), commenced proceedings under the *Companies' Creditors Arrangement Act* (Canada) (the **CCAA**, and such proceedings the **CCAA Proceedings**). Pursuant to an initial order of the Court dated January 25, 2018, Carillion Canada was granted certain protections under the CCAA and a monitor was appointed.

8. The Carillion Acquisition was an accelerated sales process that was conducted during the CCAA Proceedings and only comprised part of Carillion Canada's business. Dexterra was not provided with audited carve-out historical financial statements of the Carillion Services Assets for the fiscal year ended December 31, 2017 or any period thereafter. In addition, Dexterra had limited opportunities to conduct due diligence during the Carillion Acquisition due to the truncated sales process in the CCAA Proceedings and urgent liquidity constraints facing this business.

#### *The Proposed Transaction*

9. On March 9, 2020, the Filer, Dexterra and 947 Canada entered into a share purchase agreement pursuant to which the Filer will acquire all of the outstanding shares of Dexterra from 947 Canada in exchange for such number of Filer Shares as will constitute 49% of the outstanding Filer Shares immediately following the closing of the transaction (the **Proposed Transaction**).
10. The Filer submits that the Proposed Transaction constitutes a reverse takeover (**RTO**) of the Filer pursuant to paragraph (b) of the definition of “reverse takeover” in subsection 1.1(1) of NI 51-102.
11. Pursuant to the TSX Company Manual, the Proposed Transaction is subject to the approval of a majority of the votes cast by Shareholders at the Meeting as it will result in greater than 25% of the Filer Shares being issued as consideration and will materially affect control of the Filer.
12. As the Proposed Transaction is an RTO and materially affects the control of the Filer it is also a restructuring transaction pursuant to subsection 1.1(1) of NI 51-102. Section 14.2 of Form 51-102F5 provides that if the action to be taken at a meeting of securityholders is in respect of a restructuring transaction, the Circular must include disclosure for the business being acquired. Such disclosure must be the disclosure (including financial statements) prescribed under securities legislation and described in the form of prospectus that Dexterra would be eligible to use immediately prior to the sending and filing of the Circular.
13. The financial statement disclosure in respect of Dexterra that would be required pursuant to section 14.2 of Form 51-102F5 is that prescribed by National Instrument 41-101 *General Prospectus Requirements* and Form 41-101F1 *Information Required in a Prospectus (Form 41-101F1)*.
14. Paragraph 32.1(1)(b) of Form 41-101F1 requires the financial statements of a business acquired by the issuer within three years before the date of the prospectus to be included therein if a reasonable investor would regard the primary business of the issuer to be the business or business acquired by the issuer. As Dexterra was incorporated specifically to acquire such assets, the Carillion Services Assets comprise the primary business of Dexterra.

15. Pursuant to subsection 32.2(6) of Form 41-101F1, the financial statement disclosure in respect of the Carillion Services Assets must include "statements of comprehensive income, statements of changes in equity and statements of cash flow for the entities or businesses [Carillion Services Assets] for as many periods before the acquisition as may be necessary so that when these periods are added to the periods for which the issuer's [Dexterra's] statements of comprehensive income, statements of changes in equity and statements of cash flow are included in the [Circular], the results of the entities or businesses [Carillion Services Assets], either separately or on a consolidated basis, total three years".
16. Therefore, the financial statements of the Carillion Services Assets required under Item 32 of Form 41-101F1 include:
  - (a) a carve-out statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the period from January 1, 2018 to March 7, 2018 and for the year ended December 31, 2017; and
  - (b) notes to the carve-out annual financial statements, including a summary of significant accounting policies (collectively, the **Carillion Financial Statements**).
17. Dexterra has advised the Filer that following considerable effort by Dexterra, it has been determined that the Carillion Financial Statements do not exist or are not obtainable.

*Exemption Sought*

18. The Filer will include in the Circular the following financial information regarding Dexterra:
  - (a) audited consolidated annual financial statements of Dexterra including:
    - (i) a statement of financial position as at December 31, 2019 and December 31, 2018;
    - (ii) a statement of comprehensive income, a statement of cash flows and a statement of changes in equity for the year ended December 31, 2019 and from the date of incorporation on February 23, 2018 to December 31, 2018; and
    - (iii) notes to the financial statements, including a summary of significant accounting policies;
  - (b) pro forma statement of income of the Filer for the 12-month period ended December 31, 2019 (giving effect to the Proposed Transaction as if it has taken place as of January 1, 2019) and a pro forma balance sheet of the Filer as at December 31, 2019, and a pro forma earnings per share based on the pro forma statement of income of the Filer (collectively, the **Available Financial Information**).

19. In addition, the Circular will include disclosure to the effect that the Carillion Assets emerged from bankruptcy and current management of Dexterra are unable to access the historical accounting records of Carillion Canada.
20. Except for the Carillion Financial Statements, the Filer is otherwise able to meet the financial statement disclosure requirements in section 14.2 of Form 51-102F5 and Item 32 of Form 41-101F1. The Filer submits that the disclosure regarding the business of Dexterra and the Available Financial Information will provide a sufficient basis for Shareholders to form a reasoned judgment concerning the Proposed Transaction.

**Decision**

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted, provided that the Circular includes the disclosure set forth in paragraphs 18 and 19.

*“original signed by”*

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Timothy Robson  
Manager, Legal  
Corporate Finance  
Alberta Securities Commission