

Headnote

Multilateral Instrument 11-102 *Passport System* and National Instrument 11-203 – *Process for Exemptive Relief Applications in Multiple Jurisdictions* (“NP 11-203”) – National Instrument 51-102 – *Continuous Disclosure Obligations* (“NI 51-102”) - the Filer requests Exemptive Relief from the Financial Statement Requirements of the Business Acquisition Report in s. 8.4 of National Instrument 51-102 – *Continuous Disclosure Obligations* (“NI 51-102”). This decision should not be viewed as precedent for other filers in the jurisdictions of Canada.

Applicable Legislative Provisions

National Instrument 51-102 *Continuous Disclosure Obligations*, s. 8.4

November 3, 2022

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
NOVA SCOTIA AND ONTARIO
(the Jurisdictions)**

AND

**IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF
APPLICATIONS IN MULTIPLE JURISDICTIONS**

AND

**IN THE MATTER OF
CHORUS AVIATION INC.
(the Filer)**

DECISION

Background

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**) for a decision pursuant to section 13.1 of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) that the Filer be exempt from the requirement under section 8.4 of NI 51-102 and Item 3 of Form 51-102F4 *Business Acquisition Report* to include certain financial statements relating to the Acquisition (as defined herein) in the business acquisition report (**BAR**), (the **Exemption Sought**).

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

- (a) the Nova Scotia Securities Commission is the principal regulator for this application (the **Principal Regulator**);
- (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 each of British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, Newfoundland and Labrador, Prince Edward Island, New Brunswick, Nunavut, Yukon and the Northwest Territories (the **Passport Jurisdictions**); 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

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

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

1. The Filer is a corporation governed by the *Canada Business Corporations Act*.
2. The Filer's head office is located at 3 Spectacle Lake Drive, Suite 380, Dartmouth, Nova Scotia, B3B 1W8.
3. The Filer is a reporting issuer in each of the provinces and territories of Canada.
4. With the exception of the failure to file a BAR in respect of the Acquisition by the deadline provided for in Part 8 of NI 51-102, the Filer is not in default as to any other requirement under the securities legislation of the Jurisdictions.
5. The Filer's Class A Variable Voting Shares and Class B Voting Shares are listed and posted for trading on the Toronto Stock Exchange under the symbol "CHR". The Filer's 6% Senior Debentures due December 31, 2024 are listed and posted for trading on the Toronto Stock Exchange under the symbol "CHR.DB." The Filer's 5.75% Senior Unsecured Debentures due December 31, 2024 and June 30, 2027 are listed and posted for trading on the Toronto Stock Exchange under the symbols "CHR.DB.A" and "CHR.DB.C," respectively. The Filer's 6% Convertible Senior Unsecured Debentures due June 30, 2026 are listed and posted for trading on the Toronto Stock Exchange under the symbol "CHR.DB.B."
6. The Filer is an integrated provider of regional aviation solutions, including asset management services. The Filer's principal subsidiaries are: Falko Regional Aircraft (**Falko**), an asset manager and aircraft lessor focused solely on the regional aircraft leasing segment; Jazz Aviation, the sole provider of regional air services to Air Canada; and Voyageur Aviation, a provider of specialty air charter, aircraft modification, and parts provisioning services to regional aviation customers around the world. Together, the Filer's subsidiaries provide support services that encompass every stage of a regional aircraft's lifecycle, including: aircraft acquisition and

leasing; aircraft refurbishment, engineering, modification, repurposing and transition; contract flying; aircraft and component maintenance, disassembly, and parts provisioning.

7. On February 28, 2022, the Filer and one of its wholly-owned subsidiaries, Mayo Aircraft Leasing Limited, entered into a sale and purchase agreement (the **Purchase Agreement**) with certain sellers (the **Sellers**) pursuant to which such wholly-owned subsidiary would acquire Falko, together with (a) affiliates of Falko, and (b) the equity interests in certain entities and aircraft managed by Falko (or one of its affiliates) (the **Acquisition**).

8. In addition, the Filer entered into a subscription agreement on February 27, 2022 with Brookfield Special Investments Fund L.P. (**Brookfield**) pursuant to which Brookfield agreed to make a strategic equity investment in the Filer in connection with the Acquisition.

9. On May 3, 2022 (the **Completion Date**), the Filer completed a majority of the Acquisition for an aggregate purchase price of US\$809.7 million, comprised of (a) US\$405.0 million of cash consideration and (b) approximately US\$404.7 million of existing indebtedness that remained with the acquired entities. On the Completion Date, the Filer also closed the strategic equity investment with an affiliate of Brookfield. The Filer completed the remainder of the Acquisition by acquiring the beneficial interest in certain trusts holding an additional five aircraft (such remainder, being the **Trust Interests**) between May 31, 2022 and June 30, 2022.

10. On the Completion Date, Westmeath Aircraft Leasing Limited, a wholly-owned subsidiary of the Filer, acquired the following assets:

- a) all of the issued and outstanding limited partnership and management partnership interests in Triangle Holdings LP;
- b) 64.2% of the issued and outstanding limited partnership interests in Ravelin Holdings LP;
- c) all of the issued and outstanding limited partnership interests in DB AVO Holdings LP;
- d) all of the issued and outstanding shares in Triangle Holdings GP Inc.;
- e) 64.2% of the issued and outstanding limited liability company interests in Ravelin Holdings GP LLC; and
- f) all of the issued and outstanding limited liability company interests in DB AVO GP LLC

(collectively, the **Falko Assets**).

11. Falko is a subsidiary of Triangle Holdings LP and therefore was included in the Falko Assets. Upon completing the acquisition of the Trust Interests, the Filer acquired an additional five aircraft, for a total acquisition of 128 owned and managed regional aircraft pursuant to the Acquisition.

12. The acquisition of the Falko Assets constitutes a “significant acquisition” of the Filer for the purposes of NI 51-102 as a result of the threshold being met under the asset test (the **Asset**

Test) and the profit or loss test (the **Profit or Loss Test**) determined in accordance with section 8.3 of NI 51-102. For the purposes of the Asset Test, the Filer has determined that the Filer's proportionate share of the consolidated assets of the Falko Assets equals 31.1% of the consolidated assets of the Filer on the most recent audited annual financial statements of the Filer. For the purposes of the Profit or Loss Test, the Filer has determined that the consolidated specified profit or loss of Falko equals 219.5% of the consolidated specified profit or loss of the Filer based on the most recent audited annual financial statements of the Filer. Accordingly, the Filer was required to file a BAR within 75 days of the Completion Date, being July 17, 2022, pursuant to section 8.2 of NI 51-102.

13. The acquisition of the Trust Interests constitutes an "acquisition of related businesses" under Part 8 of NI 51-102 and requires the Filer to amend its BAR within 75 days of completing the acquisition of the Trust Interests, being September 13, 2022.

14. The financial records and the accounting for DB AVO Holdings LP and its general partner, DB AVO GP LLC, were managed by the Sellers, and as a result, Falko does not have the historical financial records for either entity. The Sellers did not possess financial records for DB AVO Holdings LP that were prepared in accordance with Generally Accepted Accounting Principles (**GAAP**). There are no historical statements prepared in accordance with GAAP for DB AVO US LLC. DB AVO Holdings LP has a 100% ownership interest in three companies as follows:

- a) DB AVO US LLC, a US company;
- b) DB AVO AZ DAC, registered in Ireland; and
- c) DB AVO AC DAC, registered in Ireland.

15. DBO AVO Holdings LP, DB AVO GP LLC and DB AVO US LLC have not previously been audited.

16. The Filer will provide audited financial statements for each of DB AVO AZ DAC and DB AVO AC DAC, in accordance with the requirements of section 8.4 of NI 51-102.

17. The Filer does not have access to any historical accounting records in respect of the Trust Interests.

18. The Filer does not possess, nor had or has had access to the historical financial records of DB AVO US LLC and the Trust Interests. Audited financial statements for each of these entities or assets for the periods prior to the Completion Date do not exist and the Filer is unable to produce such financial statements.

19. Audited historical financial statements of DB AVO US LLC and the Trust Interests were not relevant to the Filer's decision to complete the Acquisition because these are single-purpose asset-owning entities which hold aircraft under lease and debt financing, the details of which were easily verified with a high degree of assurance through contractual due diligence. Given that such audited financial statements were not considered relevant to the Filer's investment decision, the Filer does not believe that such financial statements are material to the investment decision to be made by a potential investor in the Filer.

20. The Filer is unable to prepare the required financial statements for DB AVO US LLC in accordance with section 8.4 of NI 51-102 and Item 3 of Form 51-102F4 for the following reasons:

- a) Stand-alone financial statements prepared in accordance with GAAP of this entity have never been prepared. While financial statements of both DB AVO AZ DAC and DB AVO AC DAC were prepared as a result of applicable Irish laws and regulations, no equivalent laws and regulations required the preparation of financial statements for DB AVO US LLC and accordingly none were prepared by the Sellers.
- b) The Sellers provided the operational and support functions (including treasury, tax, legal) for DB AVO US LLC. The Filer understands that information regarding such operational and support functions is not readily available and any allocation would be subjective and arbitrary, with the result that allocated costs would be unlikely to be indicative of what DB AVO US LLC would have experienced as a stand-alone company. As a result, the records are insufficiently detailed to extract information specific to DB AVO US LLC as would be required to produce the required financial statements.

21. The Filer also submits that it is impracticable to prepare the required financial statements for the Trust Interests in accordance with section 8.4 of NI 51-102 and Item 3 of Form 51-102F4 because stand-alone financial statements of the Trust Interests prepared in accordance with GAAP have never been prepared. There are no laws and regulations requiring the preparation of financial statements for the Trust Interests and, accordingly, none were prepared by the Sellers.

22. No exemption is required with respect to the financial information to be included in the BAR with respect to Triangle Holdings LP, Triangle Holdings GP Inc., Ravelin Holdings LP, Ravelin Holdings GP LLC, DB AVO AZ DAC, and DB AVO AC DAC. The Exemption Sought is only required with respect to DB AVO US LLC and the Trust Interests.

23. Pursuant to section 8.4 of NI 51-102 and Item 3 of Form 51-102F4, absent the Exemption Sought, the Filer would have been required to include in its BAR for the Acquisition, the following financial statements:

- a) an audited statement of comprehensive income, a statement of changes in equity and a statement of cash flows for each business constituting the Falko Assets, in each case for the year ended December 31, 2021, and an audited statement of financial position for each as at the end of that year;
- b) an audited statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the Trust Interests, in each case for the year ended December 31, 2021 and an audited statement of financial position for each as at the end of that year;
- c) an unaudited statement of comprehensive income, statement of changes in equity and statement of cash flows for each business constituting the Falko Assets, in each case for the year ended December 31, 2020, and an unaudited statement of financial position for each as at the end of that year;

- d) an unaudited statement of comprehensive income, statement of changes in equity and statement of cash flows for the Trust Interests, in each case for the year ended December 31, 2020, and an unaudited statement of financial position for each as at the end of that year;
- e) an unaudited interim financial report for each business constituting the Falko Assets for the three month interim period ended March 31, 2022, and an unaudited interim financial report for the comparable period in the preceding financial year;
- f) an unaudited interim financial report for the Trust Interests for the most recent three month interim period, and an unaudited interim financial report for the comparable period in the preceding financial year;
- g) a *pro forma* statement of financial position of the Filer as at the date of the Filer's most recent statement of financial position filed, at March 31, 2022, that gives effect, as if they had taken place as at the date of that *pro forma* statement of financial position, to the acquisition of the Falko Assets;
- h) a *pro forma* statement of financial position of the Filer as at the date of the Filer's most recent statement of financial position filed, that gives effect, as if they had taken place as at the date of that *pro forma* statement of financial position, to the acquisition of the Trust Interests;
- i) a *pro forma* income statement of the Filer that gives effect to the acquisition of the Falko Assets for:
 - a. the Filer's financial year ended December 31, 2021; and
 - b. the Filer's three month interim period ended March 31, 2022as if they had taken place at the beginning of that financial year; and
- j) *pro forma* earnings per share based on the *pro forma* financial statements referred to in paragraph (i) above.
- k) a *pro forma* income statement of the Filer that gives effect to the acquisition of the Trust Interests for:
 - a. the Filer's financial year ended December 31, 2021; and
 - b. the Filer's more recent three month interim periodas if they had taken place at the beginning of that financial year; and
- l) *pro forma* earnings per share based on the *pro forma* financial statements referred to in paragraph (k) above.

24. The Filer seeks exemption from the requirement under section 8.4 of NI 51-102 and Item 3 of Form 51-102F4 *Business Acquisition Report* to include the above financial statements relating to DB AVO US LLC and the Trust Interests in the BAR.

25. The Filer respectfully submits that the Exemption Sought would not be prejudicial to the public interest due to the lack of materiality of DB AVO US LLC and the Trust Interests to the Filer and the Acquisition considered as a whole. In light of the lack of materiality of DB AVO US LLC and the Trust Interests to the Filer and the Acquisition considered as a whole, the Filer believes that these financial statements are not material to investors' understanding of the Acquisition.

Decision

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 with respect to the BAR.

(signed) "Abel Lazarus"

Abel Lazarus
Director, Corporate Finance
Nova Scotia Securities Commission