

October 5, 2006

VIA EMAIL

Ontario Securities Commission
Suite 1800
20 Queen Street West
Toronto ON M5H 3S8

Attention: The Secretary of the Commission

Dear Sirs/Mesdames:

Re: Atlas Cold Storage Income Trust - Application by Avion Group HF and Others under Section 127 of the *Securities Act* (Ontario)

We are counsel to Atlas Cold Storage Income Trust (the "Trust" and, together with its subsidiaries, "Atlas").

We are writing on behalf of the Trust in response to the application (the "Avion Application") made by Avion Group HF ("Avion"), Eimskip Atlas Canada, Inc. (the "Offeror") and KingStreet Real Estate Growth LP No. 2 ("KingStreet") for, among other things, an order to cease trade the rights issue pursuant to the unitholder rights plan of the Trust (the "Rights Plan") in respect of the offer (the "Offer") by the Offeror to purchase all of the outstanding units of the Trust (the "Atlas Units") by way of a take-over bid circular dated August 17, 2006 (the "Avion Circular").

Summary of the Trust's Position

For the following reasons, the continued existence of the Rights Plan is in the best interests of the unitholders of the Trust (the "Atlas Unitholders") and it would be contrary to the public interest to terminate the Rights Plan at this time:

- (a) the Rights Plan is a genuine attempt by the Board of Trustees of the Trust to protect the best interests of the Atlas Unitholders by ensuring that the Board has sufficient time to properly develop and pursue alternative transactions to optimize unitholder value and the equal treatment of all Atlas Unitholders in the event of a change of control of the Trust;

- (b) the continued operation of the Rights Plan does not constitute an improper defensive tactic, and is not contrary to the public interest;
- (c) the Avion Offer is opportunistic and unfair to the Atlas Unitholders;
- (d) the number of days that the Avion Offer has been outstanding is not determinative of the merits of the continuation of the Rights Plan;
- (e) the Avion Offer is coercive as it fails to give adequate disclosure to Atlas Unitholders; and
- (f) if the Offeror, Avion and KingStreet have chosen to do so, they could have made a “permitted bid” within the meaning of the Rights Plan and there is nothing preventing the Offeror, Avion and KingStreet from making a permitted bid at this time.

General Terms and Purpose of Rights Plan

The Rights Plan was approved by the Board of Trustees of the Trust on August 4, 2006. The Rights Plan is a limited duration unitholder rights plan, which was adopted to ensure that all Atlas Unitholders are treated fairly in any transaction involving a change of control of Atlas and have an equal opportunity to participate in the benefits of a take-over bid. The Rights Plan seeks to ensure that the Board of Trustees will have sufficient time to properly develop and pursue a full range of potentially available alternatives that could optimize value for Atlas Unitholders.

In general terms, the Rights Plan provides for the issuance of a number of rights in connection with Atlas Units that generally become exercisable when a person or entity announces its intention to acquire more than 20% of the outstanding Atlas Units without complying with the “permitted bid” provisions of the Rights Plan or without obtaining the approval of the Board of Trustees of the Trust. In order to qualify as a “permitted bid” under the provisions of the Rights Plan, an acquiror must make a formal offer to all Atlas Unitholders for all of their Atlas Units, leave its offer open for 60 days and agree not to take up any Atlas Units unless a majority of Atlas Units (excluding units held by the acquiror) have been tendered to the bid. The “permitted bid” provisions of the Rights Plan generally provide that in the event that a majority of Atlas Units are tendered to the bid, the bid must remain open for deposits in respect of further Atlas Units for at least 10 days after that date.

Submissions

The Commission has repeatedly stated that all securityholder rights plan proceedings are fact specific and that there is no specific test or series of tests that can be applied to all circumstances where a securities regulatory authority is called upon to rule upon a rights plan. We submit that the following factors are those that are relevant in reaching a

determination that it would be contrary to the public interest to terminate the Rights Plan at this time.

Atlas Is Pursuing a Value Optimization Process

In National Policy 62-202 and decisions of Canadian securities regulatory authorities, the Canadian securities regulatory authorities have stated that defensive tactics may be taken by a board of a target in a genuine attempt to obtain a better bid, including the adoption and maintenance of a securityholder rights plan in order to give the board sufficient time to pursue alternative transactions that could optimize value for the target's securityholders. As stated by the Commission in *Falconbridge Limited*,¹ in dealing with securityholder rights plans, the Commission balances the public interest regarding the right of the securityholders of the target to tender their securities to the bidder of their choice against the duties of the target board to maximize securityholder value. In striking that balance, we submit that the balance of convenience should favour the target board (so long as it acts reasonably) by providing the Board with sufficient time to properly develop and pursue alternative transactions to optimize securityholder value. The actions of the Trust's Board of Trustees have been reasonable and consistent with its fiduciary duties.

In our view, the principal issue in this matter is whether it is in the public interest for the Rights Plan to continue to operate for a reasonable period of time. For the following reasons, the Trust submits that the interests of Atlas Unitholders can only be protected if the Rights Plan is permitted to remain in effect for a reasonable period of time and to do otherwise would be contrary to the public interest:

- (a) the Board of Trustees, with the assistance of its legal and financial advisors, is aggressively pursuing a number of alternatives to the Avion Offer in order to present the best possible alternatives to Atlas Unitholders. In this regard, Atlas has established a dataroom to permit interested parties to review Atlas' confidential information. To date, the Trust's financial advisors have contacted 57 potential bidders and entered into confidentiality and standstill agreements with 22 parties and granted dataroom access to those parties. The Trust invited several potential bidders into a second round of negotiations and is in discussions which may lead to an alternative transaction that offers higher value to the Atlas Unitholders than the Avion Offer.
- (b) the Rights Plan supports the Board of Trustees' value optimizing process for the following reasons:
 - (i) the Rights Plan ensures that both the Board and potential bidders have sufficient time to properly pursue and develop alternative transactions;

¹ *Re Falconbridge Limited* (2006), 29 O.S.C.B. 6783.

- (ii) the Rights Plan provides potential bidders, who are being encouraged to expend considerable time and money engaging in discussions with Atlas with reasonable assurances of process fairness in relation to certainty of timing by ensuring that they will not be forced into making a decision regarding a potential offer without sufficient time to structure the offer and arrive at a full valuation for Atlas;
- (iii) the Rights Plan provides potential bidders with the opportunity to engage in discussions without the risk of having the auction process prematurely terminated by a bidder like Avion through tactical steps such as locking up some unitholders and, in effect, terminating the process for others which may not be in the best interests of all unitholders from the perspective of attracting as many interested parties to the process as possible; and
- (iv) the Rights Plan ensures the fair treatment of all Atlas Unitholders by preventing potential bidders, including Avion and its joint actors, from engaging in a creeping take-over or entering into other transactions (i.e. by way of a lock-up agreement) that would enable a bidder to block any superior offer.

In order to enable the Trust to properly complete its process, the Trust is prepared to waive the application of the Rights Plan to the Avion Offer on October 27, 2006.

Complexity of the Process

Atlas' assets consist primarily of extensive real estate holdings and related operating assets. In considering alternative transactions, certain of the potential bidders engaged have considered an acquisition of those real estate assets while others have shown interest only in Atlas' operating assets. As a result, this process necessarily involves multiple parties that need not only to fully understand Atlas' business but also to structure and negotiate separate arrangements with third party partners with respect to the division of those assets. We note that KingStreet conducted extensive due diligence on Atlas' assets including visiting all of the properties. Notwithstanding the knowledge gained by KingStreet, it nevertheless appears to have taken Avion and KingStreet approximately two months to agree upon the terms upon which they would make the Avion Offer.

The Avion Offer

By letter dated September 15, 2006, we sought, on behalf of Atlas, relief pursuant to Sections 104(1) and 104(2) of the *Securities Act* (Ontario)(the "Act") on the basis that (i) certain arrangements between the Offeror, Avion and KingStreet will confer collateral benefits upon KingStreet contrary to Subsection 97(2) and (ii) the Avion Circular contains material

disclosure deficiencies regarding the KingStreet Collateral Arrangements , the background to the Avion Offer, and a proposed subsequent acquisition transaction.

In our view it is appropriate that the date for expiry of the Rights Plan be a date which will give the Commission a full opportunity to deal with the collateral benefits and related disclosure issues as it would be inappropriate and not in the interests of Atlas unitholders for the Rights Plan to expire while the collateral benefits issue remains outstanding.

The Avion Offer is Opportunistic

The Board of Trustees has received written opinions dated August 30, 2006 from each of BMO Nesbitt Burns Inc. and Brascan Financial Real Estate Group Limited to the effect that, as of that date and based upon and subject to the matters stated in such opinion, the consideration offered by the Offeror to Atlas Unitholders under the Avion Offer is inadequate, from a financial point of view, to Atlas Unitholders (other than Avion and KingStreet).

Other Factors

In its application, Avion makes several other allegations, all of which the Trust believes are without merit. Our response to those allegations is set out below.

- (a) *Unitholder Approval.* The practise of a target company adopting a limited duration rights plan in the face of an unsolicited take-over bid is a widely accepted and prudent defensive tactic. We submit that little or no weight should be afforded the fact that, in the circumstances of the Avion Offer, Atlas Unitholders have not approved the Rights Plan. The primary issue is one of optimizing unitholder value and the state of the Board's efforts in this regard. We also note that, as stated in the Board of Trustees' circular dated August 17, 2006, Atlas management and the Trusts' financial advisors have been advised that six Atlas Unitholders representing approximately 35.5% of the outstanding Atlas Units on a fully diluted basis do not intend to tender their Atlas Units to the Atlas Offer.
- (b) *Length of Time Since the Avion Offer was Made.* In *Re Cara Operations Ltd.*², the Commission held that the absolute number of days that a bid has been outstanding should not be the deciding factor with respect to whether a rights plan no longer serves the interests of the target's securityholders.

Please also note that Avion has given us no indication it is prepared to let its bid lapse unless the Rights Plan is removed. In all of the circumstances, we therefore believe the date we have proposed for waiver of the Rights Plan is appropriate.

² (2002, 25 OSCB 7997 at paragraph 60.

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Ontario Securities Commission

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Should you have any questions regarding the foregoing, please contact me at 416-601-7988, Jonathan Grant at 416-601-7604 or Gary Girvan at 416-601-7574.

Yours truly,

McCarthy Tétrault LLP


Blair Cowper-Smith