

## TRANSLATION

May 30, 2014

In the Matter of  
the Securities Legislation of  
Québec and Ontario

and

British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia,  
Prince Edward island, Newfoundland and Labrador, Yukon Territory,  
Northwest Territories and Nunavut

and

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

and

In the Matter of  
Geneba Properties N.V.  
(the “**Filer**”)

Decision

### **Background**

The securities regulatory authority or regulator in Québec and Ontario (the “**Dual Exemption Decision Makers**”) have received an application from the Filer for a decision under the securities legislation of those jurisdictions for an exemption from the prospectus requirement applicable to the first trade of the Filer Securities (as defined below) issued pursuant to the Plan (as defined below) to Canadian residents (the “**Dual Exemption**”).

The securities regulatory authority or regulator in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon Territory, Northwest Territories and Nunavut (the “**Jurisdictions**”) (the “**Coordinated Exemptive Relief Decision Makers**” and, together with the Dual Exemption Decision Makers, the “**Decision Makers**”) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the “**Legislation**”) that the Filer is not a reporting issuer in the Jurisdictions (the “**Coordinated Exemptive Relief**”).

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

- (a) the *Autorité des marchés financiers* is the principal regulator for the applications,
- (b) the Filer has provided notice that section 4.7(1) of *Regulation 11-102 respecting Passport System* ("**Regulation 11-102**") is intended to be relied upon in Alberta, New-Brunswick, Prince Edward Island and Nova Scotia,
- (c) the decision is the decision of the principal regulator and the decision evidences the decision of the Ontario Securities Commission (the "**OSC**"), and
- (d) the decision evidences the decision of each Coordinated Exemptive Relief Decision Maker.

### Interpretation

Terms defined in Regulation 11-202 and *Regulation 14-101 respecting Definitions* have the same meanings if used in this decision, unless otherwise defined.

### Representations

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

#### *The Filer*

1. The Filer was incorporated on July 11, 2013 under the laws of the Netherlands.
2. The Filer's head office is located in Amsterdam, the Netherlands.
3. The Filer was created solely in connection with a plan of compromise and reorganization (the "**Plan**") of Homburg Invest Inc. ("**HI**") adopted in accordance with the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") and for the purpose of implementing the transactions contemplated thereby.
4. As a result of the Plan, the Filer became a reporting issuer in all the Jurisdictions on the Plan Implementation Date (as defined below).
5. The Filer has a licence (the "**AFM Licence**") to operate as an investment institution in the Netherlands from the Netherlands *Autoriteit Financiële Markten* (the "**AFM**"). However, the Filer is not an "investment fund", as this term is defined in the Legislation, in any of the Jurisdictions.
6. The authorized capital of the Filer consists of EUR 2,100,000 divided into 105,000,000 shares with a nominal value of EUR 0.02 each (the "**Shares**"). Approximately 30,542,639 Shares are currently issued and outstanding. The Shares are not securities entitling their holder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the Filer.
7. The Filer is not in default of any of its obligations under the Legislation as a reporting issuer.

*HII and 1810040*

8. 1810040 Alberta Ltd. ("**1810040**"), a corporation resulting from the amalgamation of HII, Homburg Shareco Inc., Holland Garden Development Ltd., Homburg Invest USA Limited and Swiss Bondco Inc. on March 24, 2014 (the "**Amalgamation**"), is a real estate company based in Canada and existing under the *Business Corporations Act* (Alberta).
9. 1810040's head office is located in Dartmouth, Nova Scotia.
10. On the Plan Implementation Date (as defined below), the Filer became the owner of all the issued and outstanding common shares of 1810040. However, 1810040 will remain a distinct entity from the Filer under the administration of the Monitor (as defined below) for the sole purpose of selling 1810040's remaining assets in order to repay creditors as set out in the Plan. Therefore, despite owning shares of 1810040, the Filer will have no control of 1810040 and no entitlement to any proceeds from the disposition of 1810040's assets.
11. 1810040 is a reporting issuer in each of the Jurisdictions (other than British Columbia). 1810040 ceased to be a reporting issuer in British Columbia pursuant to BC Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status* effective on April 17, 2014. 1810040 has applied to the Coordinated Exemptive Relief Decision Makers (other than the British Columbia Securities Commission) for a decision that it is not a reporting issuer in the Jurisdictions (other than British Columbia).
12. As the resulting issuer of HII pursuant to the Amalgamation, 1810040 is in default of its obligations under the Legislation as a reporting issuer for the failure to file, in respect of the periods subsequent to the interim period ended September 30, 2012 and until the interim period ended March 31, 2014, its annual and interim financial statements, management's discussion and analysis related thereto as well as annual information forms as required by *Regulation 51-102 respecting continuous disclosure obligations* and the certifications of such filings as required by *Regulation 52-109 respecting Certification of Disclosure in Issuers' Annual and Interim Filings*.
13. From 2004 to 2008, HII issued, directly or through a wholly-owned subsidiary, certain bonds (the "**Homburg Bonds**") that were only offered for sale to the public in the Netherlands and on a prospectus-exempt basis in Canada.

*Catalyst and Catalyst SPV*

14. The Catalyst Capital Group Inc. ("**Catalyst**") is an Ontario corporation with its head office in Toronto, Ontario, registered in Canada with the OSC as a portfolio manager.
15. Catalyst is an "institutional investor" and an "accredited investor", but not an "investment fund", as these terms are defined in the Legislation.
16. Prior to the Plan Implementation Date (as defined below), two funds established in Ontario managed by Catalyst (the "**Catalyst Funds**") owned certain Homburg Bonds and trade debt of HII.

17. Catalyst is not in default of its obligations under the Legislation as a portfolio manager and the Catalyst Funds are not in default of any requirements applicable to them under the Legislation.
18. Catalyst Re Coöperative U.A. ("**Catalyst SPV**") is a Netherlands cooperative with its head office in Amsterdam, the Netherlands.
19. The equity and voting securities in the capital of Catalyst SPV are held legally and beneficially by the Catalyst Funds.

*CCAA Proceedings*

20. On September 9, 2011, HII and certain of its affiliates and related entities (collectively, the "**HII Group Entities**") obtained an order from the Superior Court of Québec (the "**Court**") granting the HII Group Entities protection from their respective creditors under the CCAA and appointing the monitor (the "**Monitor**") for the proceedings.
21. The Plan, as described in the management information circular of HII dated May 3, 2013 (the "**Circular**"), contemplated, among other things, the following transactions:
  - (a) all of HII's outstanding shares (other than the HII shares issued to the Filer under the Plan) were cancelled without consideration;
  - (b) Holders of Homburg Bonds and trade creditors of HII (collectively, the "**Affected Creditors**") holding proven claims (as defined in the Plan) had the option to elect to receive cash payments payable by Catalyst (the "**Cash-out Option**") and a cash distribution from the Monitor in full payment of their claim;
  - (c) Affected Creditors holding proven claims that had not elected the Cash-Out Option received a certain number of Shares and a cash distribution from the Monitor in full payment of their claims;
  - (d) HII transferred to the Filer its core business assets, all of which are located in Europe (the "**Core Business Assets**");
  - (e) Shares that may become issuable to Affected Creditors holding unresolved claims who did not elect the Cash-Out Option were issued in escrow pending the final determination of such unresolved claims or the entitlement to the distributions pertaining to such claims (the "**Escrow Shares**"); and
  - (f) the Escrow Shares in respect of unresolved claims that are subsequently determined not to be proven claims or for which the entitlement to distributions are subsequently reduced will be transferred to the Filer for cancellation without payment of any consideration.
22. On May 30, 2013, the Plan was approved by 99% of the votes cast, representing 90% of the value of proven claims. In addition, as of the Plan Implementation Date, eligible Affected Creditors (not including Catalyst or any of the funds managed or companies controlled by Catalyst) representing between approximately 32% to 42% of the value of the claims elected the Cash-out Option.

23. The Plan was sanctioned by the Court on June 5, 2013. The hearing for the sanction order provided the Filer's stakeholders (including the Affected Creditors) with an opportunity to object to the Plan if they believed the Plan treated them unfairly, having regard to their legal rights and interest. If a party wished to appeal the sanction order, it was only entitled to do so with leave of the Court of Appeal of Québec. Any application for leave to appeal was required to be brought within 21 days of the sanction order (unless the Court of Appeal of Québec granted an extension). No leave to appeal the sanction order has been sought and no extension has been granted to seek one.
24. On March 27, 2014 (the "**Plan Implementation Date**"), the Plan was implemented.
25. The Filer acknowledges that, in granting the Dual Exemption and the Coordinated Exemptive Relief, the Decision Makers are not expressing any opinion or approval as to the terms of the Plan.

#### *Activities of the Filer*

26. In the Netherlands, the Filer is regulated as a closed-end property investment company without a separate manager and is authorized to operate as an investment institution pursuant to the AFM Licence. As a result, the Filer is subject to the regulatory oversight of the AFM.
27. The Filer is a real estate development and investment company based in the Netherlands with an existing portfolio of industrial, office and retail properties located in the Netherlands, Germany and the Baltic States, being the Core Business Assets. All of the Filer's business activities relating to the Core Business Assets are conducted in Europe.
28. The Filer intends to focus on its operations and assets in Europe and has no current plans to invest or acquire further properties in Canada. The Filer does not have any substantive connections to Canada and does not have any offices, properties or assets in Canada, other than certain assets held by 1810040 for disposition by, and under the administration of, the Monitor.
29. On the Plan Implementation Date, only one Canadian resident was involved in the affairs of the Filer as a member of the initial Supervisory Board of the Filer, and such person was appointed by Catalyst upon the exercise of its board nominee right set forth in the restated support agreement dated April 26, 2013 that formalized Catalyst's investment in HII (the "**Restated Support Agreement**").

#### *Filer Securities and Holders of Filer Securities*

30. Depositary receipts in respect of the Shares ("**DRs**" and, together with the Shares, the "**Filer Securities**") have been admitted to trading on the online trading platform *Nederlandsche Participatie Exchange B.V.* ("**NPEX**") serviced by *Stichting Bewaarbedrijf NPEX* (the "**NPEX Foundation**") in the Netherlands.
31. All the Shares are registered in the name of the NPEX Foundation, which, in turn, issued on the Plan Implementation Date approximately 12,624,927 DRs to Affected Creditors (excluding Catalyst or any of the funds managed or companies controlled by Catalyst), approximately 10,804,153 DRs to Catalyst SPV and approximately 7,113,559 DRs, in

respect of the Escrow Shares, held in escrow by the Monitor pending the determination of unresolved claims (the “**Escrowed DRs**”).

32. The Filer Securities that were issued under the Plan to Canadian residents were distributed pursuant to the prospectus exemption set forth in section 2.11 of *Regulation 45-106 respecting Prospectus and Registration Exemptions*.
33. As at the date hereof, the Escrowed DRs are held in escrow by the Monitor pending the final determination of certain claims or the entitlement to the distributions pertaining to certain claims. Approximately 944,524 Escrowed DRs (or approximately 3.09% of the total outstanding Filer Securities) are held in escrow by the Monitor for the benefit of Canadian residents that are Affected Creditors which did not elect the Cash-Out Option (including Catalyst or Catalyst SPV). Should all unresolved claims be proven claims, four Affected Creditors residing in Canada (other than Catalyst or Catalyst SPV) would receive approximately 2,950 DRs (or approximately 0.0096% of the total outstanding Filer Securities) and Catalyst SPV would receive the balance of the Escrowed DRs held in escrow for the benefit of Canadian residents that are Affected Creditors which did not elect the Cash-Out Option (including Catalyst or Catalyst SPV).
34. Upon final determination of pending variables that will affect the final value of certain claims, or the entitlement to the distributions of the Filer Securities pertaining to certain claims:
  - (a) there will be approximately 5,360 holders of Filer Securities on a worldwide basis of which no more than 32 (including Catalyst) will be Canadian residents (or no more than 0.60% of all holders of Filer Securities) located in Alberta, Ontario, Québec, New Brunswick, Prince Edward Island or Nova Scotia,
  - (b) Catalyst will control, directly or indirectly, a minimum of approximately 36% and a maximum of approximately 47% of the issued and outstanding Filer Securities (the “**Catalyst Filer Securities**”); and
  - (c) the aggregate beneficial ownership of Filer Securities by Canadian residents (not including the Catalyst Filer Securities) will total between approximately 2.4% and 2.8%.
35. The Monitor has determined the number of Filer security holders in Canada based on the addresses provided by the Affected Creditors in their respective proof of claim or proxy form filed in the CCAA Proceedings.
36. As stated in paragraph 34 above, the number of Canadian Filer Securities holders (excluding Catalyst or any of the funds managed or companies controlled by Catalyst) compared to all holders of Filer Securities worldwide is *de minimis*.
37. A sale of the Catalyst Filer Securities in the Jurisdictions would be a control distribution and subject to the prospectus requirement.
38. The Plan provides for a 90-day standstill period for the Filer Securities which began on the Plan Implementation Date and will expire on June 25, 2014 (the “**Standstill Period**”).
39. After the expiry of the Standstill Period, resales of Filer Securities by Canadian residents (including Catalyst or any of the funds managed or companies controlled by Catalyst) via

NPEX must be made on the basis of one of the following exemptions from applicable prospectus requirements under Dutch securities laws: (a) the offer of Filer Securities must be directed solely to qualified investors, as such term is defined in the Dutch Financial Markets Supervision Act (*Wet op het financieel toezicht*); (b) the offer of Filer Securities must be made for a total consideration of at least EUR 100,000 per investor; or (c) the total value of the Filer Securities being offered by each single holder of Filer Securities in the European Economic Area must amount to less than EUR 2.5 million per 12-month period. By default, NPEX will assume that offers for sale made by holders of Filer Securities are made on the basis of exemption (c). However, if a holder of Filer Securities wishes to rely on a different exemption, it should contact NPEX.

*No Market in Canada for the Filer Securities*

40. No market for the Filer Securities exists in Canada and none is expected to develop. The Filer expects that, at the expiration of the Standstill Period, any resale of the Filer Securities (including the Catalyst Filer Securities) by Canadian residents will be effected through the facilities of NPEX or any other exchange or market outside of Canada on which the Filer Securities may be quoted or listed at the time that the trade occurs, in accordance with the rules and regulations of NPEX or such foreign exchange or market, or to a person or company outside of Canada.
41. Neither the Filer nor Catalyst (nor any of the funds managed or companies controlled by Catalyst) intends to conduct any marketing of the Filer Securities in Canada.
42. Catalyst has no intention to create a market for the Filer securities in Canada and expects any resale of the Catalyst Filer Securities to be effected (i) through the facilities of NPEX or any other exchange or market (including an over-the-counter market) outside of Canada or (ii) to a person or company outside of Canada, in accordance with the rules and regulations of any such foreign exchange or market.
43. None of the Filer Securities, including debt securities, are traded in Canada or another country on a marketplace as defined in *Regulation 21-101 respecting Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported. There is no intention to have the Filer Securities listed for trading on a marketplace or such facility in Canada.
44. The Filer currently has no intention to seek any type of financing in Canada, whether by way of a public offering or private placement in Canada.
45. In the last 12 months, neither HII nor the Filer has taken any steps that indicate there would be a market for the Filer Securities in Canada.

*Reasons why the Coordinated Exemptive Relief is Requested*

46. As described in paragraph 21 above, Filer Securities were distributed to Affected Creditors in exchange for the settlement and discharge of their proven claims, including debt securities of a reporting issuer in each Jurisdiction. Therefore, the Filer was deemed pursuant to the Legislation to have made a distribution of securities to the public or exchanged its securities in connection with a reorganization or a statutory arrangement. As a result, on the Plan Implementation Date, the Filer became subject to the disclosure and other requirements applicable to a reporting issuer under the Legislation in each Jurisdiction.
47. The Filer is neither eligible to use the simplified procedure nor the modified approach pursuant to CSA Staff Notice 12-307 – *Applications for a Decision that an Issuer is not a Reporting Issuer* (“**Staff Notice 12-307**”). The Filer is not eligible to use the simplified procedure pursuant to Staff Notice 12-307 because: (a) the Filer Securities are not beneficially owned, directly or indirectly, by fewer than 51 security holders worldwide and fewer than 15 security holders in each of the Jurisdictions; and (b) the Filer remains a reporting issuer in British Columbia and is not able to voluntarily surrender its reporting issuer status under British Columbia Instrument 11-502 – *Voluntary Surrender of Reporting Issuer Status* since the Filer is a reporting issuer with more than 50 security holders. The Filer is not eligible to use the modified approach pursuant to Staff Notice 12-307 because: (a) including the Catalyst Filer Securities, residents of Canada beneficially own, directly or indirectly, more than 2% of each class or series of the Filer Securities worldwide; and (b) the Filer will not file continuous disclosure reports under U.S. securities laws and the Filer Securities are not listed on a U.S. exchange or on a major foreign exchange.
48. The Filer is applying for a decision that it is not a reporting issuer in all of the Jurisdictions of Canada in which it is currently a reporting issuer.
49. Pursuant to the Restated Support Agreement, Catalyst requested that the Filer make an application for the Coordinated Exemptive Relief and the Circular disclosed the fact that the Filer would make an application for the Coordinated Exemptive Relief.
50. On September 30, 2013, the Filer issued a press release providing the Affected Creditors with notice that it had applied to cease to be a reporting issuer in each of the Jurisdictions.
51. Under the laws of the Netherlands and the Filer’s articles of association, the Filer is required to publish on its website or otherwise provide to each holder of Filer Securities the following information and documentation:
  - (a) annual accounts, annual reports of its management board and supervisory board and audit reports of its external accountant within four months of the end of each financial year;
  - (b) semi-annual accounts and corresponding reports within nine weeks of the end of each financial half-year;



- (c) corporate information on a monthly basis, including the total value of its investment portfolio, a summary of its composition and the number of outstanding Filer Securities; and
  - (d) the Filer's net asset value calculated on a yearly basis and each time the Filer offers, repurchases, sells or repays Filer Securities.
52. Although the Netherlands is a "designated foreign jurisdiction" under *Regulation 71-102 respecting Continuous Disclosure Requirements and Other Exemptions Relating to Foreign Issuers* ("**Regulation 71-102**"), the exemptions provided for by part 5 of Regulation 71-102 are not available to the Filer because it is not a "designated foreign issuer" under Regulation 71-102, since Canadian residents will own, directly or indirectly, more than 10% of the outstanding equity securities of the Filer.
53. The Filer has undertaken to deliver concurrently to its Canadian security holders all continuous disclosure and other reporting documents that it is required to deliver or send to its security holders or publicly disseminate pursuant to the laws of the Netherlands, its articles and the requirements of NPEX (the "**Dutch Public Disclosure Documents**"). As a result of Catalyst's control or direction over the Catalyst Filer Securities, Catalyst is an insider of the Filer within the meaning of the Legislation. Furthermore, Catalyst has acquired knowledge of, and is familiar with, the business, the operations and assets of the Filer as a result of its involvement in the negotiation, and as one of the major supporting sponsors, of the Plan. Given its board nominee, Catalyst continues to be knowledgeable and familiar with the Filer's business, operations and assets after the Plan Implementation Date. As a result, Catalyst does not require the degree of protection afforded by the disclosure and reporting regime of the Legislation applicable to a reporting issuer.
54. The Filer has agreed to prepare its Dutch Public Disclosure Documents in English in accordance with the terms of its articles and, where Dutch law requires such documents to be published in the Dutch language, to simultaneously publish an English version of these documents.
55. Upon granting the Coordinated Exemptive Relief, the Filer will no longer be a reporting issuer or the equivalent in any Jurisdiction. The Filer and 1810040 (formerly HII) published a news release specifying this fact on March 28, 2014.

*Reasons why the Dual Exemption is Requested*

56. In the absence of an order granting the Dual Exemption, the first trade of Filer Securities by a Canadian resident would not be exempted from prospectus requirements pursuant to section 2.6 of *Regulation 45-102 respecting Resales of Securities* ("**Regulation 45-102**") unless, among other things, the Filer has been a reporting issuer for four months immediately preceding the trade in any of the Jurisdictions.
57. The exemption provided for by section 2.14 of Regulation 45-102 is not available to Canadian residents with respect to a first trade of the Filer Securities as the criteria set out at subsection 2.14(b) of Regulation 45-102 is not met because, at the distribution date of the Filer Securities (i.e. the Plan Implementation Date), residents of Canada beneficially owned or exercised control over, directly or indirectly, more than 10% of the outstanding Filer Securities.

58. Not granting the Dual Exemption would create an unfair situation for Canadian residents other than Catalyst, or the funds managed or companies controlled by Catalyst, as they would not be able to sell their Filer Securities without a prospectus exemption.

**Decision**

Each of the principal regulator, the regulator in Ontario and the Coordinated Exemptive Relief Decision Makers is satisfied that the decision meets the test set out in the Legislation for the relevant regulator or securities regulatory authority to make the decision.

The decision of the Dual Exemption Decision Makers under the Legislation is that the Dual Exemption is granted provided that:

- a) the Filer is not a reporting issuer in any Jurisdiction at the date of the trade; and
- b) the first trade of the Filer Securities is made through an exchange or market outside of Canada or to a person or company outside of Canada.

The decision of the Coordinated Review Decision Makers under the Legislation is that the Coordinated Exemptive Relief is granted.

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Autorité des marchés financiers