

**SHAAE (2001) Master Limited Partnership  
(the "Partnership")  
Oversight Committee Meeting and Conference Call  
Held on June 26, 2012**

*On June 26, 2012, the second meeting of the Oversight Committee was conducted by David Davies of Thorsteinssons LLP, who is counsel to the Partnership's general partner (the "GP"). The meeting took place at Thorsteinssons' offices in Vancouver, BC. Robert Strother and Paul Darc, both principals of the GP, attended in person along with Anneke Driessen, while Kenneth Gordon (also a principal of the GP), attended via conference call. One member of the Committee, namely Mr. Ryan, QC, was unable to attend. Each of Sam Sorbara and David Goldsmith (referred to as the "Committee Members" in this summary) attended via conference call, as did Susan Carmichael, the GP's VP, Finance.*

**NOTE: Mr. Davies has not reviewed this summary so while I have attempted to accurately set out the meeting, it is possible some correction may be necessary from his perspective.**

Mr. Davies had conduct of the meeting. The agenda, which had been circulated to the Committee Members in advance, was as follows:

1. Update on Steps in the Litigation Proceedings since the April Meeting of the Committee (incl. Update regarding Discovery: who will be discovered and when)
2. Freedom of Information (FOI) Requests for the Transaction being made; Update on Information received through FOI Materials in the 1998 Transaction
3. Summary of Goodmans' Memo from 2003 concerning Dealings of Sentinel Hill with various departments of the Canada Revenue Agency ("CRA") and Finance in the context of Ruling Requests etc.
4. Questions to Counsel/General Partner

Update on Steps in the Litigation Proceedings

Mr. Davies noted the Lists of Documents have been exchanged, and a case management conference was held on or about May 31, 2012. The case management conference resulted in an order, setting the dates for the upcoming steps in the litigation:

1. The examinations for discovery to be completed by October 31, 2012;
2. The undertakings given at the examination for discovery to be satisfied by January 31, 2013; and
3. The parties to communicate with the hearings coordinator by no later than Feb. 15, 2013 as to settlement conference/hearing date and if hearing, fix a date and time for trial.

Mr. Davies advised that the Crown's nominee for discovery is David Duff, formerly the head of the Tax Avoidance Department in CRA's head office in Ottawa.

While more on this will follow under the next heading, Mr. Davies noted that there was, in his view, certainly embarrassing background information in the materials that would be explored during discovery.

For instance, there is mention in the materials that CRA deliberately chose to pursue a broad spectrum of issues and arguments for the express reason that this improves their bargaining position. Mr. Davies noted that in his experience, CRA will refuse to abandon even those arguments exceedingly unlikely to succeed.

Mr. Davies stated that over the summer, preparations for the discoveries to be held in the fall would proceed.

## Freedom of Information (FOI) Materials

While the requests for information relating to this transaction have not been processed yet, FOI materials relating to the 1998 transaction have been interesting. Mr. Davies summarized that the materials show the progression within CRA from the initial fear of loss of tax revenue to the issuance of reassessments of tax-assisted financing transactions in the period 2000 to 2002. The proposed legislated changes that effectively closed the window for similar transactions were apparently not satisfactory and there was a comprehensive attack on completed transactions regardless of rulings having been provided.

Mr. Strother noted that there was an apparent rearguard action from the audit department after the transactions had closed, although Rulings had clearly been content with the proposed transactions. The Committee Members noted that this may well speak to the motivation behind the reassessments, but does not address the alleged substantive failings within the transactions. Mr. Strother agreed but also noted that the transactions went ahead because CRA's Rulings department had effectively allowed the transactions to close, even after the legislative changes were announced. This is particularly interesting if one considers that Sharon Gulliver (formerly of CRA) was an outspoken opponent on the GAAR Committee when the Sentinel Hill rulings were being contemplated and later, after the transactions had closed, led a concerted attack via reassessments. It may be that it was the success of these tax-assisted financing transactions that became the concern, despite the many jobs these film financing deals created.

The Committee Members asked whether the revocation of the settlement offers had any appreciable impact. Mr. Davies stated that when the case management judge asked whether there was any prospect of a settlement at this point, the Crown responded with "none at the moment".

## 2003 Memo Summary

Mr. Davies explained that in 2003, Goodmans (a law firm then acting for Sentinel Hill) prepared a memo outlining the steps, meetings, and dealings among them, the Sentinel Hill principals, and CRA in the period from 1999 to 2003. At the time, there was contemplation of a civil suit against CRA and the memo was background information to (prospective) litigation counsel. Those proceedings were never instituted as there were inherent difficulties due to the on-going tax dispute.

The memo sets out the history of how the ruling requests were handled and pursued. A summary of the memo will be posted on the website separately. The memo outlines that the ruling request process was smooth and rapid. There were no apparent concerns from Rulings. In November of 2000, Neil Harris, Mitch Sherman and Rob Strother went to Ottawa to discuss the proposed 2001 transactions with Rulings. Accordingly, Goodmans sent in the ruling request on or about Nov. 3, 2000 and the Ruling was issued Dec. 13, 2000.

Perhaps starting end of 2000, CRA's audit department commenced reviewing the 1998 transactions. Bob Goodwin from the Vancouver CRA office was the prominent person in this process. In April there was a meeting between Sentinel Hill and Audit (incl. Goodwin). Sentinel Hill asked if there were any concerns re the 1998 transaction which might impact on the proposed 2001 transactions? No, audit stated they had no such concerns and there was nothing in the way of further transactions proceeding from their end. Another meeting in 2001 reiterated that.

There was a meeting in Ottawa on Sept. 11, 2001 which was cut short due to the events that unfolded in NYC. Mr. Strother was there and noted that they were contemplating more transactions for 2002 and would like to seek another ruling in that respect. CRA asked if they could have a diagram to show the flow of funds so they can better assess if the transaction was in

fact structured as they thought it was. Those materials were subsequently provided to CRA and CRA stated they saw their understanding of the flow of funds confirmed in the materials.

One week later, Finance announced proposed legislative changes which effectively closed these types of transactions. However, grandfathering provisions were included to allow for any "in progress" transactions to close. Sentinel Hill again asked CRA to advise of any concerns, as they were not interested in closing further transactions if there were any concerns from CRA's end. CRA said repeatedly that they had no concerns.

The stated purpose of CRA's queries and requests for additional structural diagrams was to prepare for the review of the proposed ruling request for 2002 transactions (which did not go ahead based on the Finance Department's legislated changes).

There being no further questions, the meeting then ended. No date for the next Oversight Committee Meeting was discussed; however, a tentative date of mid-September might be appropriate.