

December 3, 2020

In the Matter of
the Securities Legislation of
Ontario (the “**Jurisdiction**”)

and

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

and

In the Matter of
Ayr Strategies Inc. (the “**Filer**”)

Decision

Background

The principal regulator in the Jurisdiction has received an application (the “**Application**”) from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the “**Legislation**”) that:

1. In connection with National Instrument 62-104 *Take-Over Bids and Issuer Bids* (“**NI 62-104**”) and National Instrument 62-103 *The Early Warning System and Related Take-over Bid and Insider Reporting Issues* (“**NI 62-103**”):
 - (a) an offer to acquire outstanding subordinate voting shares (“**Subordinate Voting Shares**”), restricted voting shares (“**Restricted Voting Shares**”) or limited voting shares (“**Limited Voting Shares**”, and collectively with the Subordinate Voting Shares and the Restricted Voting Shares, the “**non-Multiple Voting Shares**”) of the Filer, as the case may be, which would constitute a take-over bid under the Legislation as a result of the securities subject to the offer to acquire, together with the offeror’s securities, representing in the aggregate 20% or more of the outstanding Subordinate Voting Shares, Restricted Voting Shares or Limited Voting Shares, as the case may be, at the date of the offer to acquire, be exempt from the requirements set out in Part 2 of NI 62-104 applicable to take-over bids (the “**TOB Relief**”),
 - (b) an acquiror who triggers the disclosure and filing obligations pursuant to the early warning requirements contained in the Legislation with respect to the Subordinate Voting Shares, Restricted Voting Shares or Limited Voting Shares, as the case may be, be exempt from such requirements (the “**Early Warning Relief**”),
 - (c) an acquiror who acquires, during a take-over bid or an issuer bid, beneficial ownership of, or control or direction over, Subordinate Voting Shares, Restricted Voting Shares or Limited Voting Shares, as the case may be, that, together with

the acquiror's securities of that class, would constitute 5% or more of the outstanding Subordinate Voting Shares, Restricted Voting Shares or Limited Voting Shares, as the case may be, be exempt from the requirement to issue and file a news release set out in section 5.4 of NI 62-104 (the "**News Release Relief**"),

- (d) an issuer bid made by the Filer in the normal course on a published market, other than a designated exchange, with respect to Subordinate Voting Shares, Restricted Voting Shares or Limited Voting Shares, as the case may be, be exempt from the requirements set out in Part 2 of NI 62-104 applicable to issuer bids (the "**NCIB Relief**" and together with the TOB Relief, the News Release Relief and the Early Warning Relief, the "**Bid Relief**");
- 2. The Filer be exempt from the disclosure requirements in Item 6.5 of Form 51-102F5 *Information Circular* ("**Form 51-102F5**") (the "**Alternative Disclosure Relief**", and together with the Bid Relief, the "**Aggregation Relief**"); and
- 3. The requirements under:
 - (a) (i) subsections 12.2(3) and 12.2(4) of National Instrument 41-101 *General Prospectus Exemptions* ("**NI 41-101**"), (ii) Item 1.13(1) of Form 41-101 F1 *Information Required in a Prospectus* ("**Form 41-101F1**"); and (iii) item 1.12(1) of Form 44-101F1 *Short Form Prospectus* (including in respect of any equivalent disclosure in a prospectus or supplement filed pursuant to National Instrument 44-102 *Shelf Distributions* ("**NI 44-102**")) relating to the use of restricted security terms,
 - (b) subsections 10.1(1)(a), 10.1(4) and 10.1(6) of NI 51-102 *Continuous Disclosure Obligations* ("**51-102**") relating to the use of restricted security terms, and
 - (c) subsections 2.3(1)(1.), 2.3(1)(3.) and 2.3(2) of Ontario Securities Commission Rule 56-501 *Restricted Shares* ("**OSC Rule 56-501**") relating to the use of restricted share terms,

shall not apply to the Limited Voting Shares (the "**Nomenclature Relief**", and together with the Aggregation Relief, the "**Exemption Sought**").

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

- (a) the Ontario Securities Commission is the principal regulator for this Application, and
- (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 Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, the

Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Quebec, Saskatchewan and the Yukon Territory.

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102, NI 62-103 and NI 62-104, including without limitation, “offeror”, “offeror’s securities”, “offer to acquire”, “acquiror”, “acquiror’s securities”, “eligible institutional investor”, and “security-holding percentage”, 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 continued under the *Business Corporations Act* (British Columbia) (the “**BCBCA**”).
2. The Filer is a reporting issuer in each of the provinces and territories of Canada, except Quebec, and is not in default of the securities legislation in any of these jurisdictions.
3. The Filer’s head office is located at 590 Madison Ave., 26th Floor, New York, NY 10022.
4. The Filer’s authorized share capital consists of (i) an unlimited number of multiple voting shares (“**Multiple Voting Shares**” and together with the Subordinate Voting Shares, Restricted Voting Shares and Limited Voting Shares, the “**Shares**”), and (ii) an unlimited number of Subordinate Voting Shares, Restricted Voting Shares and Limited Voting Shares.
5. As of December 2, 2020, 3,696,486 Multiple Voting Shares and 20,875,997 non-Multiple Voting Shares were issued and outstanding.
6. The Subordinate Voting Shares, Restricted Voting Shares and Limited Voting Shares are listed on the CSE under the symbol “AYR.A”.
7. The Filer is a vertically integrated multi-state operator in the U.S. cannabis sector, with operations in Massachusetts and Nevada. Through its operating companies, the Filer is a leading cultivator, manufacturer and retailer of cannabis products and branded cannabis packaged goods.

Aggregation Relief

8. As at June 30, 2020, the Filer believes it qualified as an FPI under Rule 405 of the U.S. *Securities Act of 1933*, as amended, and Rule 3b-4(b) of the U.S. *Securities Exchange Act of 1934*, as amended, as:
 - (a) the Filer is continued under the laws of British Columbia; and

- (b) based on reasonable enquiry, less than 50% of the Filer's outstanding voting securities are held directly or indirectly of record by residents of the United States (the "**FPI Threshold**").
9. For the purposes of the FPI Threshold, "voting securities" are defined as those securities that entitle the holders to vote for the election of directors at the time of such determination.
 10. As (a) the majority of the Filer's executive officers and directors are U.S. citizens or residents, (b) more than 50% of the Filer's assets are located in the United States, and (c) the Filer's business is administered primarily in the United States, the Filer will not qualify as an FPI should it exceed the FPI Threshold at the applicable time.
 11. The Filer derives material benefits from its status as an FPI.
 12. On December 3, 2020, the Filer amended its articles (the "**Amendments**") to (a) create and set the terms of two new share classes of the Filer, being the Restricted Voting Shares and the Limited Voting Shares, including applying coattail terms to such shares similar to those applicable to the existing Subordinate Voting Shares, and (b) amend the terms of the Filer's existing Multiple Voting Shares and Subordinate Voting Shares, including by amending the requirements in respect of who may hold Subordinate Voting Shares.
 13. The Filer received the shareholder approvals required under applicable corporate and securities laws to implement the Amendments at the annual general and special meeting of the Filer held on November 4, 2020.
 14. The Amendments are intended to ensure that the Filer maintains its FPI status under applicable U.S. securities laws and thereby avoids a commensurate material increase in its ongoing costs. This is to be accomplished by implementing a mandatory conversion mechanism in the Filer's share capital to decrease the number of shares eligible to be voted for directors of the Filer if the Filer's FPI Threshold would be exceeded.
 15. For the purposes of the Amendments, a "**U.S. Person**" means a U.S. person as defined in Regulation S (promulgated under the U.S. *Securities Act of 1933*) in Section 902(k)(1) (as amended or replaced from time to time), and a "**Non-U.S. Person**" is any person who is not a U.S. Person. Under the Amendments, where Subordinate Voting Shares are held, beneficially owned or controlled, directly or indirectly, or jointly by (a) one or more U.S. Persons, and (b) one or more Non-U.S. Persons, such Subordinate Voting Shares shall be deemed to be held, beneficially owned or controlled by a U.S. Person.
 16. Subject to the Specified Exceptions (as defined below), the Subordinate Voting Shares may only be held, beneficially owned or controlled by Non-U.S. Persons, and will carry one vote per share for the election of directors (and for all other purposes). The Subordinate Voting Shares will be automatically converted, without further act or formality, on a one-for one basis into Restricted Voting Shares if they become held, beneficially owned or controlled by a U.S. Person.

17. Subject to the Specified Exceptions, (a) the Restricted Voting Shares may be held, beneficially owned or controlled only by U.S. Persons and will carry one vote per share for the election of directors (and for all other purposes), and (b) the Limited Voting Shares may be held, beneficially owned or controlled only by U.S. Persons and will carry one vote per share on all matters except the election of directors, as the holders of Limited Voting Shares shall not have any entitlement to vote in respect of the election for directors of the Filer.
18. If, at any given time, the Restricted Voting Shares or the Limited Voting Shares are held, beneficially owned or controlled by Non-U.S. Persons, they will be automatically converted, without further act or formality, on a one-for-one basis into Subordinate Voting Shares.
19. Notwithstanding the foregoing, if, at any given time, the total number of Restricted Voting Shares represents a number equal to or in excess of the formulaic threshold set forth below, representing the FPI Threshold, then the minimum number of Restricted Voting Shares required to stay within the FPI Threshold will be automatically converted, without further act or formality, on a pro-rata basis across all registered holders of Restricted Voting Shares (rounded up to the next nearest whole number of shares), on a one-for-one basis, into Limited Voting Shares:

$(0.50 \times \text{Aggregate Number of Multiple Voting Shares, Subordinate Voting Shares and Restricted Voting Shares}) - (\text{Aggregate Number of Multiple Voting Shares held, beneficially owned or controlled by U.S. Persons})$
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20. Notwithstanding the foregoing, in connection with a formal bid for all equity shares on identical terms made in compliance with Canadian securities laws that results in the bidder owning or controlling more than fifty percent (50%) of the total voting power of the voting securities of the Filer for the election of directors (assuming for such purposes that the Limited Voting Shares each have one (1) vote per share for the election of directors), the bidder may elect, by way of written notice to the Filer, that the Restricted Voting Shares it so acquires not be automatically converted into Limited Voting Shares.
21. If, at any given time, the total number of Restricted Voting Shares represents a number below the FPI Threshold, then a number of Limited Voting Shares will be automatically converted, without further act or formality, on a pro-rata basis across all registered holders of Limited Voting Shares (rounded down to the next nearest whole number of shares), on a one-for-one basis, into Restricted Voting Shares, to the maximum extent possible such that the Restricted Voting Shares then represent a number of Shares that is one share less than the FPI Threshold.
22. The “**Specified Exceptions**” are (i) Shares held, beneficially owned or controlled by one or more underwriters for the purposes of a distribution to the public, and (ii) Shares held by a person acting solely in the capacity of an intermediary in connection with either the payment of funds and/or the delivery of securities and that provides centralized facilities

for the deposit, clearing or settlement of trades in securities (including CDS Clearing and Depository Services Inc., or any successor or assign).

23. The Multiple Voting Shares may be held, beneficially owned or controlled, directly or indirectly, by U.S. Persons or Non-U.S. Persons, and each Multiple Voting Share carries 25 votes per share. Each Multiple Voting Share will be convertible at the holder's option, on a one-for-one basis, into (a) a Subordinate Voting Share, if such Multiple Voting Share is held, beneficially owned or controlled by a Non-U.S. Person, and (b) a Restricted Voting Share, if such Multiple Voting Share is held, beneficially owned or controlled by a U.S. Person.
24. All Shares shall rank equally with the other Shares as to dividends on a share-for-share basis, without preference or distinction, except that, subject to applicable regulatory and stock exchange approvals, stock dividends or distributions may be declared by the Filer's board of directors that are payable in Multiple Voting Shares on the Multiple Voting Shares, in Subordinate Voting Shares on the Subordinate Voting Shares, in Restricted Voting Shares on the Restricted Voting Shares, and in Limited Voting Shares on the Limited Voting Shares, provided an equal number of shares is declared as a dividend or distribution on a per-share basis in each case. All Shares will rank pari passu on a per-share basis in the event of the Filer's liquidation, dissolution or winding-up, or a distribution of assets of the Filer for the purposes of a dissolution or winding-up of the Filer. All holders of Shares will be entitled to receive notice of, to attend (if applicable, virtually) and vote at all meetings of the Filer's shareholders, except that they will not be able to vote (but will be entitled to receive notice of, to attend (if applicable, virtually) and to speak) at those meetings at which the holders of a specific class are entitled to vote separately as a class under the BCBCA.
25. Each class of Shares shall be subject to coattail provisions to be contained in the terms of such class of Shares, pursuant to which each class of Shares may be converted into another class of Shares in the event an offer is made to purchase such other class of Shares and the offer is one which is required to be made to all or substantially all the holders in Canada of such other class of Shares (assuming that the offeree was resident in Ontario).
26. Aside from the differences in (a) who may hold Subordinate Voting Shares and Restricted Voting Shares and Limited Voting Shares as between U.S. Persons and Non-U.S. Persons, and (b) the voting rights attributable to each class of non-Multiple Voting Shares set out above, the non-Multiple Voting Shares are the same in all respects and are mandatorily inter-convertible (continuously and without formality) based on (i) the holder's status as a U.S. Person or Non-U.S. Person, and (ii) the Filer's FPI status.
27. The multi-class share structure among the Subordinate Voting Shares, Restricted Voting Shares and Limited Voting Shares was implemented solely to ensure the Filer's continued status as an FPI and thereby reduce compliance costs; it has no other purpose.

28. The non-Multiple Voting Shares will be automatically and mandatorily inter-convertible based on (a) the holder's status as a U.S. Person or Non-U.S. Person (as between Subordinate Voting Shares and Restricted Voting Shares/Limited Voting Shares), and (b) the status of the Filer's FPI Threshold (as between Restricted Voting Shares and Limited Voting Shares), in each case without any further act of the Filer or the holder or further formality.
29. An investor will not control or choose which class of non-Multiple Voting Shares it acquires and holds. There are no unique features of any class of non-Multiple Voting Shares which an existing or potential investor will be able to choose to acquire, exercise or dispose of; the class ultimately available to an investor will be a function of such investor's status as a U.S. Person or Non-U.S. Person and the Filer's FPI status only. Moreover, if after having acquired non-Multiple Voting Shares (a) a holder's status as a U.S. Person or Non-U.S. Person changes, or (b) the Filer's FPI status changes in a material manner, such Shares will convert accordingly and automatically, without formality or regard to any other consideration.

Nomenclature Relief

30. Section 1.1 of NI 41-101 and Section 1.1 of NI 51-102 defines "restricted security terms" to mean each of the terms "non-voting security", "subordinate voting security" and "restricted voting security".
31. Section 1.1 of OSC Rule 56-501 defines "restricted share terms" to mean "non-voting shares", "subordinate voting shares", "restricted voting shares" or any other term deemed appropriate by the Director.
32. The Limited Voting Shares may be considered restricted securities and restricted shares, as applicable, under NI 41-101, NI 51-102 and OSC Rule 56-501 as there will be (a) another class of shares that carries a disproportionate vote per share relative to the Limited Voting Shares, and (b) the share terms of the Limited Voting Shares contain provisions that nullify certain of the voting rights attributable to the Limited Voting Shares.
33. The Filer is limited to the restricted security term "non-voting" in respect of the nomenclature for the Limited Voting Shares insofar as (a) the restricted security terms "subordinate voting" and "restricted voting" are already taken by the Subordinate Voting Shares and Restricted Voting Shares, respectively, and (b) also naming the Limited Voting Shares as "restricted voting shares" would cause market confusion and be impracticable from a logistical standpoint given the need to distinguish the Limited Voting Shares from the Restricted Voting Shares.
34. It would be inappropriate to use the restricted security term "non-voting" in respect of the Limited Voting Shares because they will carry the right to vote generally other than in respect of the election of the Filer's directors.

35. The Filer desires to refer to such shares as Limited Voting Shares in any offering documents, in any future prospectuses and in all future continuous disclosure documents of the Filer to avoid confusing the Limited Voting Shares with Subordinate Voting Shares and/or Restricted Voting Shares.
36. The features of the Limited Voting Shares will be set out in disclosure documents pursuant to NI 41-101, National Instrument 44-101 *Short Form Prospectus Distributions*, NI 44-102 and NI 51-102, as applicable, in compliance with the form requirements of such instruments.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that:

1. the Filer publicly discloses the Exemption Sought and the terms and conditions of this decision in a news release filed on SEDAR promptly following the issuance of this decision;
2. the Filer discloses the Exemption Sought and the terms and conditions of this decision in each of its annual information forms and management information circulars filed on SEDAR following the issuance of this decision and in any other filing where the characteristics of the Shares are described;
3. with respect only to the TOB Relief, the securities subject to the offer to acquire, together with the offeror's securities, would not represent in the aggregate 20% or more of the outstanding Subordinate Voting Shares, Restricted Voting Shares and Limited Voting Shares, as the case may be, calculated using (a) a denominator comprised of all of the outstanding Subordinate Voting Shares, Restricted Voting Shares and Limited Voting Shares, determined in accordance with subsection 1.8(2) of NI 62-104 on a combined basis, as opposed to a per-class basis, and (b) a numerator including as offeror's securities all of the Subordinate Voting Shares, Restricted Voting Shares and Limited Voting Shares, as applicable, that constitute offeror's securities;
4. with respect only to the News Release Relief, the Subordinate Voting Shares, Restricted Voting Shares or Limited Voting Shares, as the case may be, that the acquiror acquires beneficial ownership of, or control or direction over, when added to the acquiror's securities of that class, would not constitute 5% or more of the outstanding Subordinate Voting Shares, Restricted Voting Shares or Limited Voting Shares, as the case may be, calculated using (a) a denominator comprised of all of the outstanding Subordinate Voting Shares, Restricted Voting Shares and Limited Voting Shares, determined in accordance with subsection 1.8(2) of NI 62-104 on a combined basis, as opposed to a per-class basis, and (b) a numerator including as acquiror's securities, all of the

Subordinate Voting Shares, Restricted Voting Shares and Limited Voting Shares that constitute acquiror's securities;

5. with respect only to the NCIB Relief, the Filer complies with the conditions in subsection 4.8(3) of NI 62-104, except that: (a) the bid is for not more than 5% of the outstanding Subordinate Voting Shares, Restricted Voting Shares and Limited Voting Shares on a combined basis, as opposed to a per-class basis, and (b) the aggregate number of Subordinate Voting Shares, Restricted Voting Shares and Limited Voting Shares acquired in reliance on the NCIB Relief by the Filer and any person acting jointly or in concert with the Filer within any 12-month period does not exceed 5% of the outstanding Subordinate Voting Shares, Restricted Voting Shares and Limited Voting Shares on a combined basis, as opposed to a per-class basis, at the beginning of such 12-month period;
6. with respect only to the Early Warning Relief:
 - (a) the acquiror complies with the early warning requirements, except that, for the purpose of determining the percentage of outstanding Subordinate Voting Shares, Restricted Voting Shares or Limited Voting Shares, as the case may be, that the acquiror has acquired or disposed of beneficial ownership, or acquired or ceased to have control or direction over, the acquiror calculates the percentage using (i) a denominator comprised of all of the outstanding Subordinate Voting Shares, Restricted Voting Shares and Limited Voting Shares, determined in accordance with subsection 1.8(2) of NI 62-104, on a combined basis, as opposed to a per-class basis, and (ii) a numerator including, as acquiror's securities, all of the Subordinate Voting Shares, Restricted Voting Shares and Limited Voting Shares, as applicable, that constitute acquiror's securities; or
 - (b) in the case of an acquiror that is an eligible institutional investor, the acquiror complies with the requirements of the alternative monthly reporting system set out in Part 4 of NI 62-103 to the extent it is not disqualified from filing reports thereunder pursuant to section 4.2 of NI 62-103, except that, for purposes of determining the acquiror's securityholding percentage, the acquiror calculates its securityholding percentage using (i) a denominator comprised of all of the outstanding Subordinate Voting Shares, Restricted Voting Shares and Limited Voting Shares determined in accordance with subsection 1.8(2) of NI 62-104 on a combined basis, as opposed to a per-class basis, and (ii) a numerator including all of the Subordinate Voting Shares, Restricted Voting Shares and Limited Voting Shares, as applicable, beneficially owned or controlled by the eligible institutional investor;
7. with respect only to the Alternative Disclosure Relief, the Filer provides the disclosure required by Item 6.5 of Form 51-102F5 except that for purposes of determining the percentage of voting rights attached to the Subordinate Voting Shares, Restricted Voting Shares or Limited Voting Shares, the Filer calculates the voting percentage using (a) a denominator comprised of all of the outstanding Subordinate Voting Shares, Restricted

Voting Shares and Limited Voting Shares on a combined basis, as opposed to a per-class basis, and (b) a numerator including all of the Subordinate Voting Shares, Restricted Voting Shares and Limited Voting Shares beneficially owned, or over which control or direction is exercised, directly or indirectly, by any person who, to the knowledge of the Filer's directors or executive officers, beneficially owns, controls or directs, directly or indirectly, voting securities carrying 10% or more of the voting rights attached to the outstanding Subordinate Voting Shares, Restricted Voting Shares and Limited Voting Shares on a combined basis, as opposed to a per-class basis; and

8. with respect only to the Nomenclature Relief, the Limited Voting Shares are referred to as "Limited Voting Shares".

"Jason Koskela"

Jason Koskela
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Ontario Securities Commission