

2008 BCSECCOM 605

By email

R. Seumas M. Woods
Blake, Cassels & Graydon LLP
199 Bay Street
Suite 2800, Commerce Court West
Toronto ON M5L 1A9
seumas.woods@blakes.com
Rory Engels, rory.engels@blakes.com

Shawn McColm
British Columbia Securities
Commission
smccolm@bcsc.bc.ca
Gordon Smith gsmith@bcsc.bc.ca
Ami Iaria, Ami Iaria@bcsc.bc.ca
Leslie Rose, lrose@bcsc.bc.ca

Andrew Gray
Torys LLP
Suite 3000, 79 Wellington Street West
Box 270, TD Centre
Toronto ON M5K 1N2
agray@torys.com
John Emanoilidis,
jemanoilidis@torys.com
James Miller, jmiller@torys.com

Dear Parties:

Mineralogy Pty Ltd. and Waratah Coal Inc. Ruling – Application for Consent Order

- ¶ 1 On October 14, 2008 Mineralogy Pty Ltd. applied for an order under section 161(1) of the *Securities Act*, RSBC 1996, c. 418 in connection with its takeover bid for Waratah Coal Inc. Mineralogy wanted the Commission to cease trade securities under the Waratah shareholder rights plan so Mineralogy's offer for Waratah could be completed on its expiry date of December 5, 2008.
- ¶ 2 The Commission set November 25 to hear Mineralogy's application.
- ¶ 3 On November 24, 2008 the parties asked the Commission to adjourn the hearing and issue a consent order in the application. A recital in the form of order provided by the parties says:

Mineralogy and Waratah have consented to the issuance of a cease trade order in respect of the Waratah Rights Plan in connection with the Mineralogy Offer, effective as of [the expiry date of the offer], unless Waratah has previously redeemed all rights issued under the Waratah

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Rights Plan or waived the application of the Waratah Rights Plan and not withdrawn such waiver.

- ¶ 4 In other words, Waratah will make the shareholder rights plan ineffective before the expiry date of the offer or, failing that, has consented to an order that will have the same result.
- ¶ 5 We need to consider Mineralogy's application for an order under section 161(1) only if Waratah were refusing to neutralize the shareholder rights plan. That is not the case. Waratah is prepared either to render the plan ineffective or, should it not do so, to accept an order that will have the same result.
- ¶ 6 Therefore, there is no basis at present for us to consider Mineralogy's application.
- ¶ 7 November 26, 2008
- ¶ 8 **For the Commission**

Brent W. Aitken
Vice Chair

David J. Smith
Commissioner

Shelley C. Williams
Commissioner