

2004 BCSECCOM 692

Amended Notice of Hearing

^ Stewart Jackson and Barry Whelan ^

Section 161 of the *Securities Act*, RSBC 1996, c. 418

¶ 1 A hearing will be held (the Hearing) to give ^ Stewart Jackson and Barry Whelan ^ (^ the Respondents) an opportunity to be heard before the British Columbia Securities Commission considers whether it is in the public interest to make the following orders:

1. under section 161(1)(c) of the *Securities Act*, RSBC 1996, c. 418 (the Act), that any or all of the exemptions described in any of sections 44 to 47, 74, 75, 98 or 99 do not apply to the Respondents;
2. under section 161(1)(d) of the Act, that ^ the ^ Respondents resign any positions they hold as directors and officers of any issuer and be prohibited from becoming or acting as a director or officer of any issuer;
3. under section 161(1)(d) of the Act, that the ^ Respondents be prohibited from engaging in investor relations activities;
4. under section 162 of the Act that the Respondents pay an administrative penalty;
5. under section 174 of the Act, that the Respondents pay prescribed fees or charges for the costs of, or related to, the Hearing; and
6. any other orders as may be appropriate in the circumstances.

¶ 2 The Commission will be asked to consider the following facts and allegations in making its determination:

Background

1. Canadian Metals Exploration Ltd. (the Company) was incorporated under the laws of British Columbia on January 17, 1983, is a reporting issuer under the Act, and its head office is located in British Columbia.
2. The shares of the Company are listed on the TSX Venture Exchange (the Exchange).

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3. The Company describes itself as a natural resource company engaged in the evaluation, acquisition and development of resource properties. Its current focus is the Turnagain Nickel Project (the Project), which is an exploration-stage nickel property located in northern British Columbia.
4. Jackson was ^ a director of the Company ^ at all times material to this Notice of Hearing. He was president of the Company ^ from July 2002 to October 2003. He is no longer involved in the Company in any way.
5. Whelan was ^ a director of the Company ^ at all times material to this Notice of Hearing, but is no longer a director. He was president of the Company from May 2001 to July 2002, and has been chief operating officer since April 2003.
6. ^
7. Between December 2001 and May 2002, Commission staff (Staff) conducted a review of the Company's continuous disclosure (the Initial CD Review). In a series of letters, Staff drew the Company's attention to various problems with the Company's proposed disclosure, including its mining technical disclosure. Staff closed the file in May 2002 because the Company did not make the problematic disclosure.
8. Between March 2003 and July 2003, Staff conducted a follow-up review of the Company's disclosure (the Follow-Up CD Review). In a series of letters, Staff drew the Company's attention to a variety of problems with the Company's continuous disclosure that were similar to the problems identified during the Initial CD Review. Details of some of those problems are set out below. During the course of the Follow-Up CD Review, Staff asked the Company to fix its website, in response to which the Company voluntarily shut it down. The Company subsequently put the website back up again without fixing the problems or informing Staff, and issued a press release containing the website address.
9. On May 29, 2003, the Executive Director issued a Cease Trade Order (CTO) against the Company because the Company had failed to file records in the required form.
10. During the period from September 2002 to May 29, 2003, the price of the Company's shares on the Exchange rose from \$0.18 to \$0.48.

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11. During the eight-month period from October 2002 to May 29, 2003, the average monthly trading volume of the Company's shares on the Exchange was 786,000 shares. During the preceding eight-month period from February to September 2002, the average monthly trading volume of the Company's shares on the Exchange was approximately 255,000 shares.
12. In June and July 2003, with input from Staff, the Company obtained a technical report that complied with National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (NI 43-101), shut down its website again and fixed its disclosure by issuing a clarifying news release on July 17, 2003.
13. On July 18, 2003, the Executive Director revoked the CTO, considering that it was in the public interest to do so.
14. As of the date of this Notice of Hearing, the Company's website is still shut down and Staff are not aware of any problems with the Company's disclosure. However, Staff remain concerned with the Company's historical breaches of the Act and NI 43-101, and the Respondents' conduct in the face of directions from Staff relating to its continuous disclosure and previous agreements to change its disclosure.

Failure to file technical report

15. The Company filed an Annual Information Form dated July 15, 2002 (the AIF) that included material information on the Project.
16. The Company breached section 4.2(1) 6 of NI 43-101 by failing to file a current technical report to support the information on the Project in the AIF.

Failure to disclose qualified person

17. The Company's website as of May 8, 2003 (the Website) contained extensive disclosure of a scientific or technical nature.
18. The Website did not identify and disclose the relationship to the Company of the qualified person, as defined in NI 43-101, who prepared or supervised the preparation of the technical report or other information that formed the basis for the disclosure. Accordingly, the Company breached section 3.1 of NI 43-101.

Improper disclosure of exploration target

19. The Company made various statements on the Website that the Project had the potential to contain 250 million tonnes of bulk tonnage nickel and platinum group metals (PGM) and this potential was subsequently increased to approximately 1 billion tonnes (the Bulk Tonnage Statements).

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20. The Bulk Tonnage Statements violated section 2.3(2) of NI 43-101 because:
- a) they did not disclose the potential quantity and grade of the deposit as ranges;
 - b) they did not include proximate statements that:
 - (i) the potential quantity and grade was conceptual in nature;
 - (ii) there had been insufficient exploration to define a mineral resource on the Project; and
 - (iii) it was uncertain if further exploration would result in discovery of a mineral resource on the Project; and
 - c) they did not disclose the basis on which the potential quantity and grade was determined.
21. The Company made the Bulk Tonnage Statements despite the fact that in a letter dated March 13, 2002 sent during the Initial CD Review (the March 13, 2002 Letter), Staff advised the Company that proposed statements of a similar nature would violate section 2.3 of NI 43-101. In response, the Company did not make the proposed disclosure.

Improper use of in-situ metal values

22. In its December 12 and 18, 2002 press releases and on the Website, the Company made various statements ascribing “in-situ” values for the metals found in selected intersections of holes drilled at the Project and compared these values to operating costs and in-situ values for unrelated producing mines (the In-Situ Statements).
23. The Company made the In-Situ Statements despite the fact that in the March 13, 2002 Letter, Staff advised the Company that proposed disclosure of a similar nature could be misleading and would be inappropriate for an exploration project with no defined mineral resources. In response, the Company did not make the proposed disclosure.

Misleading statements regarding Platinum Group and other metals

24. In its September 17, December 12 and December 18, 2002 and January 16, February 20 and March 19, 2003 news releases, on the Website and in its Management Discussion and Analysis (MD&A) for the year ended December 31, 2002, the Company stated or implied that there are significant amounts of PGM and certain other metals at the Project (the Platinum Group Statements).

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25. The Company made the Platinum Group Statements despite the fact that in the March 13, 2002 Letter, Staff advised the Company that statements of a similar nature on the Company's website and in a draft press release were unsupported and potentially misleading. In response, the Company did not make the proposed disclosure.
26. The Platinum Group Statement in the Company's MD&A was, in a material respect and at the time and in light of the circumstances in which it was made, false and misleading, or omitted facts or information that were necessary to make it not false or misleading. Accordingly, the Company breached section 168.1(1)(b) of the Act.

Misleading statements regarding previous assay values

27. In its September 17, 2002 and January 16, 2003 press releases, on the Website and in the AIF, the Company summarized previous assay or drill results by reporting only the highest or best values (the Previous Assay Statements).
28. The Company made the Previous Assay Statements despite the fact that in a letter dated February 18, 2002 sent during the Initial CD Review, Staff advised the Company that statements of a similar nature on the Company's proposed website and in a draft press release were potentially misleading, and did not comply with the Exchange's Corporate Finance Manual. In response, the Company did not make the proposed disclosure.
29. The statement in the AIF was, in a material respect and at the time and in light of the circumstances in which it was made, false and misleading, or omitted facts or information that were necessary to make it not false or misleading. Accordingly, the Company breached section 168.1(1)(b) of the Act.

Misleading statements regarding widespread mineralization

30. On the Website and in the AIF, the Company frequently stated or implied that there is widespread mineralization of economic significance over large areas and in most or all of the drill holes on the Project (the Widespread Mineralization Statements).
31. The Company made the Widespread Mineralization Statements despite the fact that in the March 13, 2002 Letter, Staff had advised the Company that its proposed description of mineralization in a draft news release and on its website were potentially misleading because there were no details of grade or economic significance of mineralized intercepts. In response, the Company did not make the proposed disclosure.

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32. The statement in the AIF was, in a material respect and at the time and in light of the circumstances in which it was made, false and misleading, or omitted facts or information that were necessary to make it not false or misleading. Accordingly, the Company breached section 168.1(1)(b) of the Act.

Misleading statements regarding economic viability and metal recoveries

33. In its December 12, 2002 and January 16, 2003 news releases, on the Website and in its MD&A for the period ended December 31, 2001, the Company stated or implied that metals could be economically recovered from the Project, that the Project would likely be economically viable and that the Project would likely support a future mining operation on a specific scale over a projected minimum timeframe (the Economic Viability Statements).
34. The Company made the Economic Viability Statements despite Staff's advice during the Initial CD Review that proposed statements of a similar nature on the Company's website and draft news release were inappropriate. In response, the Company did not make the proposed disclosure.
35. The Economic Viability Statement in the MD&A for the period ended December 31, 2001 was, in a material respect and at the time and in light of the circumstances in which it was made, false and misleading, or omitted facts or information that were necessary to make it not false or misleading. Accordingly, the Company breached section 168.1(1)(b) of the Act.

Misleading statements regarding prospects for exploration success

36. On the Website and in the AIF, the Company stated that "The propensity to discover massive sulphides over significant widths is probable" (the Exploration Success Statements).
37. The Company made the Exploration Success Statements despite the fact that in the March 13, 2002 Letter, Staff had instructed the Company to exclude statements of a similar nature. In response, the Company did not make the proposed disclosure.
38. The Exploration Success Statement in the AIF was, in a material respect and at the time and in light of the circumstances in which it was made, false and misleading, or omitted facts or information that were necessary to make it not false or misleading. Accordingly, the Company breached section 168.1(1)(b) of the Act.

Misleading statements about infrastructure

39. In its MD&A for the year ended December 31, 2002, on the Website and in the AIF, the Company stated that there was significant infrastructure at or near

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the Project that would make the development of a mine more attractive (the Infrastructure Statement).

40. The Infrastructure Statement in the AIF was, in a material respect and at the time and in light of the circumstances in which it was made, false and misleading, or omitted facts or information that were necessary to make it not false or misleading. Accordingly, the Company breached section 168.1(1)(b) of the Act.

Misrepresentations

41. Taken together, the Bulk Tonnage Statements, In-Situ Statements, Platinum Group Statements, Previous Assay Statements, Widespread Mineralization Statements, Economic Viability Statements, Exploration Success Statements and Infrastructure Statements (together, the Statements) amount to statements by the Company that the Project was at a sufficiently advanced stage of development where it was possible to reasonably project economic viability and future mining and metal production.
42. The Statements were misrepresentations because they overstated the nature, grade and extent of the mineralization, the likelihood of success, the overall stage of development of the Project, and the context and relevance of the conceptual economic analysis. In addition, they did not adequately disclose the steps the Company would need to successfully complete to prove an economic deposit, the risks and likelihood that an economic deposit would not be found or, if found, that it could not be developed.
43. The Company knew, or ought reasonably to have known, that the Statements were misrepresentations, and made them while engaging in investor relations activities or with the intention of effecting trades in its shares. Accordingly, the Company breached section 50(1)(d) of the Act.

Misrepresentations and false statements about four-month hold period

44. Since filing the AIF on July 16, 2002, the Company has distributed approximately 5,020,000 shares and 4,390,000 share purchase warrants to approximately 85 purchasers.
45. With the intention of effecting these distributions or while engaging in investor relations activities, the Company advised prospective purchasers of its securities that it was eligible to distribute securities with a four month hold period (the Investor Statements).

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46. In various Reports of Exempt Distribution in BC Form 45-902F, the Company stated that it was eligible to distribute securities with a four month hold period (the 45-902F Statements).
47. The Company was not a qualifying issuer as defined in Multilateral Instrument 45-102 *Resale of Securities* (MI 45-102), since:
- a) it did not file a technical report with its AIF in accordance with NI 43-101 as required by paragraph (e) of the definition of qualifying issuer; and
 - b) with respect to shares distributed after April 15, 2003, it had received notice in writing from Staff that its current AIF was unacceptable and had not satisfied Staff that its current AIF was acceptable, as required by paragraph (f) of the definition of “qualifying issuer”.
48. The Investor Statements were misrepresentations because they were untrue statements of a material fact. Since the Company was not a qualifying issuer for the purposes of MI 45-102, it was only eligible to distribute securities with a 12 month hold period.
49. The Company knew, or ought to have known, that the Investor Statements were misrepresentations. Accordingly, it breached section 50(1)(d) of the Act.
50. The 45-902F Statements were false in a material respect and at the time and in light of the circumstances in which they were made. Accordingly, the Company breached section 168.1(1)(b) of the Act.

Breaches ^

51. The ^ Respondents authorized, permitted or acquiesced in each of the Company’s contraventions of the Act and regulations identified above.
52. Accordingly, under section 168.2 of the Act, the ^ Respondents contravened each of the provisions of the Act and regulations identified above.

Public Interest

53. The Respondents acted contrary to the public interest by:
- a) contravening, or authorizing, permitting or acquiescing in the contraventions of the Act and regulations identified above;
 - b) issuing highly promotional disclosure that omits important information and context and provides no meaningful balance or disclosure of risk and other

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potentially negative factors, contrary to section 2.1(2) of National Policy 51-201 *Disclosure Standards*;

- c) failing to adequately disclose that the Company is promoting geological, metallurgical and production models that are unproven, risky and conceptual in nature;
- d) overstating the stage of exploration and development of the Project;
- e) distributing securities with a four month hold period when it was not a qualifying issuer under MI 45-102; and
- f) persisting in this behaviour despite warnings from Staff, agreements to change its disclosure in 2002, and notice that it was not a qualifying issuer.

¶ 3 The Respondents may be represented by counsel at the Hearing and may make representations and lead evidence. The Respondents are requested to advise the Commission of their intention to attend by contacting the Commission Secretary at PO Box 10142, Pacific Centre, 5th Floor, 701 West Georgia Street, Vancouver, BC, V7Y 1L2, phone: (604) 899-6500; email: commsec@bcsc.bc.ca.

¶ 4 ^

¶ 5 Determinations may be made in this matter if the Respondents or their counsel do not appear at the Hearing.

¶ 6 ^ November 24, 2004

“Brenda M. Leong”

¶ 7 ^ Brenda M. Leong
Executive Director