

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*

Multilateral Instrument 62-104, Part 6 Issuer Bids – Relief from the restrictions under section 2.7 of MI 62-104 and section 93.4(1) of the Ontario *Securities Act* that prohibit sales by an issuer from the date that the issuer announces its intention to make an issuer bid until the expiry of the issuer bid – This relief would permit the Filer to concurrently announce a private placement and issuer bid, and close the private placement before the issuer bid expires – Issuer intends to concurrently announce a private placement financing and Dutch auction issuer bid; issuer intends to close the private placement prior to the expiry of the issuer bid; issuer will provide comprehensive disclosure about the structure of the private placement financing and the issuer bid in its issuer bid circular; all shareholders will have the opportunity to consider the bid

1996 Securities Act s. 169 – Confidentiality – An applicant wants to keep an application and order confidential for a limited period of time after the order is granted – The record provides intimate financial, personal or other information; the disclosure of the information before a specific transaction would be detrimental to the person affected; the information will be made available after a specific date

Applicable British Columbia Provisions

Multilateral Instrument 62-104, s. 2.7

Securities Act, R.S.B.C. 1996, c. 418, s. 169

July 30, 2013

In the Matter of
the Securities Legislation of
British Columbia and Ontario
(the Jurisdictions)

and

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

and

In the Matter of
Ivanplats Limited
(the Filer)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Makers) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation):
- (a) for an exemption from the restrictions under section 2.7 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* (MI 62-104) and section 93.4(1) of the *Securities Act* (Ontario) prohibiting sales by an issuer during an issuer bid, permitting the Filer to announce and conduct a private placement concurrent with the announcement of an intention to commence an issuer bid (Concurrent Sale Relief); and
 - (b) that the application and this decision be held in confidence by the Decision Makers (Confidentiality Relief, and together with the Concurrent Sale Relief, Exemptions).

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

- (a) the British Columbia Securities Commission is the principal regulator for this application;
- (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, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut; and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

- ¶ 3 The decision is based on the following facts represented by the Filer:
1. the Filer is a British Columbia corporation incorporated in 1998;
 2. the Filer's corporate and administrative offices in Canada are located in Vancouver, British Columbia;
 3. the Filer is a mineral development company that has its principal mineral projects in the Democratic Republic of Congo and South Africa;

4. the authorized share capital of the Filer consists of an unlimited number of Class A common shares without par value (Common Shares), an unlimited number of restricted Class B common shares (Class B Shares) without par value, and an unlimited number of preferred shares without par value; as of July 23, 2013, 514,973,602 Common Shares, 14,511,110 Class B Shares and nil preferred shares, were issued and outstanding;
5. prior to becoming a reporting issuer, the shares of the Filer were widely held by numerous arm's length investors who had subscribed for shares of the Filer (and its predecessor) through a series of financings over almost 20 years;
6. in an effort to maintain an orderly market for the Common Shares following its initial public offering on the TSX in October 2012 (IPO), the Class B Shares (those shares outstanding prior to the IPO) were made subject to a structural lock-up; the Filer's shareholders approved the structural lock-up at an extraordinary general meeting on May 26, 2011; the holders of Class B Shares (Class B Shareholders) have the right to convert, at any time, on a one-for-one basis, their Class B Shares for Common Shares, provided the conversion is accompanied by a signed contractual lock-up agreement that allows, in the normal course, for a staggered release from lock-up over a 39 month period from the date of the IPO;
7. following the IPO, substantially all Class B Shareholders exercised their right to convert to Common Shares and each converting Class B Shareholder signed a contractual lock-up agreement (each Common Share that is subject to a contractual lock-up restriction and only to the extent that such Common Share is held by a holder whose aggregate shareholding exceeded 100,000, is referred to as a Lock-up Share); on April 23, 2013, the first 8% tranche of the Lock-up Shares was released; on July 23, 2013 the second 8% tranche of the Lock-up Shares was released; further tranches are scheduled to be released on a quarterly basis thereafter, occurring next on October 23, 2013, when a further 8% of the Lock-up Shares are scheduled to be released from lock-up (collectively the Subsequent Tranche Releases); as at July 23, 2013, the Filer had approximately 168 million freely tradable Common Shares outstanding, 347 million Lock-up Shares which have yet to be released, and 15 million Class B Shares;
8. to the Filer's knowledge and based on publicly available information, the only shareholder that, as of July 23, 2013, held greater than 10% of the Common Shares was Robert Friedland, the Filer's Executive Chairman (Control Person), who held 135,335,035 Common Shares representing approximately 25.6% of the issued and outstanding Common Shares, calculated assuming conversion of all Class B Shares into Common Shares and without reference to any Common Shares that may be issuable on exercise of options to acquire securities of the Filer; the Control Person has indicated that he does not intend to participate in the Issuer Bid (as defined below);
9. the Filer is not in default under securities legislation in any jurisdiction;

10. the Filer intends to commence an issuer bid under the legislation (Issuer Bid) for its Common Shares; the Issuer Bid will allow holders of Common Shares to be able to indirectly sell a portion of their Common Shares to the Filer and allow Class B Shareholders to also participate by converting all, or a portion, of their holdings to Common Shares, subject to the delivery of a contractual lock-up agreement;
11. immediately prior to the announcement of the Issuer Bid, the Filer intends to:
 - (a) conduct a private placement under applicable prospectus exemptions (Private Placement) by:
 - (i) issuing Common Shares at an issue price (Issue Price) that equals or exceeds the volume weighted average price of the Common Shares on the TSX for the five trading days preceding the first announcement of the Private Placement and the intention to commence the Issuer Bid (Market Price); and
 - (ii) issuing subscription receipts which are, subject to certain conditions, convertible into Common Shares (Subscription Receipts) on payment of the Issue Price;
 - (b) issue the Subscription Receipts and Common Shares under the Private Placement to one or more arm's length third parties for aggregate proceeds of between approximately \$100 million and \$600 million, in such amount that does not result in the issuance of 20% or more of the shares outstanding (as determined immediately prior to the closing of the Private Placement) to any single investor or group of investors acting jointly or in concert under the Private Placement;
 - (c) use the proceeds from the sale of Subscription Receipts to fund the Issuer Bid (Issuer Bid Proceeds); and
 - (d) use the proceeds from the sale of Common Shares to fund the Filer's operations;
12. the Issue Price will be greater than the maximum Issuer Bid tender price;
13. the Filer will announce the Private Placement and Issuer Bid (Lock-Up Release Transaction) via a press release (Initial Press Release) disclosing:
 - (a) the size of the Private Placement, number of Common Shares and Subscription Receipts expected to be sold under the Private Placement, and the amount of proceeds expected to be allocated to operations of the Filer and Issuer Bid, respectively;
 - (b) that the Issuer Bid Proceeds will be used to fund the Issuer Bid;

- (c) that the subscribers under the Private Placement will be arm's length investors and no insiders, nor any affiliates or associates of the Control Person will be permitted to participate in the Private Placement;
 - (d) that upon completion of the Private Placement, none of the subscribers will own, in the aggregate, more than 20% of the issued and outstanding Common Shares; and
 - (e) that, until completion of the Issuer Bid, it is not possible to know whether or not the Issuer Bid will result in a re-purchase of Common Shares greater than the number of Common Shares issued, or issuable, under the Private Placement;
14. in connection with the Private Placement, the Filer will deliver into escrow any Issuer Bid Proceeds to be used to fund the Issuer Bid in accordance with the procedures in subparagraph 18(m) of this decision;
15. the sole condition to the release of the Issuer Bid Proceeds held in escrow in accordance with paragraph 14 of this decision will be the satisfaction of all conditions to the Issuer Bid but for the payment by the Filer for any tendered Common Shares;
16. following the closing of the Private Placement, if the Filer realizes any Issuer Bid Proceeds, the Filer will:
- (a) determine the size of the Issuer Bid; and
 - (b) finalize and deliver its issuer bid circular describing each of the Issuer Bid, the Private Placement and the conditions of escrow about any Issuer Bid Proceeds (Circular);
17. the Issuer Bid will commence on the mailing of the Circular;
18. the Filer contemplates conducting the Issuer Bid under a modified Dutch auction process (Dutch Auction) as follows:
- (a) the Filer proposes to use the Issuer Bid Proceeds to acquire Common Shares (such amount, once determined, the Maximum Take-Up Amount);
 - (b) to the extent that shareholders wish to tender to the Issuer Bid Common Shares which are subject to the contractual lock-up agreement, those Common Shares will be released from the lock-up by the Filer for the sole purpose of permitting such tenders;
 - (c) a shareholder may elect to tender Common Shares to the Issuer Bid under either an auction tender (Auction Tender) or a purchase price tender (Purchase Price Tender);

- (d) a tendering shareholder who elects to tender via an Auction Tender will be permitted to select a per share price, that is within the Price Range (as defined below), at which the shareholder is willing to sell its Common Shares; the price range the Filer will offer to purchase Common Shares will be set at a low end of no less than 90% of the Market Price and a high end of no less than 110% of the Market Price (Price Range);
- (e) a tendering shareholder who elects to tender via a Purchase Price Tender will be deemed to have tendered such Common Shares to the Issuer Bid at the Purchase Price (as calculated in accordance with subparagraphs 18(g) through 18(i) of this decision);
- (f) all Common Shares tendered by a shareholder will be deemed to be tendered to the Issuer Bid under a Purchase Price Tender if the shareholder does any of the following:
 - (i) fails to indicate whether the tendered Common Shares have been tendered under an Auction Tender or a Purchase Price Tender;
 - (ii) tenders Common Shares under an Auction Tender but fails to specify a purchase price for such Common Shares;
 - (iii) indicates that the tendered Common Shares have been tendered under both an Auction Tender and a Purchase Price Tender;
- (g) promptly following the expiry of the Issuer Bid, the Filer will determine a single price per share (Purchase Price) that it will pay for Common Shares to be taken up under the Issuer Bid;
- (h) the Purchase Price will be the lowest price within the Price Range that, when multiplied by the number of Common Shares tendered at or below that price (including those Common Shares tendered under a Purchase Price Tender), is equal to the Maximum Take-Up Amount (unless an insufficient number of Common Shares are tendered to the Issuer Bid, in which case the Purchase Price will be the price, within the Price Range, that enables the Filer to purchase all Common Shares properly tendered to the Issuer Bid);
- (i) Common Shares that are tendered by shareholders at a price that is outside the Price Range, or which are otherwise not properly deposited to the Issuer Bid, will be considered to have been improperly tendered, will be excluded from the determination of the Purchase Price and will be returned to shareholders in accordance with subparagraph 18(l) of this decision;
- (j) the Purchase Price and the aggregate number of Common Shares that the Filer will purchase under the Issuer Bid will not be determined until after the Issuer Bid

expires, provided that the aggregate amount that the Filer will pay for Common Shares under the Issuer Bid will not exceed the Maximum Take-Up Amount;

(k) subject to the conditions of the Issuer Bid, including the conditions relating to proration described in subparagraph 18(n) of this decision, the Filer will purchase, at the Purchase Price, all Common Shares properly deposited, or deemed to be deposited, for purchase at or below the Purchase Price and which deposits were not withdrawn;

(l) promptly after the Issuer Bid expires, the Filer will return all Common Shares that were:

(i) not properly tendered to the Issuer Bid; or

(ii) properly tendered to the Issuer Bid but not taken up and paid for, including Common Shares deposited under Auction Tenders at prices greater than the Purchase Price and Common Shares not purchased because of proration or because conditions to the tender were not met;

(m) if the number of Common Shares properly tendered to the Issuer Bid (and not withdrawn) would result in an aggregate Purchase Price less than the Maximum Take-Up Amount, the Filer will do all of the following:

(i) purchase at the Purchase Price all Common Shares properly tendered to the Issuer Bid and not withdrawn;

(ii) return to the Subscription Receipt subscribers that portion of the Issuer Bid Proceeds held in escrow to fund the Issuer Bid through Subscription Receipts, if any, but not used in satisfaction of tenders to the Issuer Bid; and

(iii) cancel those Subscription Receipts issued in exchange for that returned portion of the Issuer Bid Proceeds referenced in clause 18(m)(ii) of this decision;

(n) if the number of Common Shares properly deposited or deemed to be deposited for purchase at or below the Purchase Price (and not withdrawn) would result in an aggregate Purchase Price of more than the Maximum Take-Up Amount, the Filer will purchase all those Common Shares properly deposited (or deemed to be deposited) and not withdrawn, for purchase at or below the Purchase Price, on a pro rata basis (subject to adjustments to avoid the purchase of fractional shares);

19. there is a “liquid market” in the Common Shares, as such term is defined in section 1.2 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (MI 61-101), because:

(a) there is a published market for the Common Shares on the TSX;

(b) during the period since the IPO:

- (i) the number of outstanding Common Shares was at all times at least 5,000,000 (excluding Common Shares beneficially owned, or over which control and direction was exercised, by related parties and securities that were not freely tradeable);
- (ii) the aggregate trading volume of Common Shares on the TSX (being the published market on which the Common Shares are principally traded) was at least 1,000,000 Common Shares;
- (iii) there were at least 1,000 trades in the Common Shares on the TSX; and
- (iv) the aggregate value of the trades in the Common Shares on the TSX was at least Cdn\$15,000,000; and

(c) the market value of the Common Shares on the TSX was at least \$75,000,000 for June 2013;

20. as of July 9, 2013, the Investment Industry Regulatory Organization of Canada (IIROC) has included the Common Shares on its list of highly-liquid securities, resulting in the Filer being exempt from certain restrictions and prohibitions governing trading activity during securities transactions;
21. the Filer has determined it is reasonable to conclude that, following the completion of the Issuer Bid, there will be a market for shareholders who do not tender all of their Common Shares to the Issuer Bid that is not materially less liquid than the market that will exist at the time the Issuer Bid is announced based on the:
- (a) liquid market determinations in paragraphs 19 and 20 of this decision;
 - (b) additional liquidity resulting from the Subsequent Tranche Releases; and
 - (c) anticipated number of Common Shares that may reasonably be anticipated to be purchased under the Issuer Bid;
22. based on the representations in paragraphs 19, 20 and 21 of this decision, the Filer intends to rely upon the “liquid market” exemption (the Liquid Market Exemption) from the formal valuation requirements otherwise applicable to issuer bids under MI 61-101;
23. the Filer will conduct the Lock-Up Release Transaction in compliance with applicable securities laws, TSX requirements, and applicable exemptions;
24. the Circular will:

- (a) disclose the minimum and maximum size of the Issuer Bid and the Price Range;
 - (b) disclose the mechanics for the take up of and payment for or, where applicable, the return of Common Shares tendered to the Issuer Bid as described in paragraph 18 of this decision;
 - (c) explain that, by tendering Common Shares at the lowest price in the Price Range, shareholders can reasonably expect that the Common Shares so tendered will be purchased at the Purchase Price (subject to proration);
 - (d) disclose the fact that the Filer has obtained, and is relying on, the Exemptions;
 - (e) disclose the facts supporting the Filer's reliance on the Liquid Market Exemption;
 - (f) provide the disclosure indicated in paragraph 13 of this decision;
 - (g) disclose the use of Issuer Bid Proceeds and the terms of escrow to which they are subject; and
 - (h) except to the extent exemptive relief is granted under this application, contain the disclosure prescribed by applicable legislation for issuer bids; and
25. prior to the expiry of the Issuer Bid, all information about the number of Common Shares tendered and the prices at which such Common Shares are tendered shall be kept confidential, and the Filer's depository for the Issuer Bid will be directed by the Filer to maintain such confidentiality until the Purchase Price has been determined.

Decision

- ¶ 4 Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that:

- (a) the Concurrent Sale Relief is granted provided that:
 - (i) the Filer provides the disclosure in the Circular indicated in paragraph 24 of this decision;
 - (ii) concurrent with or prior to the filing of the Circular, the Filer discloses the material information about the Lock-Up Release Transaction in a news release, including:
 - (A) the Price Range for the Issuer Bid, as well as the percentage discount to the then current Market Price represented by the top and bottom of the Price Range;

- (B) a brief, summary discussion as to the methods of tender, being the Auction Price Tender and the Purchase Price Tender, and the manner in which the Purchase Price will be determined for the Issuer Bid;
 - (C) the ability of shareholders subject to contractual lock-up to tender to the Issuer Bid; and
 - (D) the price range within which the Filer will offer to purchase Common Shares under the Dutch Auction conforms to the Price Range; and
- (b) the Confidentiality Relief is granted until the earlier of:
- (i) the date on which the Filer publicly files the Initial Press Release;
 - (ii) the date the Filer advises the principal regulator that there is no longer any need for the application and this decision to remain confidential; and
 - (iii) the date that is 90 days from the date of this decision.

Brent W. Aitken
Vice Chair
British Columbia Securities Commission