

2011 BCSECCOM 146

Headnote

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

National Instrument 51-102 *Continuous Disclosure Obligations*, s. 13.1 - General
- A reporting issuer wants relief from all the requirements of NI 51-102 - A reporting issuer is a wholly owned subsidiary of a parent reporting issuer; the subsidiary's only outstanding securities are warrants and options entitling the holder to acquire either the cash consideration or the share consideration; the warrants and options do not qualify as "designated exchangeable securities" under section 13.3 of NI 51-102; the requested relief is on terms substantially similar to section 13.3 of NI 51-102

National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*, s. 8.6 - An issuer wants relief from the requirements in Parts 4 and 5 of NI 52-109 to file annual and interim certificates - The issuer has applied for and received an exemption from filing interim and annual financial statements

National Instrument 55-104 *Insider Reporting Requirements and Exemptions*, s. 10.1 - insider reporting obligations - An issuer wants relief from the requirement to file insider reports for its insiders - The issuer is an exchangeable security issuer that cannot rely on the exemption in National Instrument 51-102 *Continuous Disclosure Obligations* because it does not comply with all of the conditions for continuous disclosure relief in NI 51-102; as a result, its insiders cannot rely on the insider reporting exemptions in NI 51-102; the issuer has received discretionary relief from NI 51-102 requirements

National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)*, ss. 2.1 and 6.1 - An issuer wants relief from the requirement to file an insider profile for its insiders - The issuer is an exchangeable security issuer that cannot rely on the exemption in National Instrument 51-102 *Continuous Disclosure Obligations* because it does not comply with all of the conditions for continuous disclosure relief in NI 51-102; as a result, its insiders cannot rely on the insider reporting exemptions in NI 51-102; the issuer has received discretionary relief from NI 51-102 requirements.

Applicable British Columbia Provisions

National Instrument 51-102, s. 13.1

Multilateral Instrument 52-109, s. 4.5

National Instrument 55-104, s. 10.1

National Instrument 55-102, ss. 2.1 and 6.1

2011 BCSECCOM 146

March 25, 2011

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
Franco-Nevada Corporation (FN), Gold Wheaton Gold Corp. (GLW),
0901490 B.C. Ltd., a wholly-owned subsidiary of FN (FN Subco),
and Franco-Nevada GLW Holdings Corp., the continuing corporation
formed as a result of the amalgamation of FN Subco and GLW (Amalco,
and together with FN, GLW and FN Subco, the Filers)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the Legislation) that:
- (a) the requirements of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) (the Continuous Disclosure Requirements) do not apply to Amalco;
 - (b) the requirements of National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (NI 52-109) (the Certification Requirements) do not apply to Amalco; and
 - (c) the insider reporting requirements under the Legislation and the requirement to file an insider profile under National Instrument 55-102 *System for Electronic Disclosure by Insiders* (together, the Insider Reporting Requirements) do not apply to any insider of Amalco.

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

2011 BCSECCOM 146

- (a) the British Columbia Securities Commission is the principal regulator for this application;
- (b) the Filers have 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, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador; 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 This decision is based on the following facts represented by the Filers:

1. GLW

- (a) GLW was incorporated as a British Columbia company on October 20, 1999 and continued to exist under the *Business Corporations Act* (British Columbia) prior to its amalgamation with FN Subco;
- (b) the authorized capital of GLW consisted of: (i) an unlimited number of common shares (GLW Common Shares); and (ii) an unlimited number of preferred shares;
- (c) as of March 13, 2011, there were outstanding: (i) 185,129,655 GLW Common Shares; (ii) options to purchase an aggregate of 4,696,000 GLW Common Shares (GLW Options) (iii) 25,999,998 warrants to purchase GLW Common Shares at an exercise price of \$10.00 with an expiry date of July 8, 2013 issued pursuant to a warrant indenture between GLW and Computershare Trust Company of Canada (Computershare) dated July 8, 2008, as supplemented (the Trading Warrants); (iv) 7,125,000 warrants to purchase GLW Common Shares at an exercise price of \$5.00 with an expiry date of May 26, 2014 issued pursuant to a warrant indenture between GLW and Computershare dated May 26, 2009, as supplemented (the 2014 (May) Warrants); and (v) 6,250,000 warrants to purchase GLW Common Shares at an exercise price of \$5.00 with an expiry date of November 26, 2014 issued pursuant to a warrant indenture between GLW and Computershare dated May 26, 2009, as supplemented (the 2014

2011 BCSECCOM 146

(November) Warrants and together with the Trading Warrants and the 2014 (May) Warrants, the GLW Warrants); and (vi) no preferred shares;

- (d) as of March 13, 2011, the Trading Warrants were listed on the Toronto Stock Exchange (TSX), under the symbol “GLW.WT”; and
- (e) as of March 13, 2011, GLW was a “reporting issuer” in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador;

2. FN

- (a) FN was incorporated under the *Canada Business Corporations Act* on October 17, 2007 and was amalgamated with Franco-Nevada Canada Corporation, its wholly-owned subsidiary on January 1, 2008;
 - (b) the authorized capital of FN consists of: (i) an unlimited number of common shares (FN Shares); and (ii) an unlimited number of preferred shares; as of March 13, 2011, there were outstanding 114,574,776 FN Shares and no preferred shares;
 - (c) FN is a “reporting issuer” in all of the provinces and territories of Canada; and
 - (d) the FN Shares are listed on the TSX under the symbol “FNV”;
3. FN entered into a definitive agreement (the Arrangement Agreement) with GLW on January 5, 2011, which provided the terms and conditions under which FN would acquire all of the issued and outstanding GLW Common Shares;
4. the acquisition was implemented by way of a court-approved plan of arrangement under British Columbia law (the Arrangement); under the Arrangement, in exchange for each GLW Common Share, FN issued to shareholders of GLW (GLW Shareholders), upon their election or deemed election, either: (i) \$5.20 in cash (the Cash Consideration); or (ii) 0.1556 of an FN Share (the Share Consideration), subject to pro-rata and caps pursuant to the terms of the Arrangement;
5. as a result of the Arrangement GLW became a wholly-owned subsidiary of FN;

2011 BCSECCOM 146

6. on February 4, 2011, GLW obtained an interim order from the Supreme Court of British Columbia (Court) specifying certain requirements and procedures for a special meeting of the GLW Shareholders for the purpose of approving the Arrangement (GLW Meeting);
7. on March 8, 2011, GLW Shareholders approved the Arrangement with an affirmative vote of 96.51% of the votes validly cast at the GLW Meeting;
8. on March 11, 2011, GLW received final approval of the Court for the Arrangement;
9. the Arrangement was completed on March 14, 2011;
10. under the Arrangement, among other things, the following occurred:
 - (a) FN acquired all of the issued and outstanding GLW Common Shares not already owned by FN or its affiliates in exchange for the payment to GLW Shareholders of either the Cash Consideration or the Share Consideration, at the election or deemed election of the holder of such GLW Common Shares, subject to pro-rata and caps pursuant to the terms of the Arrangement;
 - (b) GLW and FN Subco amalgamated to form Amalco; and
 - (c) FN received one common share of Amalco in exchange for each GLW Common Share previously held by it and one common share of Amalco for each common share of FN Subco previously held by it;
11. on completion of the Arrangement and the associated amalgamation of GLW and FN Subco to form Amalco, Amalco became a reporting issuer in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador as GLW, one of the amalgamating companies, was a reporting issuer in such jurisdictions, for a period of at least twelve months prior to the Arrangement;
12. each holder of a GLW Warrant outstanding immediately before completion of the Arrangement, became entitled to receive upon the subsequent exercise of such holder's GLW Warrant in accordance with its terms, in lieu of each GLW Common Share to which such holder was theretofore entitled, either the Share Consideration or the Cash Consideration, at each such holder's election at the time of exercise;

2011 BCSECCOM 146

13. each holder of a GLW Option outstanding immediately before completion of the Arrangement became entitled to receive upon the subsequent exercise of such holder's GLW Option in accordance with its terms, in lieu of each GLW Common Share which such holder was theretofore entitled, the Share Consideration;
14. on March 16, 2011, the TSX approved the listing of up to a maximum of 18,511,575 FN Shares issued or to be issued as a result of the Arrangement (including those FN Shares to be issued on the exercise of GLW Options and GLW Warrants);
15. on March 16, 2011, GLW Common Shares were delisted from the TSX;
16. in connection with the Arrangement, GLW mailed to the GLW Shareholders a management information circular containing information on the Arrangement and GLW and prospectus-level disclosure of the business and affairs of FN, a copy of which has been posted on SEDAR under GLW's profile;
17. GLW provided the holders of all GLW Warrants that would remain outstanding after completion of the Arrangement with prior notice of the Arrangement;
18. as a result of the Arrangement, the only securities of Amalco that are held by persons other than FN are the GLW Options and the GLW Warrants, all of which are exercisable only for the Share Consideration or the Cash Consideration, as applicable;
19. as required by the terms of warrant indentures governing the GLW Warrants, Amalco and FN have entered into supplemental indentures with the warrant agent providing that the holder of each GLW Warrant then outstanding will have the right (until the expiry of such GLW Warrant) to exercise their GLW Warrant only for either the Share Consideration or the Cash Consideration, at the election of the holder of each such GLW Warrant at the time of exercise;
20. Amalco cannot rely on the exemption available in s. 13.3 of NI 51-102 for issuers of exchangeable securities because the GLW Warrants and the GLW Options are not "designated exchangeable securities" as defined in NI 51-102; none of the holders of the GLW Warrants or the GLW Options will have voting rights in respect of FN, in their capacity as warrant holders or option holders, respectively;
21. the terms of the indenture governing the 2014 (May) Warrants and the 2014 (November) Warrants include a covenant that GLW will use its commercial

2011 BCSECCOM 146

best efforts to maintain its status as a “reporting issuer” (or the equivalent thereof) not in default of the requirements of applicable securities laws;

22. neither the warrant indentures nor the supplemental indentures governing the GLW Warrants require GLW or any successor to deliver to holders of GLW Warrants any continuous disclosure materials of GLW or any successor;
23. each of the Filers is not in default of any requirement under securities legislation in the jurisdictions in which it is a reporting issuer;
24. Amalco has no intention of accessing the capital markets in the future by issuing any further securities to the public and has no intention of issuing any securities to the public other than those that are outstanding on completion of the Arrangement; and
25. it is information relating to FN, and not to Amalco, that is of primary importance to holders of GLW Warrants and GLW Options as each of these securities is exercisable into either the Share Consideration or the Cash Consideration, as applicable; in addition, as Amalco is a wholly-owned subsidiary of FN, FN will consolidate Amalco with FN for the purposes of financial statement reporting; as such, the disclosure required by the Continuous Disclosure Requirements and the Insider Reporting Requirements would not be meaningful or of any significant benefit to the holders of the GLW Warrants or GLW Options and would impose a significant cost on Amalco.

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.

1. The decision of the Decision Makers under the Legislation is that the Continuous Disclosure Requirements do not apply to Amalco provided that:
 - (a) FN is the beneficial owner of all of the issued and outstanding voting securities of Amalco;
 - (b) FN is a reporting issuer in a designated Canadian jurisdiction (as defined in NI 51-102) and has filed all documents it is required to file under NI 51-102;
 - (c) Amalco does not issue any securities, and does not have any securities outstanding other than:

2011 BCSECCOM 146

- (i) the GLW Warrants;
 - (ii) the GLW Options;
 - (iii) securities issued to and held by FN or an affiliate of FN;
 - (iv) debt securities issued to and held by banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches, savings or credit unions, financial services cooperatives, insurance companies or other financial institutions; or
 - (v) securities issued under exemptions from the registration requirement and prospectus requirement in National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106);
- (d) Amalco files in electronic format:
- (i) if FN is a reporting issuer in the local jurisdiction, a notice indicating that it is relying on the continuous disclosure documents filed by FN and setting out where those documents can be found in electronic format; or
 - (ii) copies of all documents FN is required to file under securities legislation, other than in connection with a distribution, at the same time as the filing by FN of those documents with a securities regulatory authority or regulator;
- (e) FN concurrently sends to all holders of GLW Warrants and GLW Options all disclosure materials that would be required to be sent to holders of similar warrants or options of FN in the manner and at the time required by securities legislation;
- (f) FN complies with securities legislation in respect of making public disclosure of material information on a timely basis;
- (g) FN immediately issues in Canada and files any news release that discloses a material change in its affairs; and
- (h) Amalco issues in Canada a news release and files a material change report in accordance with Part 7 of NI 51-102 for all material changes in respect of the affairs of Amalco that are not also material changes in the affairs of FN.

2011 BCSECCOM 146

2. The further decision of the Decision Makers under the Legislation is that the Certification Requirements do not apply to Amalco provided that:
 - (a) Amalco is not required to, and does not, file its own Interim Filings and Annual Filings (as those terms are defined under NI 52-109);
 - (b) Amalco files in electronic format under its SEDAR profile either:
 - (i) copies of FN's annual certificates and interim certificates at the same time as FN is required under NI 52-109 to file such documents; or (ii) a notice indicating that it is relying on FN's annual certificates and interim certificates and setting out where those documents can be found for viewing on SEDAR; and
 - (c) Amalco is exempt from or otherwise not subject to the Continuous Disclosure Requirements and Amalco and FN are in compliance with the conditions set out in paragraph 1 above.
3. The further decision of the Decision Makers under the Legislation is that the Insider Reporting Requirements do not apply to any insider of Amalco in respect of securities of Amalco provided that:
 - (a) if the insider is not FN;
 - (i) the insider does not receive, in the ordinary course, information as to material facts or material changes concerning Amalco before the material facts or material changes are generally disclosed; and
 - (ii) the insider is not an insider of FN in any capacity other than by virtue of being an insider of Amalco;
 - (b) FN is the beneficial owner of all of the issued and outstanding voting securities of Amalco;
 - (c) if the insider is FN, the insider does not beneficially own any GLW Warrants or GLW Options other than securities acquired through the exercise of the GLW Warrants or GLW Options and not subsequently traded by the insider;
 - (d) FN is a reporting issuer in a designated Canadian jurisdiction;
 - (e) Amalco has not issued any securities, and does not have any securities outstanding, other than:

2011 BCSECCOM 146

- (i) the GLW Warrants;
 - (ii) the GLW Options;
 - (iii) securities issued to and held by FN or an affiliate of FN;
 - (iv) debt securities issued to and held by banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches, savings or credit unions, financial services cooperatives, insurance companies or other financial institutions; or
 - (v) securities issued under exemptions from the registration requirement and prospectus requirement in section 2.35 of NI 45-106; and
- (f) Amalco is exempt from or otherwise not subject to the Continuous Disclosure Requirements and GLW and FN are in compliance with the conditions set out in paragraph 1 above.

Martin Eady, CA
Director, Corporate Finance
British Columbia Securities Commission