

# 2004 BCSECCOM 184

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Application – relief from requirement to have a current AIF filed on SEDAR to be a qualifying issuer under MI 45-102 - issuer may rely on management information circular prepared in connection with a reverse take-over that contains prospectus level disclosure

## **Applicable British Columbia Provisions**

Multilateral Instrument 45-102 *Resale of Securities*, ss. 1.1 and 4.1

## **IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, ONTARIO AND QUÉBEC**

**AND**

## **IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

## **IN THE MATTER OF RNC GOLD INC.**

## **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Ontario and Québec (the “Jurisdictions”) has received an application from RNC Gold Inc. (the “Applicant”) for a decision pursuant to the securities legislation of the Jurisdictions (the “Legislation”) exempting the Applicant from the requirement (the “Current AIF Requirement”) that an issuer have a current annual information form (“AIF”) filed on the system for electronic document analysis and retrieval (“SEDAR”) in order to be considered a “qualifying issuer” or the equivalent (a “Qualifying Issuer”) for the purpose of the resale provisions contained in the Legislation;

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS, unless otherwise defined, terms herein have the meaning set out in National Instrument 14-101 - *Definitions* or in Québec Commission Notice 14-101;

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AND WHEREAS the Applicant has represented to the Decision Makers as follows:

1. The Applicant is a corporation amalgamated under the laws of Canada and its head office is in Toronto, Ontario.
2. The Applicant is a reporting issuer under the securities legislation in each of the Jurisdictions, and is an electronic filer under National Instrument 13-101 - *System for Electronic Document Analysis and Retrieval* and, to the best of its knowledge, is not in default of the securities legislation of Ontario or any other Jurisdiction.
3. The Applicant's common shares and warrants are each listed and posted for trading on the Toronto Stock Exchange (the "TSX") under the symbols "RNC" and "RNC.WT", respectively.
4. Pursuant to a Share Exchange Agreement (the "Agreement") dated as of December 4, 2003, the Applicant acquired (the "Acquisition") all of the issued and outstanding common shares (the "Old RNC Shares") and warrants (the "Old RNC Warrants") of RNC Gold Inc., a private Ontario corporation ("Old RNC"). Pursuant to the Agreement, the Applicant issued to the securityholders of Old RNC an aggregate of 15,897,500 common shares (the "Tango Shares") and 8,776,174 warrants (the "Tango Warrants") at a deemed price of \$2.00 per share as consideration for the Acquisition. Immediately following the completion of the Acquisition, 93% of the Tango Shares were held by the former securityholders of Old RNC, and 7% of the Tango Shares were held by the Applicant's previous shareholders.
5. Pursuant to the Acquisition, the Applicant was required to consolidate the Tango Shares at a ratio of 25 to 1 prior to completion of the Acquisition. The Applicant also agreed to change its name to "RNC Gold Inc." following the completion of the Acquisition.
6. The Acquisition constituted a "Back Door Listing" (an "RTO") for the purposes of the rules and policies of the TSX.
7. The Acquisition and all actions taken by the Applicant in connection with the RTO were subject to both TSX approval and the approval of the Applicant's shareholders.
8. In connection with the RTO, the Applicant and Old RNC prepared a joint management information circular (the "Circular"), containing such disclosure as prescribed by the TSX and copies of the Circular were delivered to all

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security holders of the Applicant for consideration as well as to the TSX for its approval. The Circular provided prospectus-level disclosure regarding the Applicant, Old RNC, the Agreement, the Acquisition and contained disclosure regarding the management and operations of both companies including the following financial information:

- (i) audited financial statements of the Applicant with management discussion and analysis (“MD&A”) for the most recently completed financial years ended December 31, 2002 and December 31, 2001 on a comparative basis;
  - (ii) unaudited financial statements and MD&A for the six months ended June 30, 2003 and June 30, 2002 on a comparative basis;
  - (iii) audited financial statements and MD&A of RNC Minerals Ltd. (“RNC Resources”) which was the operating subsidiary of Old RNC, for the financial years ended December 31, 2002 and December 31, 2001; and
  - (iv) unaudited financial statements and MD&A of RNC Resources for the six months ended June 30, 2003 and June 30, 2002 on a comparative basis.
9. The RTO received shareholder approval at an annual and special meeting of shareholders held on December 2, 2003 (the “Meeting”). The Applicant’s common shares and warrants were approved for listing and trading on the TSX on December 1, 2003 and commenced trading on December 10, 2003.
  10. At the Meeting, the Applicant’s shareholders also authorised the Applicant to issue up to 100% of its issued and outstanding common shares pursuant to one or more private placements over the next 12 months.
  11. The Applicant intends to pursue one or more such private placements (the “Financings”) as a means to helping finance its future growth and its future exploration activities.
  12. The Applicant has filed on SEDAR technical reports prepared in accordance with National Instrument 43-101 - *Standards of Disclosure for Mineral Projects*, in respect of its various mineral projects and properties.
  13. The Applicant currently satisfies the requirements of being a “qualifying issuer” under Multilateral Instrument 45-102 - *Resale of Securities* (“MI 45-102”) and the equivalent requirements of the CVMQ Decision No. 2003-C-

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0377 (the "CVMQ Resale Decision") except for the requirement that it have filed a current AIF on SEDAR.

14. The Circular contains disclosure comparable and substantially identical to that which would otherwise be provided in a current AIF prepared in accordance with Form 44-101F1 under National Instrument 44-101- *Short Form Prospectus Distributions*.
15. The Circular provides market participants, including any places under the Financings, with a level of disclosure concerning the Applicant and its business and operations commensurate with the level of disclosure required of a "qualifying issuer" under MI 45-102 or the CVMQ Resale Decision.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers under the Legislation is that the Applicant is exempt from the Current AIF Requirement provided that:

- (a) the Applicant files a Form 45-102 F2, or its equivalent in Québec as prescribed in the CVMQ Resale Decision, on or before the tenth day after the distribution date of any securities certifying that it is a Qualifying Issuer or that it satisfies the equivalent requirements of the CVMQ Resale Decision, except for the requirement that the Applicant have a current AIF; and
- (b) at the distribution date of any securities of the Applicant, the Applicant has filed a notice on SEDAR advising that it has filed the Circular as an alternative form of AIF and identifying the SEDAR project number under which the Circular was filed; and
- (c) this decision expires on the earlier of
  - (i) the date on which the Applicant files with the Decision Makers its audited annual financial statements for the year ended December 31, 2003, and
  - (ii) May 19, 2004.

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DATED March 16, 2004.

Cameron McInnis