

# 2004 BCSECCOM 390

## Headnote

Mutual Reliance Review System for Exemptive Relief Application –relief granted under MI 45-103 to permit an issuer that is not a qualifying issuer to use an offering memorandum prepared in accordance with Form 45-103 - relief granted from the prospectus requirement to permit issuer to rely on the short form offering document system without having a current AIF - issuer permitted to rely on its RTO information circular instead of a CPC information circular

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 61, 76

Multilateral Instrument 45-103 *Capital Raising Exemptions*, ss. 1.1, 9.1

BC Instrument 45-509 *Short Form Offering of Listed Securities and Units by Qualifying Issuers*

## IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA AND ALBERTA

AND

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

AND

## IN THE MATTER OF NORTHLINKS LIMITED

## MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia and Alberta (the “Jurisdictions”) has received an application from Northlinks Limited (“Northlinks”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that
  - 1.1 the prospectus requirement contained in the Legislation (the “Prospectus Requirement”) shall not apply to a proposed distribution of securities by Northlinks to be conducted pursuant to a short form offering document; and
  - 1.2 the requirement contained in paragraph (e)(ii) of the definition of “qualifying issuer” (“Qualifying Issuer”) contained in Multilateral Instrument 45-103 *Capital Raising Exemptions* (“MI 45-103”) that a Qualifying Issuer has filed an information circular in respect of a

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qualifying transaction for a capital pool company under a CPC Instrument, as defined in MI 45-103 (“CPC Instrument”), shall not apply to Northlinks;

2. AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Alberta Securities Commission is the principal regulator for this application;
3. AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions*;
4. AND WHEREAS Northlinks has represented to the Decision Makers that:
  - 4.1 Northlinks was incorporated on July 10, 1997 under the *Business Corporations Act* (Alberta) as 746489 Alberta Ltd. (“746489”). 746489 changed its name to Northlinks Capital Ltd. (“Capital”) and deleted its private company restrictions on August 22, 1997. Capital completed an amalgamation and changed its name to Northlinks Limited on January 31, 1999. Northlinks amended and restated its articles on July 26, 1999;
  - 4.2 the principal and registered office of Northlinks is located at Calgary, Alberta;
  - 4.3 Northlinks
    - 4.3.1 is a reporting issuer under the Legislation and is not in default of its obligations under the Legislation;
    - 4.3.2 common shares are listed for trading on the TSX Venture Exchange (the “Exchange”) and are currently halted;
    - 4.3.3 is a “venture issuer” as defined in National Instrument 51-102 *Continuous Disclosure Requirements* (“NI 51-102”); and
    - 4.3.4 has not yet filed or been required to file an “AIF” or annual financial statements under NI 51-102;
  - 4.4 Northlink’s authorized capital consists of an unlimited number of common shares without nominal or par value and an unlimited number of preferred shares, of which 37,134,129 common shares and no preferred shares were outstanding as at May 31, 2004;

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- 4.5 on April 5, 2004, Northlinks entered into a binding agreement with Ausam Resources Limited (“Ausam”), an unlisted public Australian natural resource company, to acquire all of the issued and outstanding common shares of Ausam (the “Transaction”);
- 4.6 the Transaction constitutes a reverse take-over under Exchange Policy 5.2 *Changes of Business and Reverse Take-overs* (“Exchange Policy 5.2”);
- 4.7 in conjunction with the Transaction, Northlinks proposes to
  - 4.7.1 undergo a 1 for 30 share consolidation;
  - 4.7.2 distribute up to 2,666,600 post-consolidated common shares (the “Short Form Distribution”) pursuant to a “Short Form Offering Document” as defined in Alberta Securities Commission Blanket Order 45-507 *Offerings by TSX Venture Short Form Offering Document* (“Alberta Order 45-507”) and in BC Instrument 45-509 *Short Form Offering of Listed Securities and Units by Qualifying Issuers* (“BCI 45-509”)(the “Short Form Offering Document”); and
  - 4.7.3 distribute up to 6,666,000 units (the “Private Placement”) pursuant to an offering memorandum (the “OM”) prepared in accordance with Form 45-103F2 *Offering Memorandum for Qualifying Issuers* (“Form 45-103F2”);
- 4.8 completion of the Transaction is subject to a number of conditions, including shareholder approval, final acceptance of the Transaction by the Exchange and closing of the Short Form Distribution and the Private Placement;
- 4.9 Northlinks is unable to rely on the exemption from the Prospectus Requirement contained in section 3.1 of Alberta Order 45-507 and section 2 of BCI 45-509 for the purposes of distributing shares under the Short Form Distribution as it has not filed an “AIF” as defined in Alberta Order 45-507 and BCI 45-509 (“AIF”);
- 4.10 Northlinks is unable to use the OM to distribute units under the Private Placement because only a Qualifying Issuer may prepare an offering memorandum in accordance with Form 45-103F2;

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- 4.11 Northlinks has satisfied the definition of Qualifying Issuer contained in paragraph (e)(ii) of the definition of Qualifying Issuer except that it has not filed an information circular in respect of a qualifying transaction for a capital pool company under a CPC Instrument;
- 4.12 Northlinks prepared an information circular in the form required by Exchange Policy 5.2 in respect of the Transaction (the "Information Circular") and delivered it to all security holders of Northlinks on May 10, 2004;
- 4.13 the Information Circular has been reviewed and approved by the staff at the Exchange and has been filed on SEDAR;
- 4.14 the disclosure requirements of Exchange Policy 5.2 are substantially the same as the requirements in Exchange Policy 2.4 *Capital Pool Companies* ("Exchange Policy 2.4") and therefore the Information Circular is substantially similar to an information circular filed pursuant to Exchange Policy 2.4; and
- 4.15 an information circular filed pursuant to Exchange Policy 2.4 that has been reviewed and accepted by the Exchange is one of the items defined as an AIF;
- 5. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");
- 6. 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;
- 7. THE DECISION of the Decision Makers under the Legislation is that
  - 7.1 the Prospectus Requirement shall not apply to the Short Form Distribution provided that
    - 7.1.1 the Short Form Distribution complies with the requirements of Alberta Order 45-507 and BCI 45-509 other than
      - (a) the requirement to have filed a AIF; and

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- (b) the requirement to incorporate the AIF into the Short Form Offering Document; and

- 7.1.2 the Short Form Offering Document incorporates the Information Circular by reference; and

for the purposes of this section 7.1, where the term AIF is referenced in Alberta Order 45-507 and BCI 45-509, it shall be deemed to be a reference to the Information Circular; and

- 7.2 under section 9.1 of MI 45-103, Northlinks is exempt from the requirement contained in the definition of Qualifying Issuer to have filed an information circular in respect of a qualifying transaction for a capital pool company under a CPC Instrument provided that the OM incorporates the Information Circular by reference.

DATED this 17<sup>th</sup> day of June, 2004.

Glenda A. Campbell, Q.C., Vice-Chair

Stephen R. Murison, Vice-Chair