

2008 BCSECCOM 607

October 28, 2008

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* - Multilateral Instrument 52-109 *Certification of Disclosure in Issuer's Annual and Interim Filings* - Exemption from the annual certification requirements - An issuer wants relief from the requirement in part 2 of MI 52-109 to file annual certificates - The issuer wants relief for its first financial period following completion of a reverse takeover; the other party to the RTO, whose management will constitute the management of the combined business following completion of the RTO, is a venture issuer and currently not required to provide certificates containing representations as to disclosure controls and procedures and internal control over financial reporting; the issuer will provide alternative annual certificates in the form of Form 52-109F1-IPO/RTO under National Instrument 52-109

Applicable British Columbia Provisions

Multilateral Instrument 52-109, ss. 2.1 & 4.5

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
Capstone Mining Corp. (the Filer)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for exemptive relief from the requirement to file annual certificates in the form of Form 52-109F1 under Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (MI 52-109), to be replaced by National Instrument

2008 BCSECCOM 607

52-109 (NI 52-109) effective December 15, 2008, for its financial year ended December 31, 2008 (the Exemption Sought).

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, and Newfoundland and Labrador ; and
- (c) this decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

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

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:
1. the Filer is a corporation governed by the *Business Corporations Act* (British Columbia); the registered and head offices of the Filer are located in Vancouver, British Columbia; the Filer's common shares are listed on the Toronto Stock Exchange under the symbol "CS";
 2. Sherwood Copper Corporation (Sherwood) is a corporation continued under the *Canada Business Corporations Act* (CBCA); the registered and head offices of Sherwood are located in Vancouver, British Columbia; the Sherwood common shares and convertible debentures are listed on the TSX Venture Exchange under the symbols "SWC" and "SWC.DB" respectively;
 3. the Filer is a reporting issuer in British Columbia, Alberta and Ontario; upon completion of the Arrangement, the Filer will be a reporting issuer or equivalent in each of the provinces of Canada; the Filer and, to the knowledge of the Filer, Sherwood are not in default of any of the requirements of the applicable securities legislation in any of the jurisdictions where they are respectively reporting issuers;

2008 BCSECCOM 607

4. the Filer has entered into an agreement with Sherwood to combine their respective businesses pursuant to a plan of arrangement (the Arrangement) under section 192 of the CBCA (the Filer and Sherwood following completion of the Arrangement, the Combined Company);
5. a special meeting of the holders of Sherwood common shares will be held on November 14, 2008, to vote on a special resolution to approve the Arrangement; the Arrangement is expected to close before December 31, 2008;
6. under the Arrangement,
 - (a) each Sherwood shareholder will be entitled to receive, for each Sherwood share held, 1.566 Filer shares; and
 - (b) each outstanding Sherwood stock option, Sherwood warrant, or Sherwood debenture or other right to acquire Sherwood shares entitles the holder thereof to receive upon its exercise, exchange or conversion 1.566 Filer shares in lieu of one Sherwood share and on the same terms and conditions as the original Sherwood stock option, Sherwood warrant or Sherwood debenture;
7. as part of the Arrangement, Sherwood and a wholly-owned subsidiary of the Filer incorporated under the CBCA for the purpose of the Arrangement will amalgamate to form "Amalco" which corporation will continue as a wholly-owned subsidiary of the Filer;
8. on completion of the Arrangement, the Filer will continue to have its jurisdiction of incorporation in British Columbia; it is expected that the business operations of the Filer and Sherwood will be consolidated and the principal executive office of the Combined Company will be located at Sherwood's current head office in Vancouver, British Columbia;
9. under Canadian generally accepted accounting principles in respect of reverse takeovers as defined under such principles, Sherwood will be the acquirer of the Filer; the chief financial officer of Sherwood will be the chief financial officer of the Combined Company; the financial year ends of each of Sherwood and the Filer are December 31;
10. MI 52-109 specifies Form 52-109F1 as the required form of annual certificate; NI 52-109, which comes into force on December 15, 2008, and applies to all financial periods ending on or after that date, specifies Form 52-109F1 as the

2008 BCSECCOM 607

required form of annual certificate for an issuer that is a non-venture issuer and Form 52-109FV1 for an issuer that is a venture issuer;

11. the Filer as a TSX-listed company will, if this Arrangement does not complete, be required to file annual certificates in the form of Form 52-109F1; Sherwood as a TSXV-listed company will, if this Arrangement does not complete, be required to file annual certificates in the form of Form 52-109FV1;
12. section 4.4 of NI 52-109 permits an issuer that is a reverse takeover acquiree in a reverse takeover to file annual certificates in the alternative form of Form 52-109F1 – IPO/RTO for the first financial year that ends after completion of a reverse take-over where the reverse takeover acquirer was not a reporting issuer immediately before the reverse takeover; this section would apply to the Filer except that Sherwood, as the reverse takeover acquirer, is a reporting issuer before the reverse takeover;
13. section 4.5 of NI 52-109 permits an issuer to file annual certificates in the alternative form of Form 52-109F1 – IPO/RTO for the first financial year that ends after the issuer becomes a non-venture issuer if the first financial period that ends after the issuer becomes a non-venture issuer is a financial year;
14. the Filer is of the view that the circumstances of this transaction are analogous to the transactions contemplated by the exemptions provided in sections 4.4 and 4.5 of NI 52-109 in that these exemptions recognize that a reporting issuer requires adequate time, after completion of a reverse takeover in the case of section 4.4 or after becoming a non-venture issuer in the case of section 4.5, to perform the necessary review and establish the appropriate procedures to be able to complete annual certificates in the form of Form 52-109F1; and
15. the Filer is of the view that the Exemption Sought is not against the public interest and is in the best interests of the Filer and Sherwood and their respective shareholders.

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 the Exemption Sought is granted provided that:

- (a) the Arrangement completes on or before December 31, 2008; and

2008 BCSECCOM 607

(b) the Filer files the required annual certificates for its financial year ended December 31, 2008, in the form of Form 52-109F1 – IPO/RTO.

Martin Eady, CA
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British Columbia Securities Commission