

2002 BCSECCOM 938

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from registration and prospectus requirements in connection with issuance and subsequent conversion of convertible debentures by wholly owned subsidiary of reporting issuer - convertible debentures issued by a subsidiary in exchange for convertible debentures of parent reporting issuer which were qualified by a prospectus to avoid U.K. withholding taxes - convertible debentures of subsidiary to be guaranteed by parent reporting issuer and are the economic equivalent of convertible debentures

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61 and 76

IN THE MATTER OF THE SECURITIES LEGISLATION OF ONTARIO AND BRITISH COLUMBIA

AND

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

AND

IN THE MATTER OF NAMIBIAN MINERALS CORPORATION AND NAMIBIAN (GIBRALTAR) LIMITED

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Ontario and British Columbia (the “Jurisdictions”) has received an application from Namibian Minerals Corporation (“Namco”) for a decision pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that the dealer registration and prospectus requirements under the Legislation shall not apply to certain trades as described herein;

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, the terms herein have the meaning set out in National Instrument 14-101 Definitions;

AND WHEREAS Namco has represented to the Decision Makers that:

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1. Namco is incorporated under the laws of the Yukon Territory and is a publicly traded company. The common shares (the “Common Shares”) of Namco are listed or quoted for trading on The Toronto Stock Exchange, the NASDAQ over-the-counter bulletin board system, and the Namibian Stock Exchange. Namco is a reporting issuer in each of the Jurisdictions and is not in default of any requirements under the Legislation. Namco is a qualifying issuer under Multilateral Instrument 45-102 Resale of Securities (“MI 45-102”).
2. Namco (Gibraltar) Limited (“Namco Gibraltar”) is a wholly-owned subsidiary of Namco and is incorporated pursuant to the laws of Gibraltar. Namco Gibraltar does not carry on any business and Namco has no intention that Namco Gibraltar will carry on any business in the future. As at December 31, 2001, Namco Gibraltar’s sole asset consisted of a loan due from Namco in the amount of US\$674,800. The only material indebtedness of Namco Gibraltar is pursuant to certain convertible debentures in respect of which approximately US\$1,550,000 in principal amount (for which interest is payable annually as of December 4, 2001 at 8% per annum). These convertible debentures are guaranteed by Namco.
3. On March 23, 2001, Namco completed the sale of 9,475,758 special warrants and US\$6,273,000 in principal amount of special notes (the “Tranche 1 Special Notes”).
4. The Tranche 1 Special Notes entitled the holders thereof to acquire, subject to adjustment in certain circumstances, without additional payment, an equivalent principal amount of convertible debentures (the “Tranche 1 Convertible Debentures”) and 1,515.15 warrants (the “Tranche 1 Warrants”) for each US\$1,000 in principal amount of Tranche 1 Special Notes held by the holders. The Tranche 1 Convertible Debentures and the Tranche 1 Warrants underlying the Tranche 1 Special Notes were issued under a prospectus filed in Ontario and British Columbia for which a receipt was obtained on June 20, 2001 (the “Prospectus”).
5. Pursuant to a supplemental trust indenture dated February 25, 2002, the terms of the Tranche 1 Convertible Debentures were amended, by special resolution of the holders of the Tranche 1 Convertible Debentures passed in accordance with the trust indenture governing those debentures, as follows:
 - (a) each US\$1,000 in principal amount of Tranche 1 Convertible Debentures now entitles the holder thereof to receive, upon conversion, at no additional cost, subject to adjustment in certain circumstances, Common

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Shares at a conversion price of US\$0.22 each on or before September 23, 2008; and

- (b) accrued interest on the Tranche 1 Convertible Debentures is now convertible into Common Shares from time to time at a conversion price equal to a weighted average market price of the Common Shares prior to conversion.
- 6. The Common Shares issuable pursuant to the Tranche 1 Convertible Debentures are referred to herein as the “Underlying Tranche 1 Common Shares”.
- 7. On April 30, 2001, Namco completed the sale of US\$2,600,000 in principal amount of special notes of Namco (the “Tranche 2 Special Notes”).
- 8. The Tranche 2 Special Notes entitled the holders thereof to acquire, subject to adjustment in certain circumstances, without additional payment, an equivalent principal amount of convertible debentures (the “Tranche 2 Convertible Debentures”) and 1,515.15 common share purchase warrants of Namco (the “Tranche 2 Warrants”) for each US\$1,000 in principal amount of Tranche 2 Special Notes. The Tranche 2 Convertible Debentures and the Tranche 2 Warrants underlying the Tranche 2 Special Notes were also issued under the Prospectus.
- 9. Pursuant to a supplemental trust indenture dated February 25, 2002, the terms of the Tranche 2 Convertible Debentures were amended, by special resolution of the holders of the Tranche 2 Convertible Debentures passed in accordance with the trust indenture governing those debentures, as follows:
 - (a) each US\$1,000 in principal amount of Tranche 2 Convertible Debentures now entitles the holder thereof to receive, upon conversion, at no additional cost, subject to adjustment in certain circumstances, Common Shares at a conversion price of US\$0.22 each on or before October 30, 2008; and
 - (b) accrued interest on the Tranche 2 Convertible Debentures is now convertible into Common Shares from time to time at a conversion price equal to a weighted average market price of the Common Shares prior to conversion.
- 10. The Common Shares issuable pursuant to the Tranche 2 Convertible Debentures and the Tranche 2 Warrants are referred to herein as the “Underlying Tranche 2 Common Shares”.

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11. In order to implement a more efficient capital structure for Namco, Namco wishes to transfer the full legal obligations in respect of the Tranche 1 Convertible Debentures and the Tranche 2 Convertible Debentures to Namco Gibraltar. Pursuant to the terms of the trust indentures underlying the Tranche 1 Convertible Debentures and the Tranche 2 Convertible Debentures (collectively, the “Debt Indentures”), Namco has the right to transfer its obligations in respect of the Debt Indentures to its wholly-owned subsidiary Namco Gibraltar (the “Convertible Debenture Transfer”), provided that Namco agrees to guarantee the obligations being assumed by Namco Gibraltar.
12. The Convertible Debenture Transfer will be implemented as follows:
 - (a) Namco Gibraltar will issue a first tranche of convertible debentures to replace the Tranche 1 Convertible Debentures (the “Tranche 1 Gibraltar Convertible Debentures”), such that the terms of the Tranche 1 Gibraltar Convertible Debentures will be substantially equivalent to the terms of the Tranche 1 Convertible Debentures and will be guaranteed by Namco; and
 - (b) Namco Gibraltar will issue a second tranche of convertible debentures to replace the Tranche 2 Convertible Debentures (the “Tranche 2 Gibraltar Convertible Debentures”), such that the terms of the Tranche 2 Gibraltar Convertible Debentures will be substantially equivalent to the terms of the Tranche 2 Convertible Debentures and will be guaranteed by Namco.
13. The Prospectus included a description of the terms of the Tranche 1 Convertible Debentures and the Tranche 2 Convertible Debenture which permit Namco to transfer those obligations to its wholly-owned subsidiary Namco Gibraltar, and a description of the terms of the Tranche 1 Gibraltar Convertible Debentures and the Tranche 2 Gibraltar Convertible Debentures.
14. The following trades will occur in connection with, or may occur following, the Convertible Debenture Transfer:
 - (a) the issuance of the Tranche 1 Gibraltar Convertible Debentures to holders of the Tranche 1 Convertible Debentures in exchange for the Tranche 1 Convertible Debentures;
 - (b) the issuance of the Tranche 2 Gibraltar Convertible Debentures to holders of the Tranche 2 Convertible Debentures in exchange for the Tranche 2 Convertible Debentures;

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- (c) the distribution of the Common Shares issuable upon exercise of the Tranche 1 Gibraltar Convertible Debentures; and
- (d) the distribution of the Common Shares issuable upon exercise of the Tranche 2 Gibraltar Convertible Debentures;

(collectively, the “Gibraltar Convertible Debenture Trades”).

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 dealer registration and prospectus requirements in the Legislation shall not apply to the Gibraltar Convertible Debenture Trades, provided that the first trade in Common Shares issued upon conversion of the Tranche 1 Gibraltar Convertible Debentures and Tranche 2 Gibraltar Convertible Debentures shall be deemed to be a distribution unless the conditions in paragraphs 2.10 (b) and 2.10 (c) of MI 45-102 are satisfied.

DATED this 31st day of October, 2002.

Theresa McLeod

K.D. Adams