

2011 BCSECCOM 312

June 29, 2011

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 52-107, s. 9.1 - *Acceptable Accounting Principles and Auditing Standards* - A reporting issuer wants to early adopt IFRS for purposes of preparing its financial statements - The issuer has assessed the readiness of its staff, board, audit committee, auditors and investors; the target has historically prepared its financial statements in accordance with IFRS and the target is now or will be the resulting issuer; the issuer's MD&A for the most recent interim period ending prior to the reverse takeover transaction will provide detailed disclosure about its changeover plan as well as the transaction.

Applicable Legislative Provisions

National Instrument 52-107, s. 9.1 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*

In the Matter of
the Securities Legislation of
British Columbia
(the Jurisdiction)

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
RCG Capital Inc.
(the Filer)

Decision

Background

- ¶ 1 The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) exempting the Filer from:

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- (i) the requirement in section 4.2(1) of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (NI 52-107) that it prepare its financial statements in accordance with Canadian GAAP – Part V, in order that the Filer may prepare its financial statements for financial periods ending on or after the Transaction (as defined below) in accordance with Canadian GAAP applicable to publicly accountable enterprises, which is IFRS incorporated into the Handbook (the Early Adoption Relief); and
- (ii) the requirement in section 4.14(1) of NI 52-107 that *pro forma* financial statements be prepared in accordance with Canadian GAAP – Part V in order that the Filer may prepare *pro forma* financial statements intended to be included in a disclosure document required under the policies of the TSX Venture Exchange (TSX-V) in accordance with Canadian GAAP applicable to publicly accountable enterprises, which is IFRS incorporated into the Handbook, (the Pro Forma Relief, and together with the Early Adoption Relief, the Exemptions Sought).

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

- (a) the British Columbia Securities Commission is the principal regulator for this application, and
- (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 the Province of Alberta.

Interpretation

- ¶ 2 Terms used in this decision and defined in National Instrument 14-101 *Definitions*, NI 52-107, National Instrument 51-102 *Continuous Disclosure Obligations*, 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 Filer:
1. the Filer is a corporation incorporated under the *Business Corporations Act* (British Columbia); the head office of the Filer is located at Suite 2060 – 777 Dunsmuir Street, Vancouver, British Columbia, V6Z 1T7;
 2. the Filer is a reporting issuer in the Jurisdiction and in the Province of Alberta; the Filer is not in default of securities legislation in any jurisdiction;

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3. the Filer's securities are listed on the TSX-V under the symbol "RCG.P";
4. the Filer is a capital pool company or "CPC" as defined in Policy 2.4 of the TSX-V Corporate Finance Manual (TSX-V Policy 2.4);
5. the Filer has prepared its most recent annual financial statements in accordance with Canadian GAAP – Part V; the financial year end of the Filer is February 28;
6. the Canadian Accounting Standards Board adopted IFRS as Canadian GAAP for publicly accountable enterprises for financial years beginning on or after January 1, 2011;
7. the Filer is a publicly accountable enterprise;
8. NI 52-107 sets out acceptable accounting principles for financial reporting under the Legislation by domestic issuers, foreign issuers, registrants and other market participants; under NI 52-107 for fiscal years beginning before January 1, 2011, a domestic issuer must use Canadian GAAP – Part V with the exception that an SEC registrant may use U.S. GAAP; under NI 52-107, only foreign issuers may use IFRS for financial years beginning before January 1, 2011;
9. in CSA Staff Notice 52-321 *Early Adoption of International Financial Reporting Standards, Use of US GAAP and Reference to IFRS-IASB*, staff of the Canadian Securities Administrators recognized that some issuers may wish to prepare their financial statements in accordance with IFRS for periods beginning prior to January 1, 2011 and indicated that staff were prepared to recommend exemptive relief on a case by case basis to permit a domestic issuer to do so;
10. the Filer entered into an agreement to acquire all of the issued and outstanding shares of 7887523 Canada Inc. (Almonty), a corporation existing under the federal laws of Canada, in exchange for the issuance by the Filer of its common shares (the Transaction); the Transaction will result in a reverse take-over of the Filer and will constitute the "Qualifying Transaction" of the Filer as such term is defined in TSX-V Policy 2.4;
11. concurrently with the proposed Transaction, Almonty will acquire Daytal Resources Spain SL (Daytal), the direct owner of the Los Santos tungsten project located in Salamanca, Spain (the Acquisition);

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12. completion of the Transaction is subject to, among other things, the approval of the Transaction and related matters by the TSX-V; approval of the Transaction by the shareholders of the Filer is not required under the policies of the TSX-V;
13. in accordance with the policies of the TSX-V, the Filer must file a CPC Filing Statement (as such term is defined in TSX-V Policy 2.4) with the TSX-V and on SEDAR;
14. as required by the policies of the TSX-V, the Filer must include certain financial disclosure in the CPC Filing Statement; for purposes of the TSX-V policies, the target company is Daytal; following the completion of the Acquisition, the financial statements of Daytal will become the financial statements of Almonty as Almonty is an acquisition vehicle incorporated solely for the purpose of undertaking the acquisition of Daytal and has no assets; accordingly, for the purpose of the financial statements included in the CPC Filing Statement, Daytal is a foreign issuer and the target (Target);
15. the Target is a foreign issuer for the purposes of NI 52-107;
16. the financial year end of the Target is September 30;
17. as required by TSX-V policies, the Filer will include financial statements of the Target in the CPC Filing Statement; the financial statements of the Target included in the CPC Filing Statement will be prepared in accordance with IFRS;
18. the CPC Filing Statement will also contain a *pro forma* balance sheet of the Resulting Issuer (as defined below); section 4.14(1) of NI 52-107 provides that *pro forma* financial statements must be prepared in accordance with the issuer's GAAP;
19. following completion of the Transaction, the Filer intends to adopt the financial year end of the Target (September 30);
20. the Filer believes that the use of a single accounting standard would eliminate complexity and cost from the Filer's financial statement preparation process; since the Target prepares its financial statements in accordance with IFRS, the use of Canadian GAAP applicable to publicly accountable enterprises, which is IFRS incorporated into the Handbook, as the Filer's accounting standard would permit the Filer to streamline the reporting process and reduce cost;

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21. the Filer has carefully assessed the readiness of its staff, board of directors, audit committee, auditors, investors and other market participants for its adoption of Canadian GAAP applicable to publicly accountable enterprises, which is IFRS incorporated into the Handbook, and has concluded that they will be adequately prepared for the Filer's adoption of Canadian GAAP applicable to publicly accountable enterprises concurrent with the completion of the Acquisition;
22. the Filer has considered the implications of adopting Canadian GAAP applicable to publicly accountable enterprises concurrent with the completion of the Acquisition and on its obligations under securities legislation, including, but not limited to, those relating to CEO and CFO certifications, business acquisition reports, offering documents and previously released material forward looking information; the Filer has concluded that it will continue to be able to fulfil these obligations;
23. upon the completion of the Transaction, the Target will become a subsidiary of the Filer and the Filer will continue to carry on its business through the Target (Resulting Issuer);
24. the Filer has not previously prepared financial statements that contain an explicit and unreserved statement of compliance with IFRS;
25. subject to obtaining the Early Adoption Relief, the Filer will adopt Canadian GAAP for publicly accountable enterprises concurrent with the completion of the Transaction; and
26. the Filer will include in its management's discussion and analysis for the year ended February 28, 2011 relevant information about its transition to Canadian GAAP applicable to publicly accountable enterprises, which is IFRS incorporated into the Handbook, including:
 - (a) the key elements and timing of the Filer's changeover plan;
 - (b) an explanation that the Qualifying Transaction is a reverse acquisition;
 - (c) the Filer's accounting will be a continuation of the Target's accounting which has been IFRS since inception; and
 - (d) the Target will account for the Filer as a reverse asset acquisition and present consolidation financial statements.

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Decision

- ¶ 4 The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that:

- (i) the Early Adoption Relief is granted provided that:
 - (A) the Transaction is completed;
 - (B) the Filer prepares its annual financial statements for years ending on or after the closing of the Transaction in accordance with Canadian GAAP applicable to publicly accountable enterprises;
 - (C) the Filer prepares its interim financial reports for its interim periods ending on or after the closing of the Transaction in accordance with Canadian GAAP applicable to publicly accountable enterprises; and
 - (D) the Filer provides the communication set out in paragraph 26; and
- (ii) the Pro Forma Relief is granted.

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