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August 18, 2011

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 51-102 - *Continuous Disclosure Obligations*, ss. 8.4 and 13.1 – An issuer requires relief from the requirement to include certain financial statements in a business acquisition report – The acquired company filed an information circular before the date of the acquisition; the information circular included financial information for a period that ended not more than one interim period before the financial information that the issuer would be required to include in its BAR; the issuer could rely on the exemptions in subsections 8.4(4) and (6) but for the fact that the acquired company, and not the issuer, filed the information circular; the issuer will file the information circular under its SEDAR profile and will include in the BAR all of the relevant financial statements included in the information circular

Applicable British Columbia Provisions

National Instrument 51-102 - *Continuous Disclosure Obligations*, ss. 8.4 and 13.1.

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
Mercator Minerals Ltd.
(the Filer)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) exempting the Filer

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from the requirement in the Legislation to include certain financial statements in a business acquisition report required under Part 8 of National Instrument 51-102 *Continuous Disclosure Obligations* (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 the Filer;
- (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, and Nova Scotia; and
- (c) the decision is the decision of the principal regulator and evidences the decision of the regulator in Ontario.

Interpretation

- ¶ 2 Terms defined 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 company governed by the *Business Corporations Act* (British Columbia) (BCBCA);
 - 2. the Filer's head office is located at 1050 - 625 Howe Street, Vancouver, British Columbia, V6C 2T6;
 - 3. the authorized capital of the Filer consists of an unlimited number of common shares;
 - 4. the common shares of the Filer are listed for trading on the Toronto Stock Exchange (TSX) under the trading symbol "ML";
 - 5. the Filer is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, and Nova Scotia;
 - 6. the Filer is not in default of any of the requirements of the applicable securities legislation in any of the provinces in which it is a reporting issuer;

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7. the Filer is engaged in the acquisition, development, and production of mineral properties in North America;
8. Creston Moly Corp. (Creston) was incorporated under the laws of British Columbia;
9. Creston is engaged in the exploration and development of mineral properties in Mexico and Newfoundland;
10. on June 22, 2011, the Filer acquired all of the common shares of Creston (the Acquisition);
11. prior to the Acquisition, the common shares of Creston were listed for trading on the TSX Venture Exchange (TSXV) and Creston was a reporting issuer in British Columbia, Alberta, Manitoba, and Ontario;
12. the Acquisition was carried out by way of plan of arrangement under the BCBCA (the Arrangement);
13. under the terms of the Arrangement, the common shares of Creston were exchanged for common shares of the Filer and Creston became a wholly owned subsidiary of the Filer;
14. the Arrangement and the resulting Acquisition were approved by the British Columbia Supreme Court (the Court), the TSX, the TSXV, and by special resolution of the shareholders of Creston;
15. Creston delivered an information circular (the Information Circular) describing the Acquisition to its shareholders prior to the meeting at which shareholder approval of the Acquisition was obtained;
16. the contents of the Information Circular and a draft order in respect of the Arrangement were approved by the Court prior to delivery to the shareholders of Creston;
17. under National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), the Information Circular was required to contain prospectus level disclosure and include or incorporate by reference the financial statements required by a prospectus;
18. the Information Circular included or incorporated by reference the following financial statements relating to the Acquisition:

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- (a) the audited financial statements of Creston for the years ended July 31, 2010 and July 31, 2009, together with the notes thereto and the auditors' reports thereon;
- (b) unaudited financial statements of Creston for the six month interim period ended January 31, 2011 with comparatives for the six month interim period ended January 31, 2010; and
- (c) a pro forma consolidated balance sheet of the Filer as at December 31, 2010 and a pro forma income statement of the Filer for the twelve months ended December 31, 2010;

(collectively, the Circular Statements)

- 19. Creston filed the Information Circular under its SEDAR profile on May 16, 2011; the Information Circular was, therefore, available to the public and to the shareholders of Creston and the Filer on the SEDAR website;
- 20. to the knowledge of the Filer, since the time the Information Circular was filed, there has not been any change in the Creston business that is material and adverse to the Filer, taken as a whole;
- 21. the Acquisition constitutes a "significant acquisition" for the Filer for the purposes of NI 51-102; consequently, under NI 51-102, the Filer is required to file a business acquisition report within 75 days of the Acquisition;
- 22. under NI 51-102, the business acquisition report must include the following financial statements:
 - (a) the audited financial statements of Creston for the years ended July 31, 2010 and July 31, 2009, together with the notes thereto and the auditor's report thereon;
 - (b) unaudited financial statements of Creston for the nine month interim period ended April 30, 2011 and April 30, 2010 (the Interim Statements); and
 - (c) a pro forma consolidated balance sheet of the Filer as at March 31, 2011 and pro forma income statements of the Filer for the three months ended March 31, 2011 and the twelve months ended December 31, 2010;
- 23. subsection 8.4(4) of NI 51-102 permits an issuer to include in its business acquisition report financial statements for a period ending not more than one

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interim period before the interim period for which financial statements would be required to be included in the business acquisition report, if

- (a) before the date of acquisition, the issuer filed a document that included financial statements for the acquired business that would have been required to be included if the document were a prospectus, and
- (b) those financial statements are for a period ending not more than one interim period before the interim period for which financial statements would be required to be included in the business acquisition report;

- 24. subsection 8.4(6) of NI 51-102 permits an issuer to include in its business acquisition report pro forma financial statements based on the interim financial statements permitted to be filed under subsection 8.4(4);
- 25. because Creston, and not the Filer, filed the Information Circular, the Filer is not able to rely on the exemptions in subsections 8.4(4) and 8.4(6) of NI 51-102; the Filer satisfies all the other conditions of these exemptions; and
- 26. the Filer is seeking an exemption from the requirement under NI 51-102 to include the Interim Statements, the pro forma balance sheet of the Filer as at March 31, 2011, and the pro forma income statement of the Filer for the three months ended March 31, 2011 in the business acquisition report.

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 Filer files the Information Circular under its SEDAR profile; and
- (b) the Filer includes in its business acquisition report the Circular Statements.

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