

# 2005 BCSECCOM 677

## Headnote

Securities Act s. 48, 76 Corp Acquisitions & Reorgs – Exemption from s. 34(1)(a) requirement to be registered as a dealer for a trade and s. 61 requirement to file a prospectus for a distribution in connection with a corporate acquisition or reorganization – Trades in securities of an issuer for the acquisition of an asset by the issuer's subsidiary – the asset is an interest in a resource property; in consideration for the issuer's securities, the owner of the asset will transfer the asset to the issuer's wholly-owned subsidiary

## Exemption Order

### Red Back Mining Inc.

#### Sections 48 and 76 of the *Securities Act*, R.S.B.C. 1996, c. 418

## Background

- ¶ 1 Red Back Mining Inc. (Red Back) has applied for an exemption from the requirements to be registered to trade and to file and obtain receipts for a preliminary prospectus and prospectus in sections 34(1)(a) and 61 of the Act (the registration and prospectus requirements) for certain intended trades.

## Representations

- ¶ 2 Red Back represents that:
1. it was incorporated in British Columbia on March 16, 1988;
  2. its authorized share capital consists of an unlimited number of common shares, of which 76,750,000 shares were issued and outstanding as at October 31, 2005;
  3. it is a reporting issuer under the Act and is not in default of any requirements of the Act or the *Securities Rules*, B.C. Reg. 194/97;
  4. its shares are listed for trading on the Toronto Stock Exchange (the Exchange);
  5. it is the recorded owner of 100% of the issued and outstanding share capital of Red Back Mining NL (Red Back NL);
  6. Red Back NL is a corporation incorporated under the laws of Australia and is not a reporting issuer under the Act;

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7. Red Back NL is the recorded owner of 100% of the issued and outstanding share capital of Red Back Mining (Ghana) Ltd. (Red Back (Ghana)) and Red Back Mining No. 2 (Ghana) Ltd. (Red Back No. 2);
8. Red Back (Ghana) and Red Back No. 2 are both indirect wholly-owned subsidiaries of Red Back;
9. Red Back (Ghana) and Red Back No. 2 are both companies incorporated under the laws of the British Virgin Islands and neither are reporting issuers under the Act;
10. on April 23, 1999, Red Back NL entered into an agreement with Johnsons Limited (Johnsons) to incorporate Chirano Gold Mines Limited (CGML), to hold certain mineral properties in Ghana;
11. the parties agreed that 95% of the issued shares of CGML would be held by Red Back (Ghana) and 5% of the issued shares of CGML would be held by Johnsons or another person nominated by Johnsons;
12. Johnsons nominated Johnson Yaw Gyamfi to be the registered and beneficial holder of 5% of the issued shares of CGML (CGML Shares);
13. Mr. Gyamfi has passed away and Isaac Asamoah (Asamoah) is duly authorized to act on behalf of his estate to deal with the CGML Shares;
14. Asamoah and Red Back agreed to incorporate Enchi Gold Mines Limited (EGML) to hold certain mineral properties in Ghana;
15. Asamoah owns 5,000 shares of EGML (the EGML Shares) and Red Back No. 2 owns 95,000 shares;
16. the Gyamfi estate has agreed to sell the CGML Shares to Red Back (Ghana) and Red Back (Ghana) has agreed to purchase the CGML Shares;
17. Asamoah has agreed to sell the EGML Shares to Red Back No. 2 and Red Back No. 2 has agreed to purchase the EGML Shares;
18. Johnsons, the Gyamfi estate and Asamoah retained a 5% residual carried interest in certain mineral properties in Ghana owned by CGML and EGML (the residual rights), and Johnsons, the Gyamfi estate and Asamoah have agreed to transfer all of their interests in the residual rights to CGML and EGML;

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19. as consideration for the sale to Red Back (Ghana) of the CGML Shares, the sale to Red Back No. 2 of the EGML Shares, and the sale to CGML and EGML of the residual rights, Red Back has agreed to pay an aggregate of U.S. \$275,000 and to allot and issue an aggregate of 178,883 fully-paid common shares of Red Back (the Red Back Shares) to Johnsons, the Gyamfi estate and Asamoah, jointly; and
20. if Red Back acquired the CGML Shares, the EGML Shares and the residual rights directly, rather than through its indirect wholly-owned subsidiaries, Red Back could rely on the registration and prospectus exemptions in sections 45(2)(21) and 74(2)(18) of the Act or section 2.13 of National Instrument 45-106 *Prospectus and Registration Exemptions* to distribute the Red Back Shares as part of the consideration.

### Decision

- ¶ 3 Because it is not prejudicial to the public interest, the Executive Director orders
1. under sections 48 and 76 of the Act, Red Back is exempt from the registration and prospectus requirements for trades of the Red Back Shares to Johnsons, the Gyamfi estate and Asamoah under a Deed dated August 5, 2005 among Johnsons, the Gyamfi estate, Asamoah, Red Back (Ghana), Red Back No. 2 and Red Back, provided that Red Back files a Form 45-106F1 and pays the required fee within 10 days after the distribution; and
  2. under section 76 of the Act, any trade in the Red Back Shares issued under this Order is deemed a distribution unless the conditions in subsection 2.5(2) of National Instrument 45-102 *Resale of Securities* are satisfied.

¶ 4 November 14, 2005

Rosann Youck  
Acting Manager, Corporate Finance  
British Columbia Securities Commission