

2006 BCSECCOM 242

April 21, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act, ss. 48 and 76 – registration and prospectus requirements - Trades by an issuer to its shareholders in securities of another company that it owns (e.g. spin-off transactions) - The first issuer will transfer shares it holds in a second issuer (reporting) to the first issuer's shareholders as a return of capital; the return of capital will be done in compliance with corporate law requirements; the first issuer would be able to rely on the exemptions contained in section 2.31(2) of NI 45-106 (also sections 45(2)(14) and 74(2)(13) of the Act) if the transfer was being done as a dividend in kind; the transfer of the shares will result in the shareholders of the first issuer holding directly their interests in the second issuer as opposed to indirectly through their shareholdings of the first issuer

Applicable British Columbia Provisions

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

In the Matter of
the Securities Legislation
of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova
Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador,
Northwest Territories, Yukon and Nunavut (the Jurisdictions)

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of Gowest Amalgamated Resources Ltd. (Gowest or the Filer)

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from the dealer registration requirement (the Registration Requirement) and, except in Manitoba and Yukon, the prospectus requirement, (the Prospectus Requirement) of the Legislation (the Requested Relief) for a distribution by the Filer to its shareholders (the Gowest Shareholders) by way of return of capital (the

2006 BCSECCOM 242

Return of Capital Distribution) of up to all of the common shares (each, a Trade Winds Share) that the Filer will hold in Trade Winds Ventures Inc. (Trade Winds) following the Sale (as hereinafter defined).

Under the Mutual Reliance Review System for Exemptive Relief Applications

- (a) the Ontario Securities Commission is the principal regulator for this application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 Definitions have the same meaning in this decision unless they are defined in this decision.

Representations

This decision is based on the following facts represented by the Filer:

1. Gowest was created pursuant to an amalgamation under the laws of Ontario, effective on May 27, 1982, between Gowest Gold Resources Ltd. and 508813 Ontario Limited. Gowest Gold Resources Ltd. and 508813 Ontario Limited were incorporated under the laws of Ontario on November 25, 1980 and April 16, 1982, respectively. The Filer conducts operations as a junior mining company.
2. The principal and registered office of Gowest is located in Toronto, Ontario.
3. Gowest is a reporting issuer in the Provinces of British Columbia, Alberta and Ontario and to our knowledge is not in default of any requirements under any applicable securities legislation.
4. Gowest's share capital is comprised of an unlimited number of authorised voting common shares with no par value (each, a Common Share). As of March 17, 2006, there were 16,067,933 Common Shares issued and outstanding. The Common Shares are listed and posted for trading on the TSX Venture Exchange under the symbol "GWA".
5. Trade Winds was incorporated under the laws of British Columbia on November 28, 1986 and is a reporting issuer in British Columbia and Alberta. The Trade Winds Shares are listed and posted for trading on the TSX Venture Exchange under the symbol "TWD". Trade Winds conducts operations as a junior mining company.

2006 BCSECCOM 242

6. Trade Winds is the largest shareholder of Gowest, currently holding 1,750,000 Common Shares, which represents approximately 10.9% of the Common Shares currently outstanding.
7. Gowest and Trade Winds entered into a non-binding letter of intent dated January 12, 2006 pursuant to which Gowest agreed to sell its interest in certain mining claims to Trade Winds (the Sale) in exchange for approximately 8,033,967 Trade Winds Shares to be issued by Trade Winds.
8. Upon the completion of the Sale, Gowest will be the registered and beneficial holder of approximately 8,033,967 Trade Winds Shares, which will constitute approximately 15.1% of the issued and outstanding common shares of Trade Winds.
9. Gowest intends to distribute to Gowest Shareholders up to all of the Trade Winds Shares it will own as a return of capital on a *pro rata* basis based on the number of Common Shares held by the Gowest Shareholders. The Trade Winds Shares to be distributed to Trade Winds in its capacity as a shareholder of Gowest will be cancelled by Trade Winds. Notwithstanding whether Gowest would meet the test under corporate law to distribute the Trade Winds Shares by way of dividend, Gowest prefers to distribute said shares as a return of capital due to the favourable tax treatment of such a distribution.
10. Gowest anticipates that the Trade Winds Shares will be distributed to Gowest Shareholders of record at the close of business on the 7th trading day after the later of: (i) the day on which Gowest Shareholders approve the Return of Capital Distribution; (ii) the closing date of the Sale; and (iii) the date on which Gowest receives all applicable regulatory approvals.
11. The Return of Capital Distribution will be effected in compliance with the corporate laws of Ontario. Gowest received shareholder approval for the Return of Capital Distribution at a special meeting of Gowest Shareholders held on March 20, 2006.
12. Gowest Shareholders will not be required to pay for Trade Winds Shares received in the Return of Capital Distribution or to surrender or exchange Common Shares in order to receive Trade Winds Shares or to take any other action in connection with such distribution.
13. The initial “distribution” or “primary distribution to the public”, as the case may be, of the Trade Winds Shares from Trade Winds to Gowest will be exempt from the Prospectus Requirement and the Registration Requirement, pursuant to section 2.12 of National Instrument 45-106 (NI 45-106). As a

2006 BCSECCOM 242

result, the Trade Winds Shares will be subject to a hold period (the Hold Period) under the Legislation, other than in Manitoba and Yukon.

14. As a consequence of the fact that Gowest intends to complete the Return of Capital Distribution before the expiry of the Hold Period, such distribution would constitute: (i) other than in Manitoba and Yukon, a distribution under subsection 2.5(1) of National Instrument 45-102 to which the Prospectus Requirement applies, absent statutory exemption or exemptive relief; and (ii) a trade in securities to which the Registration Requirement applies, absent statutory exemption or exemptive relief.
15. Following the Return of Capital Distribution, the Trade Winds Shares will continue to be subject to the appropriate Hold Period, other than in Manitoba and Yukon.
16. Subsections 2.31(2) and 2.31(3) of NI 45-106 provide exemptions from the Registration Requirement and the Prospectus Requirement, respectively, in respect of a trade by an issuer in, or a distribution of, respectively, a security of a reporting issuer held by the issuer that is distributed by the issuer to its securities holders as a dividend *in specie* or a distribution out of earnings or surplus.
17. The Return of Capital Distribution is not a dividend *in specie* or a distribution out of earnings or surplus, but is a return of capital.
18. If the Return of Capital Distribution were instead a dividend *in specie* or a distribution out of earnings or surplus, there would be an exemption under NI 45-106 from the Registration Requirement and the Prospectus Requirement.
19. Sufficient information concerning Trade Winds is available to Gowest Shareholders on SEDAR.

Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the decision has been met.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that:

- (a) the Return of Capital Distribution is completed as soon as practicable after the date that Gowest receives the Trade Winds Shares from Trade Winds; and

2006 BCSECCOM 242

- (b) other than in Manitoba and Yukon, the first trade in the Trade Winds Shares acquired pursuant to this Decision shall be deemed a distribution under the Legislation unless the conditions in subsection 2.5(2) of National Instrument 45-102 *Resale of Securities* are satisfied and for such purposes the “distribution date” shall be deemed to be the distribution date of the initial distribution of the Trade Winds Shares by Trade Winds to Gowest.

Paul Moore
Vice Chair
Ontario Securities Commission

Wendell Wigne
Commissioner
Ontario Securities Commission