

# 2002 BCSECCOM 213

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 43-101 - Standards of Disclosure for Mineral Projects ("NI 43-101")- Issuer choosing to base disclosure in final prospectus upon technical report prepared in accordance with NI 43-101 except that qualified person preparing report did not perform site visit as required in section 6.2 - Projects at exploration stage and qualified person able to establish some existing familiarity with the geology and geographic setting of the area - Relief granted to permit disclosure in issuer's final prospectus to be based upon qualified person's report despite site visit required by section 6.2 not performed

## Applicable British Columbia Provisions

National Instrument 43-101 *Standards for Disclosure for Mineral Projects*, B.C. Reg. 12/2001, ss. 6.2 and 9.1

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

AND

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

AND

IN THE MATTER OF VAALDIAM RESOURCES LTD.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker" and collectively the "Decision Makers") in each of the Provinces of Ontario, Alberta and British Columbia (the "Jurisdictions") has received an application (the "Application") from Vaaldiam Resources Ltd. (the "Corporation") for an exemption from Section 6.2 of National Instrument 43-101 (the "Instrument") in connection with a final prospectus to be filed by the Corporation;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Director of the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS the Corporation represented to the Decision Makers that:

1. The Corporation was incorporated under the name of Noble Peak Resources Ltd. under the *Company Act (British Columbia)* on February 28, 1983 and was continued under the *Canada Business Corporations Act* by Articles of Continuation dated March 4, 1987. By Articles of Amendment dated July 31, 1998, the name of the Corporation was changed to Vaaldiam Resources Ltd., at which time the common shares of the Corporation were consolidated on the basis of one new common share for each ten common shares then outstanding.
2. The Corporation's registered office and principal place of business is located at 20 Adelaide Street East, Suite 901, Toronto, Ontario, M5C 2T6.
3. The Corporation is a reporting issuer in various provinces of Canada, including Ontario, British Columbia and Alberta and its common shares are currently traded on the Canadian

## 2002 BCSECCOM 213

Venture Exchange (the "CDNX") under the trading symbol "VRL". The Corporation is not on the list of defaulting reporting issuers maintained pursuant to section 72(9) of the *Securities Act (Ontario)*, section 77 of the *Securities Act (British Columbia)* and section 113 of the *Securities Act (Alberta)*.

4. The Corporation filed a preliminary prospectus (the "Preliminary Prospectus") dated July 16, 2001 and intends to file a final prospectus (the "Final Prospectus") with the Decision Makers to qualify for distribution the following:

- (a) the common shares underlying 1,000,000 previously issued special warrants;
- (b) one-half of the common shares issuable on exercise of the 100,000 broker's warrants issued in connection with the 1,000,000 previously issued special warrants;
- (c) that number of units ("Units", comprised of one common share and one-half of one common share purchase warrant) that would amount to a minimum financing of \$2,000,000 and to a maximum financing of \$5,000,000 (the "Offering");
- (d) one-half of the common shares issuable on exercise of the broker's warrants to be issued in connection with the Offering;
- (e) 2,110,000 common shares issuable on closing of the Offering, as partial consideration for the acquisition of certain diamond properties; and
- (f) that number of Units to be issued upon conversion of an outstanding convertible debenture in the principal amount of \$150,000.

5. The Corporation is a mineral exploration and development company whose principal focus is the exploration and development of African diamond deposits. The Corporation has entered into an option and joint venture agreement with SouthernEra Resources Limited ("SouthernEra") to prospect the Prieska, Makoppa and Mooikloof kimberlite diamond projects in South Africa (the "Projects"), the mineral rights for which are controlled by SouthernEra. It is expected that an aggregate amount of approximately \$624,000 of the net proceeds from the minimum financing will be applied towards the Projects, of which approximately \$231,982 will be spent on the Prieska Project.

6. For the purposes of the filing of the Preliminary Prospectus and the Final Prospectus, the Corporation retained NKS Consulting on June 16, 2000 to prepare a geological report on the Projects specific to the standards dictated by National Policy No. 2-A – Guide for Engineers and Geologists and Prospectors Submitting Reports on Mining Properties to Canadian Provincial Securities Administrators. The sole proprietor of NKS Consulting is Nicholas Karl Smithson ("Smithson"), of 8 Robert Carr Avenue, Tokai, Western Cape, 7945, South Africa, who prepared a report as requested by the Corporation, which report is dated June 28, 2001 ("Smithson's Report"). A copy of Smithson's Report has been filed with the Preliminary Prospectus.

7. Smithson did not complete a personal inspection on the Prieska Project as required by Section 6.2 of the Instrument.

8. The Prieska Project is an early stage property on which very limited exploration work has been done and no resource has been defined to date.

9. Smithson held the position of Exploration Manager for Africa for SouthernEra from April 1998 to April 2000, during which time he became very familiar with the geology and geographic setting of the area in which the Prieska Project is located. Smithson has advised that, during the

## **2002 BCSECCOM 213**

creation of Smithson's Report, he had all of the data he required to prepare his report and that it would not have been beneficial to physically inspect the Prieska Project.

10. Smithson's Report states that Smithson has not visited the Prieska Property. Smithson's Report further states that during Smithson's tenure with SouthernEra, close liaison was always maintained with the contract exploration services company which conducted the diamond exploration on the Prieska Project on behalf of SouthernEra.

11. During his time with SouthernEra, a number of kimberlites were discovered in South Africa and Smithson was responsible for their evaluation. Furthermore, the Prieska Project is located in the Kimberley district of South Africa and Smithson has advised that during his tenure with De Beers and SouthernEra, Smithson worked in this area and became very familiar with its geology and geographic setting. At a due diligence session conducted on June 29, 2001, Smithson stated that during his period of employment with SouthernEra he became familiar with the local geology of the Kimberley district and knew the terrain on the Prieska Project to be flat and featureless.

12. The Final Prospectus will contain disclosure of a scientific or technical nature that is based upon Smithson's Report.

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 Makers with the jurisdiction to make the Decision has been met;

The Decision of the Decision Makers under the Legislation is that the Corporation is exempt from the requirement contained in section 6.2 of the Instrument in connection with the disclosure to be contained in the Final Prospectus that will be based upon Smithson's Report.

DATED August 29th, 2001.

Kathryn Soden