

2009 BCSECCOM 152

February 24, 2009

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203
Process for Exemptive Relief Applications in Multiple Jurisdictions – National
Instrument 51-102, s. 13.1 *Continuous Disclosure Obligations* - National
Instrument 52-109, s. 4.5 *Certification of Disclosure in Issuer's Annual and
Interim Filings* - National Instrument 52-110, s. 8.1 *Audit Committees* - National
Instrument 58-101, s. 3.1 *Disclosure of Corporate Governance Practices* –
General – An issuer wants relief from the requirement in s. 1.1 definition of
“venture issuer”, that a reporting issuer not have any of its securities listed or
quoted on any of the Toronto Stock Exchange, a U.S. marketplace, or a
marketplace outside of Canada and the United States of America other than the
Alternative Investment market of the London Stock Exchange or the PLUS
markets operated by PLUS Markets Group plc, in order to list on the New Zealand
Alternative Market in New Zealand - A venture issuer with common shares listed
on the TSXV wants to list on an exchange that does not meet the requirements of
the definition of a venture issuer; the relevant exchange is a junior market that has
similar requirements as the TSXV; the exchange requires the issuer to comply
with TSXV requirements in order to acquire and maintain listing on that
exchange; to remain a venture issuer, the issuer must continue to have its common
shares listed on the TSXV and the exchange must remain a junior market

Applicable British Columbia Provisions

National Instrument 51-102, ss. 1.1 and 13.1
National Instrument 52-109, ss. 1.1 and 4.5
National Instrument 52-110, ss. 1.1 and 8.1
National Instrument 58-101, ss. 1.1 and 3.1

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
Glass Earth Gold Limited

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(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) for relief from the requirement in the definition of “venture issuer” in section 1.1 of each of National Instrument 51-102 *Continuous Disclosure Obligations*, National Instrument 52-109 *Certification of Disclosure in Issuer's Annual and Interim Filings*, National Instrument 52-110 *Audit Committees* and National Instrument 58-101 *Disclosure of Corporate Governance Practices*, that a reporting issuer not, at the relevant time, have any of its securities listed or quoted on any of the Toronto Stock Exchange, a U.S. marketplace, or a marketplace outside of Canada and the United States of America other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc (the Exemption 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 Alberta.

Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* 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 was incorporated under the *Business Corporations Act* (British Columbia) (formerly the *Company Act* (British Columbia)) on March 23, 1989;
 - 2. the head office of the Filer is located in Wellington, New Zealand;
 - 3. the Filer, through its wholly-owned subsidiary Glass Earth (New Zealand) Limited, is engaged in the acquisition and exploration of mineral properties in New Zealand;

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4. the Filer is a reporting issuer in British Columbia and Alberta (the Jurisdictions);
5. the common shares of the Filer are listed on the TSX Venture Exchange (the TSXV) and on the New Zealand Alternative Market (NZAX);
6. the Filer listed its common shares on the NZAX due to the Filer's connection to New Zealand and to facilitate the sale and transfer of its common shares in New Zealand;
7. the authorized capital of the Filer consists of an unlimited number of common shares without par value. As of February 19, 2009, 154,902,633 common shares of the Filer are issued and outstanding;
8. from October 13, 2006 until the date of this decision, the Filer has been in default of securities legislation requirements in the Jurisdictions that apply to a non-venture issuer;
9. the Filer acknowledges that any right of action, remedy, penalty or sanction available to any person or company or to a securities regulatory authority against the Filer from October 13, 2006 until the date of this decision are not terminated or altered as a result of this decision;
10. the NZAX would be considered the second tier of the New Zealand securities market and the New Zealand Stock Market would be considered the first tier;
11. the NZAX is a junior market;
12. the NZAX is similar to the TSXV in terms of its requirements;
13. the Filer is an "overseas listed NZAX issuer" (OLNI) with the TSXV as its home exchange for the purposes of its listing and quotation on the NZAX;
14. as an OLNI, the Filer is deemed to satisfy and comply with NZAX listing requirements so long as it continues to be listed on the TSXV; and
15. the information the Filer has provided about the NZAX (and its status as a junior market) for the purposes of review by capital markets staff of the British Columbia Securities Commission, is accurate as at the date of the decision.

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.

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The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that:

- (a) the NZAX is not restructured in a manner that makes it unreasonable to conclude that it is still a junior market;
- (b) that Representations 11 through 15 above continue to be true;
- (c) the Filer continues to have its common shares listed on the TSXV; and
- (d) the Filer does not have any of its securities listed or quoted on any of the Toronto Stock Exchange, a U.S. marketplace, or a marketplace outside of Canada and the United States of America other than the NZAX, the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc.

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