

# 2011 BCSECCOM 306

June 10, 2011

## **Headnote**

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions – Securities Act*, s. 88 - *Cease to be a reporting issuer in BC* - The securities of the issuer are beneficially owned by more than 50 persons and are not traded through any exchange or market - The issuer became a wholly owned subsidiary of another company; the issuer has debt securities outstanding that are held by more than 50 holders; there is no market for the debt securities; the issuer is not required under the terms of the debt instrument to provide certain continuous disclosure to the holders of the debt securities as long as the securities are outstanding, or to remain a reporting issuer; the issuer does not intend to do a public offering of its securities to Canadian residents; the issuer will not be a reporting issuer in any Canadian jurisdiction

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, s. 88

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

and

In the Matter of  
the Process for Exemptive Relief  
Applications in Multiple Jurisdictions

and

In the Matter of  
Consolidated Thompson Iron Mines Limited  
(the Applicant)

Decision

## **Background**

The local securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Applicant for a

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decision under the securities legislation of the Jurisdictions (the Legislation) that the Applicant is not a reporting issuer (the Requested Relief).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a coordinated review application):

- a. The Autorité des marchés financiers is the principal regulator for this application; and
- b. The decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

### **Interpretation**

Terms defined terms contained in National Instrument 14-101 – *Definitions* have the same meaning if used in this decision, unless otherwise defined.

### **Representations**

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

1. The Applicant was incorporated under the name Thompson-Lundmark Gold Mines Limited under the laws of Canada pursuant to the *Companies Act, 1934* on August 31, 1938. By articles of continuance effective on November 19, 1980, the Applicant was continued under the *Canada Business Corporations Act* (CBCA). By articles of amalgamation effective on December 18, 1985, Thompson-Lundmark Gold Mines Limited and Hoffman Exploration and Minerals Limited amalgamated to form Consolidated Thompson Lundmark Gold Mines Ltd. under the CBCA. By articles of amalgamation effective July 1, 1989, Consolidated Thompson Lundmark Gold Mines Ltd. amalgamated with 166739 Canada Inc., a wholly-owned subsidiary, under the CBCA. By articles of amalgamation effective on July 1, 1989, Consolidated Thompson Lundmark Gold Mines Ltd. and Quebec Cobalt and Exploration Limited amalgamated under the CBCA to form Consolidated Thompson Lundmark Gold Mines Ltd. By articles of amendment effective August 21, 2006, Consolidated Thompson Lundmark Gold Mines Ltd. changed its name from Consolidated Thompson Lundmark Gold Mines Ltd. to Consolidated Thompson Iron Mines Limited.
2. The Applicant is a reporting issuer in the ten provinces of Canada and is applying for a decision that it is not a reporting issuer in the ten provinces of Canada.
3. The Applicant's head office and registered office is located at 1155 University Street, Suite 508, Montréal, Québec, Canada.

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4. Pursuant to its Articles of Amalgamation dated July 1, 1989, the Applicant is authorized to issue an unlimited number of common shares (the Common Shares). As of May 12, 2011, there were 240,398,020 Common Shares outstanding.
5. Pursuant to a trust indenture (as supplemented or otherwise amended from time to time, the Convertible Debenture Indenture) dated November 29, 2010 between the Applicant and Equity Financial Trust Company, as trustee (the Trustee), the Applicant issued US\$230,000,000 aggregate principal amount of 5% convertible unsecured subordinated debentures maturing on November 30, 2017 (the Debentures). The principal amount outstanding of the Debentures as of May 25, 2011 is US\$229,381,000.
6. Based on a report dated May 20, 2011 from Broadridge, as of May 17, 2011, there were 133 beneficial holders of the Debentures in Canada allocated geographically as follows: 5 in British Columbia, 3 in Alberta, 3 in Manitoba, 93 in Ontario, 22 in Quebec, 3 in New Brunswick and 4 in Nova Scotia. Furthermore, there were 2 beneficial holders of the Debentures in unspecified jurisdictions, which may or may not have been in Canada.
7. Pursuant to an arrangement agreement entered into with the Applicant on January 11, 2011, Cliffs Natural Resources Inc. (Cliffs), a corporation incorporated under the laws of the State of Ohio with its principal executive offices located in Cleveland, Ohio, agreed to acquire all of the outstanding Common Shares pursuant to a plan of arrangement (the Arrangement) for C\$17.25 per Common Share payable in cash. The Arrangement was approved at a special meeting of shareholders of the Applicant held on February 25, 2011 and was subsequently consummated on May 12, 2011.
8. Pursuant to a purchase agreement entered into with Marret Asset Management Inc. and CI Investment Inc. on April 12, 2011 in connection with the Arrangement, Cliffs purchased all of the Applicant's outstanding 8.5% senior secured bonds due 2017 that were issued pursuant to a trust indenture dated as of January 29, 2010 between the Applicant and Computershare Trust Company of Canada in an aggregate principal amount of US\$100,000,000 for a price of US\$122,500,000 plus accrued and unpaid interest.
9. As a result of the consummation of the Arrangement, Cliffs became the sole beneficial owner of all of the outstanding Common Shares. The Common Shares were delisted from the Toronto Stock Exchange (the TSX) on May 13, 2011.

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10. Prior to the consummation of the Arrangement, pursuant to the Convertible Debenture Indenture, the Debentures had been convertible at the option of the holders thereof at a conversion rate of approximately 65.6 Common Shares per US\$1,000 principal amount of Debentures. However, the completion of the Arrangement constituted a "Cash Change of Control" under the Convertible Debenture Indenture, pursuant to which (i) the Debentures are no longer convertible into Common Shares, and (ii) upon the exercise by a holder of Debentures of the conversion right under the Debentures, such holder shall be entitled to receive a payment in cash (a Premium Conversion Payment) per US\$1,000 principal amount of Debentures equal to C\$1,439.78 (plus accrued and unpaid interest) in the case of a conversion occurring until the close of business on June 11, 2011 or C\$1,131.60 (plus accrued and unpaid interest) in the case of a conversion occurring thereafter (it being understood that no conversions will occur thereafter, since the Optional Redemption described below will occur on June 13, 2011, the first business day following June 11, 2011).
11. Pursuant to the Convertible Debenture Indenture, the Applicant is entitled, by giving not less than 15 and not more than 60 days' notice to the Trustee, to redeem (an Optional Redemption) any Debentures that remain outstanding at the time of redemption (which may be any time after the close of business on June 11, 2011) at a redemption price per US\$1,000 principal amount of Debentures equal to C\$1,131.60 (plus accrued and unpaid interest), whereupon the Debentures will no longer be deemed to be outstanding, interest will cease to accrue on the Debentures, and all rights under the Convertible Debenture Indenture of the holders of such Debentures (except for the right to receive the redemption price) will cease. The Applicant delivered to the Trustee on May 13, 2011 a notice of Optional Redemption in respect of any Debentures that remain outstanding on June 13, 2011. Having delivered this notice, the Applicant has done everything necessary in order for the Optional Redemption to occur on June 13, 2011 and cannot withdraw the notice or otherwise stop the Optional Redemption process. Similarly, there is nothing that a holder of Debentures that remain outstanding on June 13, 2011 will be able to do to prevent the Optional Redemption of its Debentures on that date (it being understood that a holder of Debentures may, until the close of business on June 11, 2011, convert its Debentures and thereupon receive a Premium Conversion Payment). Accordingly, no Debentures will remain outstanding after June 13, 2011.
12. As a result of the consummation of the Arrangement, in order to comply with requirements of the Convertible Debenture Indenture, the Applicant delivered to the Trustee an offer (the Offer to Purchase) to purchase all of its outstanding Debentures for 100% of the principal amount thereof (plus accrued and unpaid

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interest) on the terms and conditions set out in the Offer to Purchase. However, pursuant to the terms of the Convertible Debenture Indenture, as a result of the Optional Redemption, this Offer will automatically become void and of no effect on June 13, 2011.

13. Pursuant to the Convertible Debenture Indenture, the Applicant is entitled to cause the Trustee to release and discharge the Convertible Debenture Indenture and to release the Applicant from its covenants therein contained other than the provisions relating to the indemnification and the payment of remuneration and expenses of the Trustee (a Discharge), upon proof being given to the reasonable satisfaction of the Trustee that all the Debentures having been duly called for redemption, payment of the principal of and interest on such Debentures and of all other monies payable under the Convertible Debenture Indenture has been duly and effectually provided for in accordance with the provisions of the Convertible Debenture Indenture.
14. On May 20, 2011, the Applicant satisfied the conditions of a Discharge, including the deposit with the Trustee of an amount of funds sufficient for that purpose. As a result, the Trustee holds sufficient funds to pay (and will pay such funds to) any holders of Debentures who elect to convert their Debentures and receive a Premium Conversion Payment, as well as any holders of Debentures that are redeemed pursuant to the Optional Redemption. Accordingly, the Debentures have been fully Discharged, the Applicant has been released from its covenants under the Convertible Debenture Indenture and no longer has any obligation under the Convertible Debenture Indenture to maintain a listing of the Debentures on the TSX or to maintain its status as a reporting issuer, or to make payments of any kind on the Debentures, and the holders of the Debentures no longer have any right to require the Applicant to deliver any disclosure documents to them.
15. The Debentures were delisted from the TSX on May 30, 2011. As a result, there is no organized market for the Debentures in Canada.
16. No securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*.
17. Other than the Debentures, the outstanding securities of the Applicant, including debt securities, are beneficially owned by Cliffs.
18. The Applicant has no intention to seek financing by way of a public offering of its securities in Canada.

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19. The Debentures no longer have the characteristics of an outstanding security, as they only represent a right to receive a fixed amount of cash, the aggregate amount of which was deposited with the Trustee in connection with the Discharge. There is no longer any benefit or risk related to the ownership of the Debentures of the Applicant.
20. The Applicant is not in default of any of its obligations under the Legislation as a reporting issuer.
21. The Applicant did not apply to revoke its status as a reporting issuer under the simplified procedure in CSA Staff Notice 12-307 *Applications for a decision that an Issuer is not a Reporting Issuer* (CSA Staff Notice 12-307) or British Columbia Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status* (Instrument 11-502) because it does not meet the criteria set out in CSA Staff Notice 12-307 and Instrument 11-502.

### **Decision**

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 Requested Relief is granted.

Louis Morisset  
Superintendant, Securities Markets  
Autorité des marchés financiers