

2009 BCSECCOM 206

Headnote

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

Endeavour Silver Corp.

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

Background

- ¶ 1 Endeavour Silver Corp. (Endeavour) 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 Endeavour represents that:
1. it was incorporated under the laws of British Columbia on March 11, 1981;
 2. its authorized share capital consists of an unlimited number of common shares, of which 51,507,018 common shares were issued and outstanding as at March 17, 2009;
 3. it is a reporting issuer in British Columbia, Alberta, Ontario and Quebec and is not in default of any requirements of the securities legislation in these jurisdictions;
 4. its common shares are listed for trading on the Toronto Stock Exchange and on the NYSE Amex Equities stock exchange (formerly, the American Stock Exchange) (AMEX);
 5. it is the beneficial owner of 100% of the issued and outstanding share capital of Minera Plata Adelante, S.A. de C.V. (the Endeavour Subsidiary);
 6. the Endeavour Subsidiary is a corporation incorporated under the laws of Mexico and is not a reporting issuer in any province or territory of Canada;

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7. the Endeavour Subsidiary and Endeavour are parties to an option agreement dated February 9, 2009 (the Option Agreement) with a third party (the Owner), under which the Endeavour Subsidiary has an option to acquire a 100% interest (the Option) in certain mineral concessions located in Mexico (the Property) from the Owner;
8. under the laws of Mexico, only Mexican citizens and Mexican corporations can hold mineral concessions;
9. the Option Agreement provides that the Endeavour Subsidiary may acquire the Property by paying the Owner an aggregate of US\$700,000, of which US\$600,000 may be paid by issuing common shares of Endeavour (the Endeavour Shares) to the Owner over a period of two years; the number of Endeavour Shares that may be issued to the Owner will be calculated based on the ten-day average closing trading price of the Endeavour Shares on the AMEX on certain dates;
10. upon the exercise of the Option under the Option Agreement, the Endeavour Subsidiary will have acquired all of the Owner's right and interest in and to the Property;
11. the TSX has approved of the issuance of the Endeavour Shares under the Option Agreement;
12. if Endeavour acquired the Property directly rather than through its wholly-owned subsidiary, the Endeavour Subsidiary, Endeavour 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 Endeavour Shares as part of the consideration for the Property.

Order

¶ 3 Considering that it is not prejudicial to the public interest, the Commission orders that:

1. under sections 48 and 76 of the Act, Endeavour is exempt from the registration and prospectus requirements for trades of the Endeavour Shares to the Owner or the Owner's designees under the Option Agreement, provided that:
 - (a) prior to any trade of the Endeavour Shares pursuant to the Option Agreement, Endeavour will, for as long as the Endeavour Shares are posted and listed for trading on the AMEX, apply for and obtain the AMEX's approval for such trade; and

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- (b) Endeavour files a Form 45-106F1 and pays the required fee within 10 days of each distribution; and
- 2. under section 76 of the Act, any trade in the Endeavour Shares issued under this Order is deemed to be a distribution unless the conditions in subsection 2.5(2) of National Instrument 45-102 *Resale of Securities* are satisfied.

¶ 4 April 15, 2009

Noreen Bent
Manager, Legal Services, Corporate Finance
British Columbia Securities Commission