

2005 BCSECCOM 74

February 2, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 48, 76 Corp Acquisitions & Reorgs - Exemption from s. 34(1)(a) requirement to be registered as a dealer for a trade and s. 61 requirement to file a prospectus for a distribution - Trades by an issuer to its shareholders in securities of another company that it owns (e.g. spin-off transactions) - The issuer holds shares of a non-reporting issuer that it will transfer to its shareholders in exchange for its own shares held by those shareholders; the issuer would be able to rely on the exemptions contained in sections 45(2)(14) and 74(2)(13) of the Act to transfer the shares but for the fact that, for tax reasons, the transfer is not being done as a dividend in specie and because the issuer of the shares to be transferred is not a reporting issuer; the transfer of the shares will result in the shareholders of the issuer holding directly their interests in certain properties as opposed to indirectly through their shareholdings of the issuer; the shareholders of the issuer voted on and approved the transfer of shares

Applicable British Columbia Provisions

Securities Act, R.S.B.C.1996, c. 418, ss. 48 and 76

In the Matter of
the Securities Legislation
of British Columbia and Alberta (the Jurisdictions)

and

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

and

In the Matter of Southern Arc Minerals Inc. (Southern Arc) and Sunda Mining Corporation (Sunda) (collectively, the Filer)

MRRS Decision Document

Background

- ¶ 1 The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer(s) for a decision under the securities legislation of the Jurisdictions (the Legislation) that the

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registration requirement and the prospectus requirement of the Legislation do not apply to the proposed distribution by Sunda of certain common shares of Southern Arc held by Sunda to holders of common shares of Sunda.

Under the Mutual Reliance Review System for Exemptive Relief Applications

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

Interpretation

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

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer(s):
1. Southern Arc is a private corporation and was incorporated pursuant to the British Columbia Business Corporations Act on August 19, 2004;
 2. Sunda is a private corporation and was incorporated pursuant to the British Columbia Company Act on March 21, 2003;
 3. the head offices of Southern Arc and Sunda are located in British Columbia;
 4. the authorized capital of Southern Arc consists of an unlimited number of common shares (Common Shares), of which 9,000,001 are currently issued and outstanding;
 5. Southern Arc is not currently a reporting issuer or the equivalent in any jurisdiction and its securities are not currently listed on any exchange or quotation system;
 6. Southern Arc and Sunda entered into an assignment agreement (Assignment Agreement) on November 24, 2004;
 7. under the Assignment Agreement, Sunda agreed to assign its interest in certain mining properties located in Indonesia (Properties) to Southern Arc in exchange for the issuance by Southern Arc to Sunda of 11,500,000 Common Shares (Consideration Shares) to Sunda;
 8. under the Assignment Agreement, Southern Arc has covenanted to file a prospectus with the British Columbia, Alberta, and Ontario Securities

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Commissions (Commissions) in connection with an offering of its Common Shares and to make application to the TSX Venture Exchange (TSXV) to have its Common Shares listed for trading on the TSXV;

- 9 if Southern Arc receives a receipt from the Commissions for its prospectus it will become a reporting issuer in British Columbia, Alberta and Ontario;
- 10 the Consideration Shares to be issued to Sunda by Southern Arc will be issued under exemptions from the registration and prospectus requirements contained in the Legislation;
- 11 Sunda wishes to transfer 11,016,770 of the Consideration Shares to its shareholders (Transfer) on a pro-rata basis in exchange for the common shares of Sunda held by Sunda's shareholders;
- 12 on September 30, 2004, shareholders of Sunda passed a special resolution approving the Assignment Agreement and the Transfer; and
- 13 there are no exemptions from the registration and prospectus requirements available under the Legislation for the Transfer.

Decision

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

The decision of the Decision Makers under the Legislation is that the registration and prospectus requirements shall not apply to the Transfer provided that:

1. Any subsequent trade in Consideration Shares acquired under this decision shall be deemed to be a distribution unless the conditions in 2.5(2) of Multilateral Instrument 45-102 *Resale of Securities* are satisfied.

Andrew S. Richardson, CA
Deputy Director, Corporate Finance
British Columbia Securities Commission