

# 2006 BCSECCOM 726

November 30, 2006

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-102, s.13.1 – Continuous Disclosure Obligations - *Prospectus-level disclosure relief*: Information circular - An issuer wants relief from the requirement to include prospectus-level disclosure in an information circular to be circulated in connection with an arrangement, reorganization, acquisition or amalgamation - The securities that are being issued will only be outstanding for a short period of time before they are redeemed for cash; the securities are being issued for tax reasons only, not so the shareholders continue to have an interest in the issuer; finances have been secured to fund the redemption of the securities - *Executive compensation disclosure relief*: Information circular - An issuer wants relief from the requirement to include disclosure in its information circular regarding executive compensation, indebtedness of directors, and securities authorized for issuance under equity compensation plans - The required disclosure is not relevant to the matters to be dealt with at the meeting for which the information circular is required

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 117 and 119

National Instrument 51-102, s.13.1

Form 51-102F5, Items 8, 10 and 14.2

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

and

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

and

In the Matter of  
Inco Limited  
(the Filer)

MRRS Decision Document

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### Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) exempting the Filer from the requirement to include prospectus-level disclosure in respect of Amalco (as defined below), executive compensation disclosure of the Filer and disclosure as to the indebtedness of directors, and executive officers of the Filer, in a management information circular of the Filer (the Circular) relating to a special meeting of its shareholders to be held to approve the amalgamation of the Filer with another company in accordance with the Legislation (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

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

### Interpretation

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

### Representations

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

1. The Filer is a corporation continued under the *Canada Business Corporations Act* (the CBCA). The authorized capital of the Filer consists of an unlimited number of common shares (Common Shares) and 45 million preferred shares, issuable in series. As at November 3, 2006, there were 223,266,026 Common Shares issued and outstanding and there are no other shares of any class or series outstanding. The Common Shares are listed on the Toronto Stock Exchange under the symbol "N". The Common Shares were de-listed from the New York Stock Exchange on November 17, 2006.
2. The Filer is a reporting issuer or the equivalent thereof in each of the Jurisdictions. The Filer is not, to its knowledge, in default of its reporting issuer obligations under the Legislation.
3. Pursuant to an offer (the Offer) made August 14, 2006, as amended by a Notice of Variation and Extension dated September 26, 2006, a Notice of Variation and Extension dated October 13, 2006, and a Notice of Extension and Subsequent Offering Period dated October 24, 2006, CVRD Canada Inc.

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(CVRD Canada), a wholly-owned indirect subsidiary of Companhia Vale do Rio Doce (CVRD), offered to purchase all of the issued and outstanding Common Shares at a price of Cdn.\$86.00 per Common Share.

4. CVRD Canada is incorporated under the CBCA. The principal office of CVRD Canada is located at 5300 Commerce Court West, 199 Bay Street, Toronto, Ontario, Canada. CVRD Canada was incorporated solely for the purpose of making the Offer and is not a reporting issuer in any Jurisdiction.
5. On October 23, 2006, CVRD Canada acquired, pursuant to the Offer, 174,623,019 Common Shares. During the subsequent offering period that expired on November 3, 2006, CVRD Canada acquired an additional 21,455,257 Common Shares. After giving effect to the transactions referred to above, CVRD Canada beneficially owns 196,078,276 Common Shares, representing approximately 86.57% of the outstanding Common Shares on a fully diluted basis.
6. CVRD Canada has requested that the Filer call a special meeting of shareholders (the Meeting) to approve, *inter alia*, the Amalgamation. At the Meeting, the Filer will seek, among other things, the requisite approval of its shareholders in respect of a special resolution to approve the proposed amalgamation (the Amalgamation) upon the terms and conditions set forth in an amalgamation agreement between the Filer and Itabira Canada Inc. (Itabira Canada), a wholly-owned, indirect subsidiary of CVRD Canada (the Amalgamation Agreement), the material terms of which will be described in Circular. The matters to be determined at the Meeting do not relate to the performance or compensation of the officers or directors of the Filer.
7. In connection with the Meeting, the Filer expects to mail, by no later than December 13, 2006, to each holder of Common Shares (i) a notice of the Meeting; (ii) a management information circular; (iii) a form of proxy; and (iv) a letter of transmittal, which will be prepared in accordance with the CBCA and applicable securities laws.
8. Pursuant to the Amalgamation, among other things, Itabira Canada and the Filer will amalgamate to form Amalco. Holders of Common Shares (other than dissenting shareholders and CVRD Canada and its affiliates) will receive one Class A redeemable preferred share in the capital of Amalco (a Class A Redeemable Preferred Share) for each Common Share held immediately prior to the Amalgamation, and Itabira North America Inc. (Itabira North America), a wholly-owned, indirect subsidiary of CVRD Canada, will receive all of the common shares in the capital of Amalco. Itabira North America

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will become the sole holder of common shares of Amalco following the completion of the Amalgamation.

9. Immediately following the effective time of the Amalgamation, each Class A Redeemable Preferred Share will be redeemed by Amalco (the Redemption) for a cash amount equal to Cdn.\$86.00 per share (the Redemption Amount), which is the same consideration paid by CVRD Canada under the Offer. No new certificates evidencing the Class A Redeemable Preferred Shares will be issued to the holders of Common Shares; they will continue to hold their Common Share certificates until exchanged for the aggregate Redemption Amount represented by such certificates as provided for in the Amalgamation Agreement. The Redemption is the final step in the Amalgamation.
10. The Legislation in the Jurisdictions requires that, subject to the Requested Relief being granted, the Circular include the prospectus-level disclosure of Amalco, executive compensation disclosure of the Filer and disclosure as to the indebtedness of directors and executive officers of the Filer.
11. No action is to be taken at the Meeting on any matter involving executive compensation or the indebtedness of directors or executive officers, and neither disclosure as to executive compensation nor disclosure as to indebtedness of directors and executive officers would reasonably be expected to affect a shareholder's decision whether or not to vote in favour of the Amalgamation.
12. The consideration paid by Amalco on the Redemption will be funded directly or indirectly by CVRD Canada or CVRD. CVRD Canada has advised the Filer that it intends to ensure that Amalco will have sufficient funds to pay in full the aggregate Redemption Amount on the Redemption.

### **Decision**

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 Requested Relief is granted provided that the Filer complies with all other provisions of the Legislation applicable to the Circular and to the Amalgamation.

Jo-Anne Matear  
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Ontario Securities Commission