

2002 BCSECCOM 903

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief granted to permit a newly formed issuer to file an annual information form despite not having completed a financial year – issuer formed to complete a spin off by way of plan of arrangement with a reporting issuer under the *Company Act*

Applicable British Columbia Provisions

Multilateral Instrument 45-102 *Resale of Securities* – s. 9.1

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA AND ALBERTA

AND

IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF DIAMONDS NORTH RESOURCES LTD.

MRRS DECISION DOCUMENT

- ¶ 1 WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia and Alberta (the “Jurisdictions”) has received an application from Diamonds North Resources Ltd. (the “Filer”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirement contained in the Legislation to have a “current AIF” (a “Current AIF”) as defined in Multilateral Instrument 45-102 *Resale of Securities* (“MI 45-102”) filed on SEDAR to be a “qualifying issuer” (a “Qualifying Issuer”) under MI 45-102 shall not apply to the Filer;
- ¶ 2 AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the British Columbia Securities Commission is the principal regulator for this application;
- ¶ 3 AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions* or in Québec Commission Notice 14-101;
- ¶ 4 AND WHEREAS the Filer has represented to the Decision Makers that:

2002 BCSECCOM 903

1. the Filer was incorporated under the *Company Act* (British Columbia) on February 13, 2002;
 2. the Filer's authorized share capital is 100,000,000 common shares without par value of which 10,096,449 shares are outstanding;
 3. the Filer is a reporting issuer in the Jurisdictions and is not in default of any requirement under the Legislation;
 4. the Filer is listed on the TSX Venture Exchange;
 5. the Filer was formed for the purposes of completing an arrangement (the "Arrangement") with Commander Resources Ltd. (formerly Major General Resources Ltd.) ("Commander");
 6. under the Arrangement, which closed on May 3, 2002, Commander separated and transferred its diamond property interests to the Filer;
 7. Commander is a reporting issuer in each of the Jurisdictions, has filed all its annual financial statements, and at the time of the Arrangement was a Qualified Issuer;
 8. the Filer filed a final prospectus dated June 24, 2002 (the "Prospectus") in connection with its initial public offering;
 9. a receipt was issued for the Prospectus in each of the Jurisdictions;
 10. the Prospectus included audited financial statements as of March 31, 2002, and an unaudited *pro forma* balance sheet giving effect to the closing of the Arrangement;
 11. to be a Qualifying Issuer under MI 45-102, the Filer must have a Current AIF that contains audited financial statements for the Filer's most recently completed financial year filed on SEDAR; and
 12. as the Filer has not yet completed a full financial year, its Current AIF cannot contain audited financial statements for its most recently completed financial year;
- ¶ 5 AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

2002 BCSECCOM 903

- ¶ 6 AND WHEREAS 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;
- ¶ 7 THE DECISION of the Decision Makers under the Legislation is that the requirement in the Legislation to have a Current AIF filed on SEDAR in order to be a Qualifying Issuer under MI 45-102 shall not apply to the Filer provided that:
- (a) the Filer files a notice on SEDAR advising that it has filed the Prospectus as an alternative form of annual information form and identifying the SEDAR project number under which the Prospectus was filed;
 - (b) the Filer files a Form 45-102F2 on or before the tenth day after the distribution date of any securities certifying that it is a Qualifying Issuer except for the requirement that it have a Current AIF; and
 - (c) this Decision expires 140 days after the Filer's financial year ended December 31, 2002.
- ¶ 8 DATED October 25, 2002.

Brenda Leong
Director