

2006 BCSECCOM 211

Headnote

An issuer wants relief from the requirement to include a certificate signed by each underwriter in the prospectus

Exemption Order

Pan American Silver Corp.

Section 76 of the *Securities Act*, R.S.B.C. 1996, c. 418

Background

- ¶ 1 Pan American Silver Corp. (Pan American) applied under section 76 of the Act for an exemption from the requirement in section 69(1) of the Act that an underwriter that is in a contractual relationship with the issuer must sign a certificate to the prospectus.

Representations

- ¶ 2 Pan American represents that:
1. it is incorporated under the laws of British Columbia with its head office in British Columbia;
 2. its mind and management is primarily located in British Columbia and its business is administered from British Columbia;
 3. it is a reporting issuer in British Columbia and is not in default of its requirements under securities legislation in British Columbia;
 4. it filed a short form base shelf prospectus (the Shelf Prospectus) dated February 9, 2005 under National Instrument 44-102 – *Shelf Distributions* qualifying the distribution, from time to time, of among other securities, its common shares, and concurrently filed the Shelf Prospectus on a registration statement (the Registration Statement) on Form F-10 with the United States Securities and Exchange Commission (the SEC);

2006 BCSECCOM 211

5. on April 5, 2006, it filed a preliminary prospectus supplement to the Shelf Prospectus (the Preliminary Prospectus Supplement) with the securities regulatory authorities in each of the provinces and territories of Canada, and at the same time filed the Preliminary Prospectus Supplement as an amendment to the Registration Statement with the SEC, in connection with a public offering of common shares in Canada and the United States (the Offering);
6. it will file a final prospectus supplement (the Final Prospectus Supplement) to the Shelf Prospectus and a further amendment to the Registration Statement in connection with the Offering;
7. the Offering will take place pursuant to an underwriting agreement (the Underwriting Agreement) to be dated as of the date of the Final Prospectus Supplement and entered into among Pan American and Bear, Stearns & Co. Inc., Harris Nesbitt Corp., CIBC World Markets Corp., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Canaccord Capital Corporation (USA), Inc. and NBF Securities (USA) Corp. (together, the US Underwriters);
8. section 69(1) of the Act provides that if an underwriter is in a contractual relationship with an issuer of securities offered by a prospectus, the prospectus must contain a certificate signed by that underwriter;
9. BMO Nesbitt Burns Inc., CIBC World Markets Inc., Merrill Lynch Canada Inc., Canaccord Capital Corporation and National Bank Financial Inc. (together, the Canadian Underwriters), each of which is a Canadian affiliate of one of the US Underwriters, will act as underwriters of the Offering in Canada, and the US Underwriters will act as underwriters of the Offering in the United States;
10. the US Underwriters are not registered to trade in securities in Canada and cannot sell to Canadian investors as part of the Offering;
11. without this relief, the certificate in the Final Prospectus Supplement would have to be signed by each of the US Underwriters because:
 - (a) they are all underwriters as defined in section 1(1) of the Act;
 - (b) due to the facts set out in representations 1 and 2, the sale of the common shares would generally be a distribution in British Columbia; and
 - (c) because they are parties to the Underwriting Agreement, they will all be in a contractual relationship with Pan American as an issuer of the securities offered by a prospectus;

2006 BCSECCOM 211

12. the Canadian Underwriters signed the underwriters' certificate in the Preliminary Prospectus Supplement and will sign the underwriters' certificate in the Final Prospectus Supplement; and
13. the US Underwriters did not sign the underwriters' certificate in the Preliminary Prospectus Supplement and will not sign the underwriters' certificate in the Final Prospectus Supplement.

Order

¶ 3 Because it would not be prejudicial to the public interest, the Commission orders that, under section 76(1) of the Act, Pan American is exempt from the requirements of section 69(1) of the Act that requires the US Underwriters to sign the underwriters' certificate in the Final Prospectus Supplement.

¶ 4 April 7, 2006

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