

# 2011 BCSECCOM 334

June 30, 2011

## Headnote

National Instrument 44-101, s. 8.1 - *Short Form Prospectus Distributions* - The filer wants to file its short form prospectus less than 10 days after it files its notice of intention to file a short form prospectus - The issuer has a current annual information form - The issuer believed it was eligible to file a short form prospectus without first filing a notice under the transitional provisions in s. 2.8(4) - The issuer could suffer significant prejudice if it has to delay filing its preliminary prospectus.

Securities Act s. 169 *Confidentiality* – An applicant wants to keep an application and order confidential for a limited amount of time after the order is granted – The record provides intimate financial, personal or other information. The disclosure of the information before a specific transaction would be detrimental to the person affected. The information will be made available after a specific date.

## Applicable Legislative Provisions

NI 44-101, s. 8.1 - *Securities Act*, R.S.B.C. 1996, c. 418, s. 169

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

and

In the Matter of  
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of  
Tanzanian Royalty Exploration Corporation  
(the Filer)

Decision

## Background

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

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- (a) the Filer be exempted from the requirement contained in section 2.8 of National Instrument 44-101 – *Short Form Prospectus Distributions* to file a notice declaring its intention to be qualified to file a short form prospectus (Notice of Intention) at least ten business days prior to the filing of its first preliminary short form prospectus (the Notice of Intention Relief); and
- (b) the Application and this decision be held in confidence by the Decision Maker (the Confidentiality Relief).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (a) the British Columbia Securities Commission is the principal regulator for this application,
- (b) the Filer has provided notice that Section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

### **Interpretation**

- ¶ 2 Terms defined in National Instrument 14-101 and MI 11-102 have the same meanings if used in this decision, unless otherwise defined.

### **Representations**

- ¶ 3 This decision is based on the following facts represented by the Filer:
1. the Filer is a corporation incorporated under the *Business Corporations Act* (Alberta), with a head office in British Columbia;
  2. the Filer's common shares are listed on the Toronto Stock Exchange under the symbol "TNX" and on the NYSE Amex Equities under the symbol "TRX";
  3. the Filer is a reporting issuer in British Columbia, Ontario and Alberta; the Filer has filed the required continuous disclosure documents with the securities commissions or similar regulatory authorities in each of the Jurisdictions;
  4. the Filer is not in default of the requirements of applicable securities legislation in the Jurisdictions;

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5. the Filer is a foreign private issuer subject to reporting requirements under the *Securities Exchange Act of 1934* of the United States of America, as amended from time to time;
6. the Filer has filed an annual information form as required under applicable disclosure requirements since 2000; the Filer's most current annual information form is dated November 29, 2010;
7. subsection 2.8(1) of NI 44-101 provides that an issuer is not qualified to file a short form prospectus unless it has filed a Notice of Intention to be qualified to file a short form prospectus at least ten business days prior to the issuer filing its first preliminary short form prospectus; for the purposes of section 2.8, if, on December 29, 2005, an issuer had a current annual information form, the issuer is deemed to have filed a notice on December 14, 2005 declaring its intention to be qualified to file a short form prospectus pursuant to subsection 2.8(4) of NI 44-101;
8. the Filer believed that it was currently eligible to file a short form prospectus, without first filing a Notice of Intention, under the transitional provisions in subsection 2.8(4) of NI 44-101;
9. while the Filer did have an annual information form as at December 29, 2005, the Filer is not listed on Appendix A of CSA Notice 44-302, which lists issuers grandfathered under section 2.8 of NI 44-101;
10. the Filer is currently in discussions with an underwriter concerning a potential bought deal offering (the "Potential Offering") in Canada and the United States;
11. the underwriter has indicated to the Filer that there is a limited window of opportunity within which to launch the Potential Offering;
12. on June 24, 2011, the Filer, on reviewing the CSA Notice 44-302, Appendix A, and noticing that its name did not appear on the list of issuers with a "current AIF" on December 29, 2005, filed a Notice of Intention; in the absence of the Requested Relief, the Filer will not be qualified to file a preliminary short form prospectus until July 11, 2011; and
13. the Filer has been advised by the underwriter that the inability to file a preliminary short form prospectus until July 11, 2011 will preclude the Filer from taking advantage of the existing window of opportunity in the market, and that it is highly unlikely that the Potential Offering will proceed unless the

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preliminary short form prospectus can be filed sooner, thereby causing significant prejudice to the Filer.

### **Decision**

- ¶ 4 Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that

- (a) the Notice of Intention Relief is granted;
- (b) the Confidentiality Relief is granted until the earlier of
  - (i) the date the Filer publicly announces the Potential Offering;
  - (ii) the date that a preliminary short form prospectus is filed in respect of the Potential Offering; and
  - (iii) the date that is 90 days from the date of this decision.

Martin Eady, CA  
Director, Corporate Finance  
British Columbia Securities Commission