

2008 BCSECCOM 158

February 25, 2008

Headnote

Mutual Reliance Review System for Exemptive Relief Applications

National Instrument 44-101, s. 8.1 - Short Form Prospectus Distributions –
Qualification criteria - Qualification - An issuer wants relief from the qualification criteria in NI 44-101 so it can file a short form prospectus - The issuer is a new reporting issuer that is the continuation of an existing business; the issuer satisfies all the criteria for the exemption in s. 2.7 except that the audited comparative annual financial statements incorporated in its final prospectus are not its own, but are the financial statements of the existing business

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 British Columbia Provisions

National Instrument 44-101 *Short Form Prospectus Distributions*, ss. 2.2 and 8.1
Securities Act, R.S.B.C. 1996, c. 418, s. 169

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario,
Quebec, Nova Scotia, New Brunswick, Prince Edward Island,
Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut
(the “Jurisdictions”)

and

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

and

In the Matter of
Franco-Nevada Corporation
(the “Applicant”)

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MRRS Decision Document

Background

The local securities regulatory authority or regulator (the “Decision Maker”) in each of the Jurisdictions has received an application from the Applicant for:

- (a) a decision under the securities legislation of the Jurisdictions (the “Legislation”) for an exemption pursuant to section 8.1 of National Instrument 44-101 *Short Form Prospectus Distributions* (“NI 44-101”) from the requirement in section 2.2(d) of NI 44-101 that an issuer has filed an annual information form (“AIF”) and current annual financial statements in at least one jurisdiction in which it is a reporting issuer, in order to qualify to file a short form prospectus under NI 44-101 (the “Requested Relief”); and
- (b) a decision in every Jurisdiction (the “Confidentiality Relief”) that the application for this decision and this decision be kept confidential until the earliest to occur of:
 - (i) March 30, 2008;
 - (ii) the date on which the Applicant publicly announces the Proposed Offering, and
 - (iii) the date on which the Applicant advises the Decision Makers that there is no longer any need for the application for this decision and this decision to remain confidential.

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 Applicant:

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1. The Applicant is a company existing under the *Canadian Business Corporations Act* with its head office and registered office located in Toronto, Ontario.
2. The financial year end of the Applicant is December 31.
3. The Applicant was formed in October 2007 to acquire an established portfolio of mining and oil and natural gas royalties and certain equity interests, which had historically produced stable cash flow.
4. The Applicant is a reporting issuer in each of the Provinces and Territories of Canada.
5. The Applicant's authorized capital consists of an unlimited number of common shares and an unlimited number of preferred shares of which 88,800,000 common shares are currently outstanding.
6. The Applicant's common shares are listed on the Toronto Stock Exchange under the symbol "FNV" and the Applicant's operations have not ceased.
7. On November 30, 2007, the Applicant filed and obtained a receipt for a final prospectus (the "IPO Prospectus") in connection with its initial public offering of common shares.
8. The Applicant's initial public offering of common shares closed on December 20, 2007 and the Applicant raised aggregate gross proceeds of approximately \$1.2 billion.
9. The proceeds of the Applicant's initial public offering were used primarily in connection with the acquisition of a royalty portfolio (the "Royalty Portfolio") consisting of approximately 190 royalty interests in precious and base metal properties and certain equity interests and over 100 royalty and/or working interests in oil and natural gas properties from Newmont Mining Corporation ("Newmont").
10. The IPO Prospectus included the following financial statements:
 - (i) the audited opening balance sheet of the Applicant as at October 19, 2007;
 - (ii) the audited combined balance sheets of the Royalty Portfolio as of December 31, 2006 and 2005 and the related combined statements of

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income, changes in owner's net investment and cash flows for each of the three years ended December 31, 2006;

(iii) the unaudited combined balance sheets of the Royalty Portfolio as at September 30, 2007 and December 31, 2006 and the related combined statements of income and comprehensive income, changes in owner's net investment and statement of cash flows for each of the nine months ended September 30, 2007 and 2006; and

(iv) the unaudited *pro forma* combined balance sheet of the Applicant as at September 30, 2007 and the related unaudited *pro forma* combined statements of income for the nine month period then ended and for the year ended December 31, 2006.

11. The Applicant is, to the best of its knowledge, not in default of any requirement of Canadian securities laws.
12. The Applicant is an electronic filer under National Instrument 13-101 respecting the System for Electronic Document Analysis and Retrieval (SEDAR).
13. The Applicant has filed with the securities regulatory authority in each Jurisdiction all periodic and timely disclosure documents that it is required to have filed in the Jurisdictions under the Legislation.
14. The Applicant wishes to file a short form prospectus pursuant to NI 44-101 on or before February 26, 2008 in order to raise funds necessary to acquire further royalty interests and general working capital purposes (the "Proposed Offering").
15. The audited financial statements of the Applicant for the period ended December 31, 2007 are not required to be filed under National Instrument 51-102 *Continuous Disclosure Obligations* until March 30, 2008. Such financial statements will not be ready for filing with the securities regulatory authorities until shortly before March 30, 2008.
16. Except for not having filed a current AIF and current annual financial statements, in at least one jurisdiction in which the Applicant is a reporting issuer, the Applicant would be qualified to file a prospectus in the form of a short form prospectus pursuant to NI 44-101.
17. The Applicant has not been exempted from the requirement of the applicable continuous disclosure rule to file annual financial statements and the Applicant

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has not yet been required under the continuous disclosure rule to file such financial statements.

18. Under section 2.7 of NI 44-101, an issuer that has filed and obtained a receipt for a prospectus that included the issuer's comparative annual financial statements for its most recently completed financial year or the financial year immediately preceding its most recently completed financial year is exempted from the requirements to have a current AIF and current annual financial statements in order to be entitled to file a short form prospectus (the "New Reporting Issuer Exemption"). However, the comparative annual financial statements contained in the IPO Prospectus are not the financial statements of the Applicant, but rather those of the Royalty Portfolio, now the business of the Applicant, and which was acquired using the proceeds of the initial public offering.
19. The Applicant's acquisition of the Royalty Portfolio from Newmont does not represent a change in substance of the business of the Royalty Portfolio and therefore it is appropriate for the Applicant to present comparative financial information for the Royalty Portfolio prior to its acquisition by the Applicant.
20. If the Requested Relief is granted, the Applicant will incorporate by reference in a preliminary short form prospectus and a short form prospectus, all of the financial statements included in the IPO Prospectus as set forth in paragraph 10 above.
21. It is not contrary to the public interest for the comparative financial statements of the Royalty Portfolio presented in the IPO Prospectus to be considered as being the annual financial statements of the Applicant, and in particular, because investors in the proposed new offering would be investing based on the same financial information as in the initial public offering. Given that the initial public offering closed only on December 20, 2007, and the Applicant only acquired the Royalty Portfolio as of that date, this information would be materially the same, as financial statements of the Applicant for December 31, 2007, would only contain 11 days of operations from December 20, 2007 to December 31, 2007.
22. The Applicant has requested confidentiality of this decision as the Applicant intends to proceed to a public offering and has not made its intent public, and the ability of the Applicant to access equity markets on favourable terms if this decision was made public would be compromised.

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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 this decision has been met.

The decision of the Decision makers under the Legislation is that the Requested Relief is granted, so long as:

- (a) the Applicant is not exempt from the requirement in the applicable continuous disclosure rule to file annual financial statements within the prescribed period after its financial year end;
- (b) has not yet been required under the applicable continuous disclosure rule to file annual financial statements;
- (c) the Applicant's business continues to be, in all material respects, the same as described in the IPO Prospectus;
- (d) the Applicant includes or incorporates by reference in a preliminary short form prospectus and short form prospectus if either is filed prior to the filing of annual financial statements of the Applicant and an AIF under the applicable continuous disclosure rule (i) all of the financial statements included in the IPO Prospectus, and (ii) the information that would otherwise have been required to have been included in a current AIF.

The further decision of the Decision Makers under the Legislation is that the Confidentiality Relief is granted.

Erez Blumberger
Manager, Corporate Finance
Ontario Securities Commission