

2012 BCSECCOM 413

November 2, 2012

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions – Securities Act*, s. 88 - Cease to be a reporting issuer

The securities of the issuer are beneficially owned by not more than 50 persons and are not traded through any exchange or market; the issuer falls within the definition of “closely held reporting issuer” contained in BC Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status* as the securities of the issuer are beneficially owned by not more than 50 persons and are not traded through any exchange or market.

The filer’s securities are traded only on a market or exchange outside of Canada; Canadian residents own less than 2% of the issuer’s securities and represent less than 2% of the issuer’s total number of security holders; the issuer does not intend to do a public offering of its securities to Canadian residents, will not be a reporting issuer in a Canadian jurisdiction, is subject to the reporting requirements of foreign securities laws, and all shareholders receive or have access, in accordance with the foreign securities laws, to the same disclosure.

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s.88

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba
Ontario and Nova Scotia
(the Jurisdictions)

and

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

and

In the Matter of
Allied Gold Mining Plc and St. Barbara Limited
(the Filers)

Decision

Background

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- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (each a “Decision Maker”) has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the Filers are not reporting issuers in the Jurisdictions (the “Exemptive Relief Sought”).

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

- (a) the Ontario Securities Commission (the “Principal Regulator”) is the principal regulator for this application; and
- (b) this decision is the decision of the Principal Regulator and evidences the decision of each other Decision Maker.

Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined herein.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filers:

Allied Gold Mining PLC

1. Allied Gold Mining PLC (“Allied Gold”) is a Pacific Rim gold producer, developer and exploration company.
2. Allied Gold’s principal place of business is located at Building 23, Garden Office Park, 2404 Logan Road, Eight Mile Plains, Queensland, 4113, Australia. Allied Gold’s registered office is located at 3 More London Riverside, London, SE1 2AQ, United Kingdom.
3. Prior to June 30, 2011, the assets of Allied Gold were ultimately held by Allied Gold Limited, a corporation incorporated under the *Corporations Act 2001* (Commonwealth of Australia). Allied Gold Limited listed on the Australian Securities Exchange (the “ASX”) in December 2003, on the London Stock Exchange’s (the “LSE”) Alternative Investment Market (“AIM”) in 2006 and on the Toronto Stock Exchange (the “TSX”) in 2009. Allied Gold Limited became a reporting issuer in certain Canadian jurisdictions in 2004.
4. On June 30, 2011, Allied Gold Limited completed a redomiciling transaction by way of a scheme of arrangement under the laws of Australia whereby

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shareholders of Allied Gold Limited exchanged their shares in Allied Gold Limited for ordinary shares in Allied Gold, a public limited company registered in England and Wales. Immediately following completion of this redomiciling transaction, Allied Gold's ordinary shares (the "Allied Gold Shares") were admitted to the premium segment of the Official List of the Financial Services Authority (the "FSA") of the United Kingdom and to trading on the LSE's Main Market for listed securities (the "Main Market") (symbol: ALD) and were also listed on the ASX and the TSX. Allied Gold became a reporting issuer in Canada on June 30, 2011.

5. Allied Gold is a reporting issuer in each of the Jurisdictions.
6. Effective on September 7, 2012, St Barbara Limited ("St Barbara") acquired all of the issued and outstanding Allied Gold Shares by way of a court-sanctioned scheme of arrangement under the laws of England and Wales (Part 6 of the Companies Act 2006) (the "Scheme").
7. Other than the Allied Gold Shares, Allied Gold has no other securities, including debt securities, outstanding.
8. As a result of the Scheme, Allied Gold became a wholly-owned subsidiary of St Barbara.
9. The Allied Gold Shares were delisted from the TSX on September 7, 2012, from the LSE's Main Market on September 10, 2012 and from the ASX on September 10, 2012.
10. No securities of Allied Gold, including debt securities, are traded in Canada or another country on a marketplace (as defined in National Instrument 21-101 *Marketplace Operation*) or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported.
11. Allied Gold is applying for a decision that it is not a reporting issuer in all of the jurisdictions of Canada in which it is currently a reporting issuer.
12. Allied Gold is not in default of any of its obligations under the Legislation as a reporting issuer.
13. Allied Gold has no plans to conduct a public offering or private placement of its securities in Canada.
14. Allied Gold has elected to pursue a coordinated review application to avoid the minimum 10-day waiting period under British Columbia Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status* (which is a condition

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precedent to the other Jurisdictions making a decision under the simplified procedure described in Canadian Securities Administrators' Staff Notice 12-307 *Applications for a Decision that an Issuer is Not a Reporting Issuer* ("CSA Staff Notice 12-307"). But for the fact that Allied Gold is a reporting issuer in British Columbia, Allied Gold meets all of the other criteria set out in CSA Staff Notice 12-307 for use of the simplified procedure.

15. Upon granting of the Exemptive Relief Sought, Allied Gold will no longer be a reporting issuer in any jurisdiction in Canada.

St Barbara Limited

16. St Barbara is a gold production and exploration company with its principal assets located in Western Australia.
17. St Barbara's corporate headquarters is located at Level 10, 432 St Kilda Road, Melbourne, VIC 3004, Australia.
18. St Barbara's ordinary shares (the "St Barbara Shares") are listed on the ASX. St Barbara's American Depository Receipts ("ADRs"), representing ownership of five St Barbara Shares per ADR, have also been issued through Bank of NY Mellon.
19. Pursuant to the Scheme, holders of Allied Gold Shares became entitled to receive Australian \$1.025 and 0.8 of a St Barbara Share (the "Exchange Ratio") for each Allied Gold Share held (subject to the ability to elect to receive the cash portion of the consideration in certain other currencies).
20. The issued share capital of St Barbara as at the close of business on September 12, 2012 (i.e., after closing of the Scheme) was comprised of 488,074,077 St Barbara Shares, all of which were credited as fully paid. As at September 12, 2012, St Barbara had 1,242,714 ADRs outstanding, representing ownership of 6,213,570 of such St Barbara Shares. As at September 12, 2012, options to acquire 1,955,263 St Barbara Shares were granted and outstanding pursuant to St Barbara's employee option plan and performance rights to acquire 3,687,483 St Barbara Shares were granted and outstanding pursuant to St Barbara's Performance Rights Plan.
21. St. Barbara has never issued any securities in Canada other than in connection with the Scheme.
22. Under the securities laws of the Jurisdictions, a "reporting issuer" generally includes an issuer whose existence continues following the exchange of securities of an issuer in connection with an arrangement or similar transaction

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where one of the issuers participating in the arrangement is a reporting issuer (in the case of Ontario, such an issuer must have been a reporting issuer for at least twelve months).

23. St Barbara became a reporting issuer in the Jurisdictions upon the consummation of the Scheme by virtue of the reporting issuer definitions in the Jurisdictions.
24. St Barbara qualifies as a designated foreign issuer (as defined in National Instrument 71-102 *Continuous Disclosure and other Exemptions Relating to Foreign Issuers* (“NI 71-102”)) in Canada and is subject to the securities laws of Australia and the ASX.
25. St Barbara is not in default of any of its obligations under the securities laws of Australia or the rules of the ASX.
26. No securities of St Barbara have ever been listed, traded or quoted on a marketplace in Canada as defined in National Instrument 21-101 *Marketplace Operations*.
27. Based on (i) a list of the beneficial holders of St Barbara Shares dated July 20, 2012 prepared by Computershare; (ii) a list of the beneficial holders of Allied Gold Shares dated May 30, 2012 prepared by Thomson Reuters; (iii) the Exchange Ratio; (iv) an analysis of the geographic breakdown of beneficial owners of St Barbara Shares (including through holdings of ADRs) commissioned by St Barbara and prepared by Orient Capital Pty Ltd. as of August 28, 2012; and (v) a report of the issued and outstanding St Barbara Shares prepared by Computershare as of September 12, 2012, there are:
 - (a) 5,082,605 St Barbara Shares beneficially held by Canadian residents, representing 1.04% of the issued and outstanding St Barbara Shares; and
 - (b) 106 beneficial holders of St Barbara Shares resident in Canada, representing 0.94% of the number of holders of issued and outstanding St Barbara Shares.
28. Based on the foregoing, residents of Canada:
 - (a) do not directly or indirectly beneficially own more than 2% of each class or series of issued and outstanding securities of St Barbara worldwide; and

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- (b) do not directly or indirectly comprise more than 2% of the total number of holders of issued and outstanding securities of St Barbara worldwide.
- 29. St Barbara will remain listed on the ASX and be subject to the continuous disclosure requirements of Australian securities law and the ASX. Such disclosure requirements are similar to the requirements under the laws of the Jurisdictions and are, pursuant to Part 5 of NI 71-102, generally acceptable for purposes of a designated foreign issuer complying with the continuous disclosure requirements in the Jurisdictions.
- 30. Canadian resident holders of St Barbara Shares will have the same rights under Australian securities law and corporate law as Australian resident holders of St Barbara Shares.
- 31. In the 12 months before the application for this decision was made, St Barbara did not take any steps that indicate there is a market for its securities in Canada and St Barbara has no plans to conduct a public offering or private placement of its securities in Canada.
- 32. There is currently no market in Canada through which the St Barbara Shares may be sold, and no market is expected to develop.
- 33. St Barbara disclosed its intention to apply to cease to be a reporting issuer in Canada upon completion of the Scheme in the scheme document containing further information about the Scheme that was prepared in accordance with the laws of England and Wales and (i) sent by Allied Gold to holders of Allied Gold Shares and holders of options to purchase Allied Gold Shares, (ii) filed under Allied Gold's profile on the System for Electronic Document Analysis and Retrieval (SEDAR) and (iii) attached to a press release of St Barbara dated July 19, 2012, which was also made available on St Barbara's website.
- 34. St Barbara undertakes to concurrently deliver to Canadian resident holders of St Barbara Shares all disclosure that St Barbara is required under Australian securities law or the rules of the ASX to deliver to Australian resident holders of such securities.
- 35. Upon granting of the Exemptive Relief Sought in respect of St Barbara, St Barbara will no longer be a reporting issuer in any jurisdiction of Canada.
- 36. St Barbara is not in default of any of its obligations under the Legislation as a reporting issuer, with the exception of (i) filing announcements filed with the ASX relating to the closing of the Scheme and (ii) the requirement to file

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technical reports upon becoming a reporting issuer pursuant to National Instrument 43-101 *Standards of Disclosure for Mineral Projects*.

37. St. Barbara is not subject to the requirement to create an issuer profile supplement on SEDI by reason that it is a “foreign issuer (SEDAR)” as defined in National Instrument 13-101 System for Electronic Document Analysis and Retrieval. St. Barbara has never filed a notice of election to become an electronic filer on the System for Electronic Document Analysis and Retrieval.
38. St Barbara is not eligible for the simplified procedure described in CSA Staff Notice 12-307 because, among other reasons, it has more than 51 securityholders in total worldwide and is in default of the Legislation as described above. St Barbara meets the conditions of CSA Staff Notice 12-307 relating to the modified approach for foreign issuers.

Decision

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 the Exemptive Relief Sought is granted.

“*C. Wesley M. Scott*”
Ontario Securities Commission

“*Vern Krishna*”
Ontario Securities Commission