

# 2011 BCSECCOM 567

December 8, 2011

## Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 51-102, s. 13.1 – *Continuous Disclosure Obligations* - An issuer wants relief from the requirements to file and/or deliver financial statements for a particular period – A compulsory acquisition procedure pursuant to corporate legislation has been undertaken, prior to the filing deadline, in relation to the issuer and its shareholders pursuant to which all of the issuer's securities will be acquired by the offeror by a fixed date.

National Instrument 52-109, s. 8.6 - *Certification of Disclosure in Issuers' Annual and Interim Filings* – An issuer wants relief from the requirements in Parts 4 and 5 of NI 52-109 to file interim and annual certificates – The issuer has applied for and received an exemption from filing interim and annual financial statements.

## Applicable British Columbia Provisions

National Instrument 51-102, s. 13.1

National Instrument 52-109, s. 8.6

In the Matter of  
the Securities Legislation  
of British Columbia  
(the Jurisdiction)

and

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

and

In the Matter of  
Grayd Resource Corporation (Grayd)

## Decision

## Background

- ¶ 1 The principal regulator in the Jurisdiction has received an application from Grayd for a decision under the securities legislation of the Jurisdiction (the Legislation) that Grayd be exempt from the requirements:

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- (a) under National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), to prepare, file and, where required, deliver to shareholders: (i) annual financial statements and related management's discussion and analysis for the year ended August 31, 2011 (the Annual Filings); and (ii) interim financial statements and related management's discussion and analysis as at and for the three-month period ended November 30, 2011 (the Interim Filings); and
- (b) under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (NI 52-109), to file: (i) the prescribed annual certification forms of its Chief Executive Officer and Chief Financial Officer in respect of the year ended August 31, 2011 (the Annual Officer Certificates); and (ii) the prescribed interim certification forms of its Chief Executive Officer and Chief Financial Officer in respect of the three-month period ended November 30, 2011 (the Interim Officer Certificates) (paragraphs (a) and (b), the Requested Relief).

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

- (a) the British Columbia Securities Commission is the principal regulator for this application; and
- (b) Grayd 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.

### **Interpretation**

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

### **Representations**

- ¶ 3 This decision is based on the following facts represented by Grayd:
- 1. Grayd is a corporation existing under the *Business Corporations Act* (British Columbia) (the BCBCA); Grayd's registered, records and head office is located at Suite 1620, 1140 West Pender Street, Vancouver, British Columbia V6E 4G1;
  - 2. Grayd is a reporting issuer in British Columbia and Alberta and is not in default of the Legislation or the securities legislation of Alberta;

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3. Grayd is a Canadian-based natural resource company engaged in the acquisition and exploration of mineral resource properties in Mexico; Grayd currently owns a 100% interest in the La India and Tarachi properties located in the Mulatos Gold Belt of Sonora, Mexico;
4. the common shares of Grayd (the Shares) are listed on the TSX Venture Exchange (the TSX-V) under the trading symbol "GYD";
5. the authorized capital of Grayd consists of an unlimited number of Shares and 20,000,000 Class "A" preferred shares without par value, of which 96,261,039 Shares and no Class "A" preferred shares are currently issued and outstanding; Grayd has no other outstanding securities, including debt securities;
6. on October 13, 2011, Agnico-Eagle Mines Limited (Agnico-Eagle) commenced an offer (the Offer) to acquire all of the issued and outstanding Shares, including all Shares that became issued and outstanding after the date of the Offer but before the expiry of the Offer, by filing and mailing to Grayd shareholders an offer and circular (the Offer and Circular);
7. on October 21, 2011, Agnico-Eagle amended and supplemented the Offer and Circular by filing and mailing to Grayd shareholders a notice of change and variation that, among other things, doubled the maximum amount of cash available under the Offer;
8. on November 18, 2011, Agnico-Eagle took up and paid for (pursuant to the Offer) approximately 94.77% of the issued and outstanding Shares on a fully-diluted basis; prior to this date, Agnico-Eagle did not hold any Shares;
9. the Offer expired at 5:00 p.m. (Toronto time) on November 18, 2011;
10. in a joint press release dated November 18, 2011 announcing the completion of the Offer, Agnico-Eagle and Grayd announced that Grayd would apply to cease to be a reporting issuer and that it intended to apply to the Commission to request an exemption from certain continuous disclosure obligations, including the requirement to prepare, file and mail to Grayd shareholders Grayd's annual and interim financial statements and related materials, pending the anticipated completion of the compulsory acquisition of those Shares not deposited under the Offer;
11. in the Offer and Circular, Agnico-Eagle disclosed that if the Offer was accepted by Grayd shareholders who, in the aggregate, held at least 90% of the issued and outstanding Shares, Agnico-Eagle would, to the extent possible,

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acquire those Shares not tendered to the Offer pursuant to the provisions of section 300 of the BCBCA;

12. on November 22, 2011, Agnico-Eagle sent to those shareholders of Grayd who did not accept the Offer (the Remaining Offerees, which definition includes any person who subsequently acquires any such Shares) written notice (the Acquisition Notice) that Agnico-Eagle will acquire the Shares held by the Remaining Offerees (the Remaining Shares) pursuant to the provisions of section 300 of the BCBCA for the same consideration and on the same terms contained in the Offer (the Compulsory Acquisition);
13. section 300 of the BCBCA provides that once the Acquisition Notice has been sent, Agnico-Eagle is entitled and bound to acquire all of the Remaining Shares for the same price and on the same terms contained in the Offer;
14. pursuant to section 300 of the BCBCA, a Remaining Offeree is entitled to make an application to the Supreme Court of British Columbia (the Court) on or before January 22, 2012 in connection with the Compulsory Acquisition; the Court may, by order, set the price and terms of payment for the Shares and make consequential orders and give such directions as the Court considers appropriate; neither Grayd nor Agnico-Eagle has received notice of any such application;
15. provided the Court has not ordered otherwise, under the provisions of section 300 of the BCBCA, Agnico-Eagle intends to deliver to Grayd on or about January 23, 2012 (the Acquisition Date) a copy of the Acquisition Notice and to pay/transfer to Grayd the aggregate consideration payable by Agnico-Eagle for the Remaining Shares that Agnico-Eagle is entitled and bound to acquire pursuant to the Compulsory Acquisition;
16. section 300 of the BCBCA provides that such delivery and payment/transfer by Agnico-Eagle may not be made earlier than two months after the date of the Acquisition Notice; the Acquisition Date will not be earlier than two months after the date of the Acquisition Notice;
17. section 300 of the BCBCA also provides that upon receipt of the Acquisition Notice and the consideration payable for the Remaining Shares, Grayd must register Agnico-Eagle as the shareholder of Grayd with respect to all of the Remaining Shares;
18. the Remaining Offerees will continue as shareholders of Grayd until the Acquisition Date; the Shares will continue to be listed on the TSX-V until after the Acquisition Date;

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19. immediately after the Acquisition Date, Agnico-Eagle intends to cause the Shares to be delisted from the TSX-V; as soon as practicable thereafter, Grayd also intends to apply to the relevant securities regulatory authorities for an order that Grayd cease to be a "reporting issuer" under the laws of British Columbia and Alberta; it is therefore expected that Grayd will be 100% owned by Agnico-Eagle by January 24, 2012 and will cease to be a reporting issuer by mid-February 2012;
20. absent the Requested Relief being granted, Grayd is required to:
- (a) file on or before December 29, 2011 the Annual Filings and deliver copies of the Annual Filings to Grayd shareholders;
  - (b) file the Annual Officer Certificates concurrently with the filing of the Annual Filings;
  - (c) file on or before January 30, 2012 the Interim Filings and deliver copies of the Interim Filings to Grayd shareholders; and
  - (d) file the Interim Officer Certificates concurrently with the filing of the Interim Filings;
21. Agnico-Eagle has advised Grayd that it has no need to obtain, in the form of the Annual Filings, Annual Officer Certificates, Interim Filings and Interim Officer Certificates, the information to be set out in those documents.

### **Decision**

- ¶ 4 The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Requested Relief is granted.

Andrew S. Richardson, CA  
Acting Director, Corporate Finance  
British Columbia Securities Commission