

2003 BCSECCOM 147

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief from the registration and prospectus requirements to allow issuer to issue shares where exemptions not available because fair market value of assets acquired by the issuer is less than minimum \$100,000 - first trade subject to conditions

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 45(2)(6), 48, 61, 74(2)(5), 76
Multilateral Instrument 45-102, *Resale of Securities* ss. 2.5(2) or (3)

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA AND ALBERTA

AND

IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF EARTH STAR DIAMONDS LTD.

MRRS DECISION DOCUMENT

- ¶ 1 WHEREAS the local securities regulatory authority or regulatory (the “Decision Maker”) in each of British Columbia and Alberta (the “Jurisdictions”) has received an application from Earth Star Diamonds Ltd. (the “Filer”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the issuance by the Filer of a total of 95,238 common shares of the Filer (the “Shares”) to Navigator Exploration Corp. (“Navigator”) (as to 47,619 Shares) and Tyler Resources Inc. (“Tyler”) (as to 47,619 Shares) shall be exempt from the requirements contained in the Legislation to be registered to trade and to file and obtain a receipt for a preliminary prospectus and a prospectus (the “Registration and Prospectus Requirements”), subject to certain conditions;
- ¶ 2 AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the British Columbia Securities Commission is the principal regulator for this application;

2003 BCSECCOM 147

¶ 3 AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 – Definitions;

¶ 4 AND WHEREAS the Filer has represented to the Decision Makers that:

1. the Filer, a company incorporated under the laws of British Columbia, is a reporting issuer under the Legislation and is not in default of any requirement of the Legislation;
2. the authorized capital of the Filer consists of 100,000,000 common shares without par value, of which 5,869,250 common shares were issued and outstanding as of December 10, 2002;
3. the common shares of the Filer are listed on the TSX Venture Exchange (the “Exchange”) and on the Berlin Stock Exchange;
4. during the course of the past year, the Filer, together with Cantech Ventures Inc. (“Cantech”) and International Samuel Exploration Corp. (“Samuel”) (the Filer, Cantech and Samuel collectively referred to as “CEC”) have acquired various mineral claims located in the Northwest Territories; CEC subsequently pooled their interests in the claims (the “Pooled Properties”) so that each company now owns a 1/3 interest in the Pooled Properties;
5. Navigator and Tyler are companies that had previously completed work on certain mineral claims contained in the Pooled Properties (which claims are commonly referred to as the “Crystal Property”);
6. under an agreement among Navigator, Tyler and CEC, dated July 15, 2002, as amended, Navigator and Tyler agreed to sell data relating to previous work they completed on the Crystal Property in consideration for \$108,291.66 payable by way of issuance of common shares of CEC as follows:
 - (a) the Filer will issue a total of 95,238 common shares - 47,619 shares to Navigator and 47,619 shares to Tyler;
 - (b) Cantech will issue a total of 416,250 common shares - 208,125 shares to Navigator and 208,125 shares to Tyler; and
 - (c) Samuel will issue a total of 183,332 Shares - 91,666 Shares to Navigator and 91,666 Shares to Tyler;

2003 BCSECCOM 147

7. by letter dated January 29, 2003 from the Exchange to the Filer, the Exchange approved the issuance of the Filer's Shares to Navigator and Tyler;

¶ 5 AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

¶ 6 AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

¶ 7 THE DECISION of the Decision Makers under the Legislation is that the Registration and Prospectus Requirements shall not apply to the issuance of the Shares, provided that the first trade in the Shares acquired pursuant to this Decision in a Jurisdiction shall be deemed to be a distribution under the Legislation of such Jurisdiction unless the conditions in subsection (2) or (3) of section 2.5 of MI 45-102 *Resale of Securities* are satisfied.

¶ 8 February 18, 2003

Brenda Leong
Director