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January 3, 2008

Headnote

Mutual Reliance Review System for Exemptive Relief Applications

Securities Act, s. 114(2) – exemption from formal take-over bid requirements in Part 13 of the *Securities Act* - An issuer wants to complete a take over bid that meets some, but not all, of the conditions of the exemption set out in s. 98 (1)(e) of the Act (de minimis exemption) - The offeror is making the bid complying with the law of a jurisdiction that the Commission has not recognized for the purposes of s. 98(1)(e); the target does not maintain a share register, but the offeror believes the number of the target's shareholders in B.C. is de minimis; the bid will satisfy all other conditions required for an exempt take over bid

National Instrument 51-102, s. 13.1 – exemption from continuous disclosure obligations - An issuer wants relief from the requirement to include prospectus-level disclosure in an information circular to be circulated in connection with an arrangement, reorganization, acquisition or amalgamation - The transaction is not a reverse takeover; the issuer will provide alternate financial information about the business that is consistent with the financial information required in the continuous disclosure context for significant acquisitions; the issuer will provide information about the parties to the transaction sufficient for shareholders to assess the transaction as a whole

Securities Act, s. 48&76 - exemption from registration and prospectus requirements - An issuer wants prospectus and registration relief for trades in securities of the issuer in connection with a take over bid done outside Canada in compliance with foreign law - Issuer is making a take over bid in compliance with law of a foreign jurisdiction to all shareholders of an offeree company whose shares have been admitted to trading on AIM; because the number of BC resident shareholders of the offeree is extremely small or non-existent, the offer may not qualify as a take-over bid under the *Securities Act* because it is not an offer to acquire securities made to a resident in BC; first trades of securities are subject to conditions stated in the order

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34, 48, 61, 76, 105-110, and 114(2)

NI 51-102, s. 13.1

Form 51-102F5, Section 14.2

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan,

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Manitoba, Ontario, Quebec, New Brunswick,
Prince Edward Island, Nova Scotia,
Newfoundland and Labrador, Nunavut Territory,
Northwest Territories, and
Yukon Territory
(collectively, the Jurisdictions)

and

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

and

In the Matter of
Katanga Mining Limited
(the Applicant)

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 decision under the securities legislation of the Jurisdictions (the Legislation) that:

- (a) the formal take-over bid requirements contained in the Legislation, including the provisions relating to delivery of an offer and take-over bid circular and any notices of change or variation thereto, delivery of a directors' circular and any notices of change or variation thereto, minimum deposit periods and withdrawal rights, take-up of and payment for securities tendered to a take-over bid, disclosure, financing, restrictions upon the purchases of securities, identical consideration, and collateral benefits, not apply to the Offer (defined below) (the Formal Take-Over Exemption);
- (b) the prospectus and registration requirements not apply to the distribution of Katanga Shares (defined below) pursuant to the Offer (the Prospectus and Registration Exemption); and
- (c) the obligation to include, in a proxy solicitation and management information circular to be sent to its security holders in connection with the Offer, Nikanor's balance sheet, income statement, retained earnings and

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cash flow for its financial year ended December 31, 2004 and audited balance sheet and statement of income, retained earnings and cash flow for its financial year ended December 31, 2005 not apply to the Management Information Circular (defined below) (the Financial Statement Exemption).

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:

1. The Applicant is a company existing under the *Companies Act*, 1981 (Bermuda) and its registered office is located in Bermuda. The Applicant operates a major copper/cobalt mine complex in the Democratic Republic of the Congo (the DRC) on behalf of the Kamoto Copper Company joint venture in which it holds a 75% interest.
2. The Applicant is a reporting issuer in each of the Provinces of British Columbia, Alberta and Ontario, and is not in default of any requirement of the Legislation in those jurisdictions.
3. The Applicant's capital consists of 1,000 Common Shares with a par value of \$12.00 each and 300,000,000 common shares with a par value of \$0.10 each (the Katanga Shares). As at November 16, 2007, there were 78,887,743 Katanga Shares outstanding.
4. The Katanga Shares are listed on the Toronto Stock Exchange (the TSX).
5. The Applicant has entered into an Implementation Agreement with Nikanor plc (Nikanor) dated November 6, 2007 pursuant to which the Applicant has agreed to make an offer (the Offer) to acquire all of the issued and outstanding shares of Nikanor.

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6. Nikanor was incorporated under the Isle of Man *Companies Act*, 1931-2004 on June 26, 2006. The ordinary shares in the capital of Nikanor (the Nikanor Shares) are admitted to trading on the AIM Market of the London Stock Exchange plc (AIM). Nikanor is not a reporting issuer or the equivalent in any Jurisdiction and its securities are not listed for trading on any Canadian stock exchange. Nikanor indirectly holds 75% of a joint venture at Kolwezi in the DRC. The combination of Nikanor and Katanga will bring their adjacent properties in the DRC under common ownership.
7. Pursuant to the Offer, the Applicant will offer 0.613 of a Katanga Share and US\$2.16 in cash (which is currently proposed to be paid by way of a distribution by Nikanor to the holders of Nikanor Shares including, if relevant, Katanga, which shall then pay the distribution to the previous shareholders of Nikanor by way of a cash return) for each issued and outstanding Nikanor Share. The Applicant will make the Offer to all of the shareholders of Nikanor, other than those shareholders resident in any jurisdiction where it is unlawful to do so.
8. As of November 14, 2007, none of the registered holders of Nikanor Shares (based on the registered shareholder list of Nikanor provided to Katanga by Nikanor) was a resident of Canada. However, a significant number of Nikanor Shares are registered in the name of CREST, the United Kingdom depository that is the equivalent of CDS in Canada. Nikanor has indicated to Katanga that, to the best of Nikanor's knowledge, after reasonable inquiry, as at November 12, 2007 there was one beneficial shareholder of Nikanor resident in Ontario. This shareholder holds a total of 47,624 shares of Nikanor, representing approximately 0.023% of the total 206,550,000 Nikanor Shares which are issued and outstanding.
9. The Offer will be subject to conditions usual to offers of this nature, including the condition that shareholders holding at least 90% of the issued and outstanding shares of Nikanor have accepted the Offer, in which case the Applicant intends to apply the provisions of Section 160 of the Isle of Man *Companies Act*, 2006 for compulsory acquisition of all of the remaining issued and outstanding shares of Nikanor.
10. The *City Code on Take-over and Mergers* (the Code) will not apply to the Offer as Nikanor is not managed in the United Kingdom. However, the Applicant has determined that the Offer will be made in a manner which generally complies with the Code, including substantial compliance with the requirements regarding contents of the offering circular, except where otherwise agreed with Nikanor.

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11. As the number of Canadian resident shareholders of Nikanor is extremely small and Nikanor Shares are not traded on the TSX, it is conceivable that, at the time the Offer is made, there will be no shareholders of Nikanor resident in any Jurisdiction and the Offer may not constitute a “take-over bid” within the meaning of the Legislation because it is not an offer to acquire made to a resident in any of the Jurisdictions. If the Offer is not a take-over bid, then the distribution of Katanga Shares will not be exempt from the prospectus and registration requirements under National Instrument 45-106 *Prospectus and Registration Exemptions*.
12. As a condition to the listing of the Katanga Shares to be issued in connection with the Offer on the TSX, the Applicant is required to seek the approval of the holders of its outstanding shares to the completion of the Offer at a meeting of its shareholders. In connection with that meeting Katanga will be preparing a management information circular (the Management Information Circular) in accordance with the requirements of applicable securities laws and distributed to its shareholders.
13. The Offer constitutes a “significant probable acquisition” for the Applicant (within the meaning of Legislation applicable to prospectuses, other than short form prospectuses), and that at least one of the three significance tests in the Legislation would be satisfied if the 20 percent threshold was changed to 50 percent. Therefore, Item 14.2 of Form 51-102F5 requires that 3 years of historical financial statements of the business of Nikanor must be included in Management Information Circular.
14. The acquisition of Nikanor pursuant to the Offer will not constitute a “reverse take-over” as defined in National Instrument 51-102 *Continuous Disclosure Obligations*.
15. The Management Information Circular contains the following:
 - (a) Nikanor’s unaudited balance sheet and statements of income, retained earnings and cash flow for its financial year ended December 31, 2005;
 - (b) Nikanor’s balance sheet and statements of income, retained earnings and cash flow for its financial year ended December 31, 2006, together with an auditor’s report prepared in accordance with International Auditing Standards accompanied by a statement of the auditor that:
 - (i) describes any material differences in the form or content of the auditor’s report as compared to an auditor’s report prepared in accordance with Canadian GAAS; and

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- (ii) indicates that an auditor's report prepared in accordance with Canadian GAAS would not contain a reservation;
 - (c) Nikanor's unaudited balance sheets and statements of income, retained earnings and cash flow for the interim periods ended June 30, 2006 and June 30, 2007;
 - (d) a *pro forma* balance sheet as at June 30, 2007 and a *pro forma* statement of income, retained earnings and cash flow of Katanga for the year ended December 31, 2006 and the interim period ended June 30, 2007, giving effect to the completion of the Offer as of the first day of such periods; and
 - (e) *pro forma* earnings per share based upon the *pro forma* financial statements.
16. The Management Information Circular will contain prospectus level disclosure regarding the Offer and the acquisition of Nikanor.

Order

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 Take-Over Exemption is granted, provided that:

- (a) Nikanor Shareholders (if any) in the local jurisdiction are entitled to participate in the Offer on terms at least as favourable as the terms that apply to the general body of Nikanor Shareholders; and
- (b) at the same time as material relating to the Offer (the Offering Material) is sent by or on behalf of the Applicant to Nikanor Shareholders, the Offering Material is filed and sent to those Nikanor Shareholders resident in the Jurisdictions (if addresses are known).

The further decision of the Decision Makers under the Legislation is that Prospectus and Registration Exemption is granted, provided that the first trade of such Katanga Shares is deemed to be distribution unless:

- (a) the Offering Material has been filed by the Applicant on SEDAR;

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- (b) the trade is not a control distribution within the meaning of the Legislation; and;
- (c) the Applicant is a reporting issuer in British Columbia, Alberta or Ontario at the time of the trade.

Robert L. Sherriff
Commissioner
Ontario Securities Commission

David L. Knight
Commissioner
Ontario Securities Commission

The further decision of the Decision Makers under the Legislation is that the Financial Statement Exemption is granted, provided that the Management Information Circular contains the information described in representations 15 and 16.

Naizam Kanji
Ontario Securities Commission