

Citation: 2013 BCSECCOM 112

**Headnote**

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – *Securities Act*, s. 88 – Cease to be a reporting issuer in BC – The securities of the issuer are beneficially owned by more than 50 persons and are not traded through any exchange or market – The issuer became a wholly owned subsidiary of another company; the issuer has debt securities outstanding that are held by more than 50 holders; there is no market for the debt securities; the issuer is not required under the terms of the debt instrument to provide certain continuous disclosure to the holders of the debt securities as long as the securities are outstanding, or to remain a reporting issuer; the issuer does not intend to do a public offering of its securities to Canadian residents; the issuer will not be a reporting issuer in any Canadian jurisdiction

**Applicable British Columbia Provision**

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

April 3, 2013

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

and

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

and

In the Matter of  
Molycorp Minerals Canada ULC  
(formerly Neo Material Technologies Inc.)  
(the “Filer”)

Decision

**Background**

The securities regulatory authority or regulator in each of the Jurisdictions (the “Decision Maker”) has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the “Legislation”) to cease to be a reporting issuer (the “Exemption Sought”).

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

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

### **Interpretation**

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

### **Representations**

This decision is based on the following facts represented by the Filer, as the case may be:

### ***Facts***

1. The Filer is a producer, processor and developer of neodymium-iron-boron magnetic powders, rare earth materials, and zirconium-based engineered materials and rare metals, continued under the laws of British Columbia, with its head office in Toronto, Ontario. The Filer is a reporting issuer in each of the Jurisdictions.
2. Molycorp Inc. (“Molycorp”) is a rare earth oxide producer and rare metal and alloy producer, incorporated under the laws of the State of Delaware, with its head office in Greenwood Village, Colorado. Molycorp’s common stock is listed for trading on the New York Stock Exchange (“NYSE”).
3. MCP Exchangeco Inc. (“Exchangeco”) is a wholly-owned subsidiary of Molycorp and is a corporation incorporated under the laws of British Columbia.
4. On March 8, 2012, Molycorp, Exchangeco and the Filer entered an arrangement agreement, pursuant to which Exchangeco would acquire all of the outstanding common shares of the Filer (the “Neo Shares”) pursuant to a plan of arrangement (the “Arrangement”). Prior to the completion of the Arrangement, the Filer had 115,186,306 Neo Shares issued and outstanding.
5. The Arrangement was completed on June 11, 2012 (the “Effective Date”), pursuant to which holders of Neo Shares elected to receive: (i) cash consideration of C\$11.30 per Neo Share, (ii) share consideration of either 0.4242 common shares of Molycorp (“Molycorp Shares”) per Neo Share or 0.4242 shares of Exchangeco that are exchangeable for Molycorp Shares (“Exchangeable Shares”) per Neo Share or (iii) a combination of cash and shares. The Exchangeable Shares are intended to be the economic equivalent of the Molycorp Shares.
6. Immediately prior to the Effective Date, the Filer had outstanding \$229,990,000 aggregate principal amount of 5% Convertible Unsecured Subordinated Debentures with a maturity date of December 31, 2017 (the “Debentures”). The Debentures were issued pursuant to a short form prospectus offering on June 2, 2011 and were listed

for trading on the Toronto Stock Exchange. The Debentures were governed by a debenture indenture dated June 2, 2011 between the Filer and Computershare Trust Company of Canada (the “Trustee”) (the “Old Indenture”). The Debentures remained outstanding following the completion of the Arrangement.

7. The Old Indenture provided for the rights of holders of Debentures (“Holders”) and the required treatment of Debentures upon certain transactions such as the Arrangement and, therefore, the Debentures were not included in the Arrangement and Holders did not vote with respect to the Arrangement.
8. Upon the completion of the Arrangement and pursuant to the terms of the Old Indenture, Holders were entitled to: (i) require the Filer to acquire their Debentures for a cash payment, (ii) convert their Debentures in exchange for Molycorp Shares or (iii) continue to hold their Debentures under the terms of the Indentures (collectively, the “Election”). Holders were notified of their right to make the Election by notice (the “Election Notice”) delivered on July 11, 2012. Holders had up to 30 business days following the delivery of the Election Notice to make the Election.
9. Pursuant to the terms of the Old Indenture, the Board of Directors of Molycorp was authorized to enter into a new supplemental indenture to give effect to the completion of the Arrangement and to provide for the application of certain provisions of the Old Indenture to Molycorp following the Effective Date. Molycorp entered into a new indenture with the Trustee on June 11, 2012 (the “New Indenture” and together with the Old Indenture, the “Indentures”).
10. The New Indenture is intended to supplement and be read together with the Old Indenture. The New Indenture provides for the guarantee and assumption of the Filer’s obligations under the Old Indenture by Molycorp, subject to certain amendments necessary to give effect to the Arrangement.
11. More particularly, pursuant to Article 2 of the New Indenture, Molycorp guarantees payment punctually when due and payable of all amounts payable by the Filer to Holders arising under the Old Indenture, including amounts payable to Holders upon maturity of the Debentures, by acceleration or otherwise. Molycorp’s guarantee of the payment obligations is a “guarantee of payment and not merely of collection”, meaning that the payment obligations under the Debentures are direct obligations of Molycorp and enforceable against Molycorp without any requirement for the Filer to default on payment and for Holders to seek recourse against the Filer first in order to trigger Molycorp’s payment obligation. Holders have direct recourse to Molycorp.
12. Additionally, pursuant to Article 2 of the New Indenture, Molycorp assumes the obligations of the Filer to Holders upon conversion of the Debentures, such that conversion obligations will be satisfied by the issuance, sale or delivery by Molycorp of cash or Molycorp Shares, rather than Neo Shares. Molycorp also assumes the obligations of the Filer, and Molycorp Shares are substituted for Neo Shares, in respect of provisions relating to conversion rights and adjustments to the conversion

price, change of control provisions, and obligations of successor parties. The obligations of Molycorp relating to any issuance of Molycorp Shares under the New Indenture are directly enforceable against Molycorp and Holders are not required to seek any recourse against the Filer in order to enforce such obligations.

13. Holders and the Trustee have direct recourse against Molycorp under the Indentures in respect of all primary obligations relating to payments under the Debentures and the issuance, sale or delivery of Molycorp Shares. The Filer continues to be a party to the Old Indenture and is, therefore, still named in provisions relating to the administration of the Debentures and other secondary provisions such as covenants, defaults, cancellation and discharge of Debentures and meetings of Holders. However, such provisions do not impair Molycorp's direct responsibility for, or the Holders direct recourse against Molycorp in respect of, the primary payment and share issuance obligations under the Indentures.
14. In addition to the foregoing and in place of the Filer's obligation to maintain the listing of the Neo Shares on the Toronto Stock Exchange, Molycorp has agreed in the New Indenture to maintain the listing of the Molycorp Shares on the NYSE. Moreover, the conversion ratio for the Debentures is adjusted in the New Indenture to reflect that Molycorp Shares will be issued to Holders upon conversion of the Debentures in lieu of Neo Shares, and the change of control and successor obligations are based on Molycorp and not the Filer.
15. The effect of the Indentures, taken together, is that Molycorp guarantees and assumes all payment and share issuance obligations of the Filer with respect to the Debentures, and Molycorp Shares are issuable in all events in lieu of Neo Shares, resulting in the value of the Debentures being tied to Molycorp's business and the value of the Molycorp Shares and not to the Filer's business or share price.
16. On June 13, 2012, the Neo Shares and the Debentures were delisted from the Toronto Stock Exchange.
17. As of the date of the Election Notice and as of March 11, 2013, the sole registered holder of the Debentures was the Canadian Depositary for Securities Limited. The Trustee has advised the Filer that, based on a report of Broadridge Financial Solutions, Inc., nominee of the intermediaries for Holders of the Debentures, at the date of the Election Notice there were an estimated 950 Holders representing \$229,990,000 aggregate principal amount of outstanding Debentures. As of March 11, 2013, there were 112 Holders beneficially held through Broadridge Financial Solutions, Inc., representing \$2,556,000 aggregate principal amount of outstanding Debentures, and intermediaries outside of Broadridge Financial Solutions, Inc. holding \$43,000 aggregate principal amount of outstanding Debentures, for a total of \$2,599,000 aggregate principal amount of outstanding Debentures.
18. As of March 11, 2013, the Debentures were beneficially held by Holders resident in the following jurisdictions: Alberta (12 Holders representing \$276,000 aggregate

principal amount of outstanding Debentures); British Columbia (19 Holders representing \$402,000 aggregate principal amount of outstanding Debentures); Manitoba (1 Holder representing \$5,000 aggregate principal amount of outstanding Debentures); New Brunswick (1 Holder representing \$22,000 aggregate principal amount of outstanding Debentures); Ontario (40 Holders representing \$824,000 aggregate principal amount of outstanding Debentures); Quebec (22 Holders representing \$456,000 aggregate principal amount of outstanding Debentures); Saskatchewan (3 Holders representing \$35,000 aggregate principal amount of outstanding Debentures); and countries other than Canada (14 Holders representing \$546,000 aggregate principal amount of outstanding Debentures).

19. As the Filer has greater than 51 Holders in the Jurisdictions, it is not currently eligible to use the simplified procedure to cease to be a reporting issuer described in CSA Staff Notice 12-307.
20. The Filer's only outstanding securities are the Neo Shares and the Debentures. All of the Filer's outstanding securities, excluding the Debentures, are legally and beneficially owned by Molycorp.
21. On the Effective Date and pursuant to the relevant provisions of the Legislation, Molycorp and Exchangeco each became a "reporting issuer" (as that term is defined in the Legislation) in each of the Jurisdictions. Pursuant to section 13.3 of National Instrument 51-102 – *Continuous Disclosure Obligations*, Exchangeco relies on the continuous disclosure documents filed by Molycorp on SEDAR to satisfy its continuous disclosure obligations. Pursuant to section 13.4 of National Instrument 51-102 – *Continuous Disclosure Obligations*, the Filer has primarily relied on the continuous disclosure documents filed by Molycorp on SEDAR to satisfy its continuous disclosure obligations.
22. Molycorp is an "SEC foreign issuer" as such term is defined in National Instrument 71-102 – *Continuous Disclosure and other Exemptions relating to Foreign Issuers*. As such, Molycorp satisfies its continuous disclosure obligations by filing its continuous disclosure documents required under U.S. securities laws in the Jurisdictions.
23. The Filer has no intention of accessing the capital markets in the future by issuing any further securities to the public, and has no intention of issuing any securities.
24. The Filer and Molycorp are not in default of any of their obligations under the Legislation as reporting issuers, including their respective obligations to remit all filing fees in the Jurisdictions.
25. No securities of the Filer, 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.

26. The Filer has disseminated a news release in Canada providing notice to Holders that it has applied to securities regulatory authorities for a decision that it is not a reporting issuer in the Jurisdictions and, if that decision is made, the Filer will no longer be a reporting issuer in any jurisdiction of Canada.
27. The Filer is no longer required to remain a reporting issuer in the Jurisdictions or provide continuous disclosure to Holders under any contractual arrangement between the Filer and the Holders, including the Indentures governing the Debentures. Molycorp has covenanted pursuant to the New Indenture to ensure that its common stock remains listed for trading on the NYSE.
28. The Filer is not a reporting issuer or the equivalent in any jurisdiction in Canada, other than the Jurisdictions.
29. Upon granting of the Relief, the Filer will no longer be a reporting issuer in any jurisdiction in Canada.

**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 Exemption Sought is granted.

C. Wesley M. Scott  
Commissioner  
Ontario Securities Commission

Vern Krishna  
Commissioner  
Ontario Securities Commission