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Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief granted from requirements in Parts 2, 3, and 4 of NI 43-101 for a private placement in Canada by a South African issuer as, after the offering, the issuer will have a *de minimis* presence in Canada, and the offering document will include a reserves report prepared in accordance with both the definitions and standards of the SAMREC Code and the CIM Standards

Applicable British Columbia Provisions

National Instrument 43-101 *Standards of Disclosure for Mineral Projects* Parts 2, 3 and 4 and s. 9.1

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, MANITOBA, ONTARIO AND QUÉBEC

AND

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

AND

IN THE MATTER OF DURBAN ROODEPOORT DEEP, LIMITED AND CIBC WORLD MARKETS INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Manitoba, Ontario and Québec (the “Jurisdictions”) has received an application from Durban Roodepoort Deep, Limited (the “Issuer”) and CIBC World Markets Inc. (“CIBC”, and together with the Issuer, the “Applicants”) for a decision pursuant to subsection 9.1(1) of National Instrument 43-101 – *Standards of Disclosure for Mineral Projects* (“NI 43-101”) that the Applicants be exempt from Parts 2, 3, and 4 of NI 43-101 in connection with: (i) disclosure relating to the Offering (as defined below); and (ii) the offering memorandum (the “Offering Memorandum”) prepared by the Issuer for the Offering;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”) the Ontario Securities Commission is the principal regulator for this application;

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AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 – *Definitions* or in Québec, Commission Notice 14-101;

AND WHEREAS the Applicants have represented to the Decision Makers that:

1. The Issuer is a company incorporated pursuant to the laws of the Republic of South Africa (“South Africa”) with its head office in Johannesburg, South Africa. The Issuer is a gold mining company with its principal operations in South Africa and exploration properties and production facilities in Papua New Guinea;
2. The Issuer’s securities are listed and traded on the JSE Securities Exchange South Africa (the “JSE”), the NASDAQ, the London Stock Exchange, the Brussels Stock Exchange, the Paris Bourse, the Australian Stock Exchange, the Berlin Stock Exchange, and the Frankfurt Stock Exchange. The principal trading markets of the Issuer are the JSE and the NASDAQ;
3. The Issuer is not a reporting issuer or its equivalent in any of the Jurisdictions, nor are any of its securities listed or posted for trading on any stock exchange in Canada. The Issuer has no present intention of becoming a reporting issuer or its equivalent in any of the Jurisdictions or of becoming listed in Canada;
4. The authorized capital of the Issuer consists of 300,000,000 ordinary no par value shares (the “Ordinary Shares”) and 5,000,000 cumulative preference shares (the “Preference Shares”) of which 177,173,485 Ordinary Shares and 5,000,000 Preference Shares were issued and outstanding as of June 30, 2002;
5. As disclosed in its annual audited financial statements for its fiscal year ended June 30, 2002, the Issuer’s gross revenues derived from mining operations were approximately US\$256.0 million for the fiscal year ended June 30, 2002, and approximately US\$792.1 million in the aggregate for the three fiscal years ended June 30, 2002. As a result, the Issuer is a “producing issuer” as such term is defined in NI 43-101;
6. The Issuer intends to offer convertible debentures (the “Notes”) on a private placement basis in several jurisdictions (the “Offering”). CIBC will be the agent in respect of the Offering in Canada and affiliates of CIBC and one or more other investment dealers will be agents in other foreign jurisdictions in which the Offering is made;
7. The Applicants are in the process of settling the terms of the Notes, which shall be unsecured obligations of the Issuer and convertible into either

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Ordinary Shares or American deposit receipts (“ADRs”). The ADRs are listed for trading on NASDAQ. It is anticipated that the Issuer will provide a covenant to CIBC and the purchasers of the Notes to use its best efforts to file a registration statement with the United States Securities and Exchange Commission which will register the ADRs to be issued upon conversion of the Notes;

8. CIBC anticipates that approximately 50% of the Offering will be made to purchasers in the United States and approximately 30% of the Offering will be made to purchasers in Canada. The remaining 20% of the Offering will be made to purchasers in Europe and other foreign jurisdictions. CIBC anticipates that the Offering will be made to institutional investors only;
9. The Offering Memorandum will contain a report on the reserves of the Issuer as at June 30, 2002 (the “Reserves Report”) concerning mineral projects on each property which is material to the Issuer. The reserve calculations in the Reserves Report were prepared in accordance with South African law and the South African code for Reporting of Mineral Resources and Mineral Reserves (the “SAMREC Code”), which prescribes the content of disclosure of scientific or technical information in respect of mineral projects, and shall be reported in the Offering Memorandum in accordance with the applicable definitions contained in the SAMREC Code and the standards of the Canadian Institute of Mining Metallurgy and Petroleum (the “CIM Standards”);
10. The Reserves Report has been prepared by William John Laing, Jans Johannes Jacobus Petrus Pretorius, Matthys Hendrik Greeff Heyns, Natalie Rose Ordenaal, and Michael John Bird and compiled by David Stephanus Du Toit van den Bergh, each of whom is an employee of the Issuer and who qualifies as a “Competent Person” for the purposes of the SAMREC and JORC Codes. Each such person possesses greater than five years of relevant mining and geological surveying experience and is a registered member of a professional organization recognized by statute in South Africa;
11. The Issuer is a “producing issuer” under NI 43-101, and according to Part 5 thereof, in connection with the Offering, is not required to file an independent technical report;
12. The Reserves Report will be audited by Mike Sperinck, a qualified person who is considered a “Competent Person” for the purposes of the SAMREC Code and in accordance with South African law;
13. In connection with the Offering, the Issuer will distribute the Offering Memorandum containing disclosure regarding the Issuer, the Reserves Report,

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the Notes, and any additional disclosure required in the jurisdictions in which the Offering is made. In particular, the Offering Memorandum will contain disclosure required under Canadian securities laws applicable in the Jurisdictions related to, among other things, prospectus and registration exemptions, statutory rights of action and exchange rate information;

14. The Offering Memorandum will contain the following cautionary statement (the “Cautionary Statement”):

No technical report, as defined under National Instrument 43-101 - *Standards for Disclosure of Mineral Projects*, will be provided in connection with this offering or filed with any of the Canadian securities regulatory authorities.

This Offering Memorandum contains a report on the reserves of the Issuer as at June 30, 2002 (the “Reserves Report”) concerning mineral projects on each property which is material to the Issuer. The reserve calculations in the Reserves Report were prepared in accordance with South African law and the South African code for Reporting of Mineral Resources and Mineral Reserves (the “SAMREC Code”), which prescribes the content of disclosure of scientific or technical information in respect of mineral projects, and shall be reported in the Offering Memorandum in accordance with the applicable definitions contained in the SAMREC Code and the standards of the Canadian Institute of Mining Metallurgy and Petroleum (the “CIM Standards”);

15. The Issuer will file the Offering Memorandum in each of the Jurisdictions within 10 days of the closing of the Offering;
16. Upon completion of the Offering, persons or companies whose last address as shown on the books of the Issuer was in Canada, will not own, directly or indirectly, Ordinary Shares or securities convertible into Ordinary Shares representing more than 10% of the Ordinary Shares and will not represent more than 10% of the total number of owners, directly or indirectly, of Ordinary Shares;

AND WHEREAS under the System this Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);

AND WHEREAS each of the Decision Makers is satisfied that the test contained in NI 43-101 that provides the Decision Maker with the jurisdiction to make the decision has been met;

THE DECISION of the Decision Makers pursuant to subsection 9.1(1) of NI 43-101 is that the Applicants are exempt from Parts 2, 3, and 4 of NI 43-101 in

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connection with: (i) disclosure relating to the Offering; and (ii) the Offering Memorandum prepared by the Issuer for the Offering, provided that the Offering Memorandum includes:

- (a) a reference to this Decision; and
- (b) the Cautionary Statement.

DATED October 3, 2002.

Margo Paul