

Citation: 2013 BCSECCOM 397

**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 a *de minimis* number of Canadian holders of the debt securities holding a *de minimis* amount of the outstanding debt; there is no market for the debt securities; the issuer is 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, but is not required to remain a reporting issuer in Canada; 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 Provisions**

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

September 17, 2013

In the Matter of  
the Securities Legislation  
of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador,  
Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Quebec,  
Saskatchewan, and Yukon  
(the Jurisdictions)

and

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

and

In the Matter of FQM (Akubra) Inc. (successor entity of Inmet Mining Corporation)  
(the Filer)

Decision

**Background**

¶1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the filer is not a reporting issuer in the Jurisdictions (the Exemptive Relief 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**

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

### **Representations**

¶3 This decision is based on the following facts represented by the Filer:

- (a) the Filer is a corporation governed by the *Canada Business Corporations Act* (the CBCA) with its registered address located at 333 Bay Street, Suite 2400, Toronto, ON M5H 2T6;
- (b) the Filer is a reporting issuer or the equivalent in each of the Jurisdictions;
- (c) the Filer is authorized to issue an unlimited number of common shares;
- (d) on January 9, 2013, FQM (Akubra) Inc., a wholly owned subsidiary of First Quantum Minerals Ltd. (First Quantum), and First Quantum (together the Offeror) made an offer to purchase all of the issued and outstanding common shares of Inmet Mining Corporation (Inmet), together with the associated rights issued under the Shareholder Rights Plan of Inmet (collectively the Inmet Shares), pursuant to an offer and take-over bid circular dated January 9, 2013, as varied and extended by notices of variation and extension dated February 8, 2013, February 27, 2013, March 11, 2013 and March 21, 2013 (the Offer), on the basis of, at the election of each holder of Inmet Shares, (a) Cdn.\$72.00 in cash per Inmet Share, or (b) 3.2967 common shares of First Quantum per Inmet Share, or (c) cash in the amount of Cdn.\$36.00 and 1.6484 common shares of First Quantum per Inmet Share, subject, in each case, to proration as set out the Offer;
- (e) the Offer expired at 5:00 p.m. (Eastern Daylight Time) on April 1, 2013;
- (f) on March 21, 2013, the Offeror took up 59,979,309 Inmet Shares validly tendered to the Offer;
- (g) on April 1, 2013, the Offeror took up 5,226,735 Inmet Shares validly tendered to the Offer;
- (h) on April 5, 2013, under section 206(2) of the CBCA, the Offeror sent notice to those shareholders of Inmet who had not accepted the Offer that the Offeror

would be acquiring the Inmet Shares not tendered to the Offer by way of compulsory acquisition under section 206 of the CBCA (the Compulsory Acquisition);

- (i) on April 9, 2013, the Offeror acquired all of the Inmet Shares not tendered to the Offer, being 4,272,677 Inmet Shares pursuant to the Compulsory Acquisition;
- (j) Inmet's issued and outstanding share capital immediately prior to the expiry of the Offer was 69,478,721 Inmet Shares;
- (k) prior to the completion of the Offer, the Inmet Shares were listed for trading on the Toronto Stock Exchange under the symbol "IMN";
- (l) the Inmet Shares were delisted from the Toronto Stock Exchange as of the close of business on April 9, 2013;
- (m) effective April 23, 2013, Inmet amalgamated with FQM (Akubra) Inc. and all of the Inmet Shares were cancelled (the Amalgamation);
- (n) the Filer has no current intention to seek public financing by way of an offering of securities;
- (o) pursuant to a note indenture dated as of May 18, 2012 among Inmet, Citibank, N.A., as U.S. trustee, and Citi Trust Company Canada, as Canadian trustee (the 2012 Indenture) the Filer issued US\$1.5 billion aggregate principal amount of 8.75% senior notes due 2020 (the 2012 Notes);
- (p) pursuant to a note indenture dated as of December 18, 2012 among Inmet, Citibank, N.A., as U.S. trustee, and Citi Trust Company Canada, as Canadian trustee (together with the 2012 Indenture, the Indentures) the Filer issued US\$500 million aggregate principal amount of 7.500% senior notes due 2021 (together with the 2012 Notes, the Notes);
- (q) the Notes are not convertible or exchangeable for common shares or other securities of the Filer. The Notes were originally issued by way of private placement under applicable exemptions from the registration requirements of the United States Securities Act of 1933, as amended (the 33 Act), and in Canada pursuant to applicable exemptions from Canadian provincial securities laws, and they have not been listed on any exchange or marketplace;
- (r) pursuant to the Indentures, the Filer is required to provide the noteholders and each of the trustees with: (a) all annual financial information that Inmet would be required to file as a reporting issuer; (b) all quarterly financial information that Inmet would be required to file as a reporting issuer; and (c) following events giving rise to the requirements for Inmet to file a material change report, such material change report;

- (s) pursuant to the Indentures, the Filer may provide the information required to be provided to the noteholders and trustees by posting such information on a public website maintained by Inmet;
- (t) the acquisition by the Offeror on March 21, 2013 of 59,979,309 Inmet Shares, representing 85.5% of the outstanding Inmet Shares, constituted a "Change of Control" as defined in the Indentures. As such, Inmet commenced the requisite offer to purchase the Notes (the Change of Control Offer) upon the terms and conditions set forth in the Notice of Change of Control and Offer to Purchase dated April 19, 2013 (the Change of Control Notice), at a price in cash equal to 101% of the aggregate principal amount of the Notes, plus accrued and unpaid interest up to, but not including, the date of purchase. The Change of Control Offer expired at 5:00 p.m. (Eastern Daylight Time) on May 20, 2013;
- (u) The Change of Control Notice stated that, as a result of the Amalgamation, the Filer succeeded to all of the obligations of Inmet, including obligations under the Indentures and the Notes. The Filer's corporate parent, First Quantum, remains subject to continuous disclosure obligations under Canadian provincial securities laws;
- (v) The Change of Control Notice stated that, as a result of the Offer and the Compulsory Acquisition, the Filer would no longer be subject to continuous disclosure obligations under the securities laws of the Jurisdictions if the Filer is deemed to cease to be a reporting issuer in the Jurisdictions by the applicable securities regulatory authorities. Accordingly, the Filer's noteholders were presented with the opportunity to close out their position in the Notes to the extent that, among other things, they believed continuous disclosure would be necessary going forward and they were dissatisfied with the Amalgamation. However, Notes in the aggregate principal amount of US\$10,129,000, representing approximately 0.51% of the total outstanding Notes, were validly tendered to the Change of Control Offer;
- (w) following the Change of Control Offer, approximately US\$1.99 billion aggregate principal amount of the Notes are issued and outstanding;
- (x) the Filer made diligent enquiry (the Investigation) with Lucid Issuer Services Limited to ascertain the location of the noteholders in Canada;
- (y) based on the Investigation and other reasonable inquiries made by the Filer, the Filer is of the reasonable belief that, as of July 5, 2013, there were fewer than 50 beneficial holders of the Notes in Canada;
- (z) to the best of the Filer's knowledge and belief, pursuant to the Investigation, as of July 5, 2013, there were approximately 10 beneficial holders of the Notes in Canada, holding an aggregate of US\$34 million principal amount of the Notes, representing approximately 1.72% of the outstanding principal amount of the

Notes. Approximately US\$1.12 billion of the Notes were held by 23 non-Canadian beneficial holders, representing 56.38% of the outstanding principal amount of the Notes. The remaining US\$834 million of the Notes were held by 79 undisclosed beneficial holders, representing 41.45% of the outstanding principal amount of the Notes;

- (aa) to the best of the Filer's knowledge and belief, pursuant to the Investigation, as of July 5, 2013, of the 10 beneficial holders identified in Canada, which held one or more series of the Notes, six were identified to be resident in Ontario, two to be resident in Québec and two to be resident in British Columbia;
- (bb) to the best of the Filer's knowledge and belief, pursuant to the Investigation, as of July 5, 2013, approximately US\$1.16 billion aggregate principal amount of the Notes were held by 29 institutional beneficial holders holding one or more series of the Notes. Pursuant to the Investigation, 23 of the 29 institutional beneficial holders were non-Canadian institutions. Six of the remaining 29 institutional beneficial holders, holding US\$33.66 million aggregate principal amount of the Notes, were Canadian institutions. The remaining holders, holding approximately US\$834 million aggregate principal amount of the Notes, did not provide beneficial ownership information;
- (cc) there is no obligation in the provisions of the Indentures for the Filer to maintain its status as a reporting issuer or the equivalent in any of the Jurisdictions;
- (dd) the Notes were offered and sold inside the United States only to those investors that the underwriters reasonably believed to be "qualified institutional buyers" (QIBs) as defined in, and in accordance with, Rule 144A under the 33 Act, and outside the United States (as defined under Rule 902 of Regulation S, promulgated under the 33 Act) in accordance with Regulation S under the 33 Act. Generally, QIBs comprise institutions that manage at least US\$100 million in securities, including banks, savings and loans institutions, insurance companies, investment companies, employee benefit plans and entities owned entirely by persons that are themselves qualified investors;
- (ee) to the best of the Filer's knowledge and belief, pursuant to the Investigation, as of July 5, 2013, 98% of the aggregate principal amount of the Notes were Rule 144A global notes and 2% of the aggregate principal amount of the Notes were Regulation S global notes;
- (ff) to the best of the Filer's knowledge and belief, pursuant to the Investigation, none of the Notes originally issued under Rule 144A have subsequently been traded into a local jurisdiction;
- (gg) the QIBs and other investors to whom the Notes were placed are sophisticated investors who had the opportunity, including through the underwriters, to negotiate for such disclosure obligations under the Indentures as they deemed

necessary. They determined that they did not require that the Filer maintain reporting issuer status;

- (hh) the Filer is not eligible to surrender its status as a reporting issuer in British Columbia pursuant to British Columbia Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status* because the Filer has reason to believe that it has more than 50 securityholders worldwide, being the holders of the Notes. Similarly, and because the Notes are beneficially owned, directly or indirectly, by more than 51 securityholders worldwide, the Filer is not eligible to file under the simplified procedure under CSA Staff Notice 12-307 *Applications for a Decision that an Issuer is not a Reporting Issuer*;
- (ii) the Notes are not and will not be 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;
- (jj) the Filer is applying for relief to cease to be a reporting issuer in each of the Jurisdictions;
- (kk) the Filer is not in default of any requirement of the securities legislation in any of the Jurisdictions except for the obligation arising after First Quantum came to be the Filer's sole shareholder to file its interim financial statements and related management's discussion and analysis for the three-month periods ended March 31, 2013 and June 30, 2013, as required under National Instrument 51-102 - *Continuous Disclosure Obligations* (the Interim Filings) and the related certification of such financial statements as required under National Instrument 52-109 - *Certification of Disclosure in Filers' Annual and Interim Filings*. However, in accordance with the Indentures, the Filer has provided the Interim Filings to the noteholders and each of the trustees and will provide the noteholders and each of the trustees with: (a) all annual financial information that the Filer would be required to file as a reporting issuer; (b) all quarterly financial information that the Filer would be required to file as a reporting issuer; and (c) following events giving rise to the requirements for the Filer to file a material change report, such material change report; and
- (ll) the Filer, upon the granting of the Exemptive Relief Sought, will no longer be a reporting issuer or the equivalent in any jurisdiction in Canada.

#### **Decision**

¶4 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 Exemptive Relief Sought is granted.

*“Wesley M. Scott”*  
Commissioner  
Ontario Securities Commission

*“James D. Carnwath”*  
Commissioner  
Ontario Securities Commission