

## 2010 BCSECCOM 617

November 3, 2010

### **Headnote**

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203  
*Process for Exemptive Relief Applications in Multiple Jurisdictions*

National Instrument 51-102 *Continuous Disclosure Obligations*, s. 13.1 - General  
- A reporting issuer wants relief from all the requirements of NI 51-102 - A reporting issuer is a wholly owned subsidiary of a parent reporting issuer; the subsidiary's only outstanding securities are warrants entitling the holder to acquire a combination of cash and common shares of the parent; the warrants do not qualify as "designated exchangeable securities" under section 13.3 of NI 51-102; the requested relief is on terms substantially similar to section 13.3 of NI 51-102

National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*, s. 8.6 - An issuer wants relief from the requirements in Parts 4 and 5 of NI 52-109 to file annual and interim certificates - The issuer has applied for and received an exemption from filing interim and annual financial statements

National Instrument 55-104 *Insider Reporting Requirements and Exemptions*, s. 10.1 - insider reporting obligations - An issuer wants relief from the requirement to file insider reports for its insiders - The issuer is an exchangeable security issuer that cannot rely on the exemption in National Instrument 51-102 *Continuous Disclosure Obligations* because it does not comply with all of the conditions for continuous disclosure relief in NI 51-102; as a result, its insiders cannot rely on the insider reporting exemptions in NI 51-102; the issuer has received discretionary relief from NI 51-102 requirements

National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)*, ss. 2.1 and 6.1 - An issuer wants relief from the requirement to file an insider profile for its insiders - The issuer is an exchangeable security issuer that cannot rely on the exemption in National Instrument 51-102 *Continuous Disclosure Obligations* because it does not comply with all of the conditions for continuous disclosure relief in NI 51-102; as a result, its insiders cannot rely on the insider reporting exemptions in NI 51-102; the issuer has received discretionary relief from NI 51-102 requirements

### **Applicable British Columbia Provisions**

National Instrument 51-102, s. 13.1

Multilateral Instrument 52-109, s. 4.5

National Instrument 55-104 *Insider Reporting Requirements and Exemptions*, s. 10.1

National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)*, ss. 2.1 and 6.1

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In the Matter of  
the Securities Legislation of  
British Columbia and Ontario (the Jurisdictions)

and

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

and

In the Matter of  
Thompson Creek Metals Company Inc. (Thompson Creek),  
Terrane Metals Corp. (Terrane), 0888046 B.C. Ltd., a wholly-owned subsidiary of  
Thompson Creek (TCM Subco), and the continuing corporation formed as a result  
of the amalgamation of TCM Subco and Terrane (Amalco, and together with  
Thompson Creek, Terrane and TCM Subco, the Filers)

## Decision

### **Background**

- ¶ 1 The securities regulatory authority in each of the Jurisdictions (Decision Maker) has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the Legislation) that:
1. the requirements of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) (the Continuous Disclosure Requirements) do not apply to Amalco;
  2. the requirements of National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (NI 52-109) (the Certification Requirements) do not apply to Amalco; and
  3. the insider reporting requirements under the Legislation and the requirement to file an insider profile under National Instrument 55-102 - *System for Electronic Disclosure by Insiders* (together, the Insider Reporting Requirements) do not apply to any insider of Amalco.

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

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- (a) the British Columbia Securities Commission is the principal regulator for this application;
- (b) the Filers have provided notice that Section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador; and
- (c) the decision is the decision of the principal regulator and evidences that decision of the securities regulatory authority or regulator in Ontario.

### **Interpretation**

- ¶ 2 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**

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

#### **1. Terrane**

- (a) Terrane continued its jurisdiction of incorporation into British Columbia on May 2, 2006;
- (b) the authorized capital of Terrane consists of: (i) an unlimited number of common shares (Terrane Common Shares); and (ii) an unlimited number of Preferred shares issuable in series, of which only the Series A Preferred shares have been designated;
- (c) as of October 19, 2010, the date immediately preceding the Arrangement, there were outstanding: (i) 460,413,900 Terrane Common Shares; (ii) options to purchase an aggregate of 11,997,600 Terrane Common Shares (Terrane Options); (iii) warrants to purchase Terrane Common Shares at a price of \$0.85, pursuant to the Common Share Purchase Warrant Indenture between Terrane and Pacific Corporation Trust Company, dated June 21, 2007 (2007 Warrants); (iv) warrants to purchase Terrane Common Shares at a price of \$1.50, pursuant to the Common Share Purchase Warrant Indenture between Terrane and Computershare Trust Company of Canada, dated April 16, 2010 (2010 Warrants); and (v) warrants to purchase Terrane Common Shares at a price of \$1.50, pursuant to a warrant certificate issued by Terrane to Goldcorp Canada Ltd. dated April 15, 2010 (Goldcorp Warrants and together with the 2007 Warrants and the 2010 Warrants, the Terrane Warrants);

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- (d) the 2007 Warrants and the 2010 Warrants (collectively the Trading Warrants) are listed on the TSX Venture Exchange (TSX-V ), under the symbols “TRX.WT” and “TRX.WT.A” respectively; and
  - (e) Terrane is a “reporting issuer” in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador;
- 2. Thompson Creek
  - (a) Thompson Creek continued its jurisdiction of incorporation into British Columbia on July 29, 2008;
  - (b) the authorized capital of Thompson Creek consists of: (i) an unlimited number of common shares (TCM Shares); and (ii) an unlimited number of preferred shares issuable in series; as of October 19, 2010, the date immediately preceding the Arrangement, there were outstanding 139,894,094 TCM Shares and no preferred shares;
  - (c) Thompson Creek is a “reporting issuer” in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador; and
  - (d) the TCM Shares are listed on the Toronto Stock Exchange (TSX) and the New York Stock Exchange under the symbols “TCM” and “TC” respectively;
- 3. Thompson Creek entered into a definitive agreement (the Arrangement Agreement) with Terrane on July 15, 2010, which provided the terms and conditions under which Thompson Creek would acquire all of the issued and outstanding Terrane Common Shares;
- 4. the acquisition was implemented by way of a court-approved plan of arrangement under British Columbia law (the Arrangement); under the Arrangement: (i) holders of Terrane Common Shares (Terrane Securityholders) received C\$0.90 in cash and 0.052 of a TCM Share (the Arrangement Consideration) per Terrane Security; (ii) the outstanding Terrane Options were deemed exercised on a cashless basis for the same consideration; and (iii) Terrane became a wholly-owned subsidiary of Thompson Creek;
- 5. on August 23, 2010, Terrane made an application to the Supreme Court of British Columbia (Court) for an interim order requesting that certain

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requirements and procedures be specified for a special meeting of the Terrane Securityholders and holders of Terrane Options (Optionholders) for the purpose of approving the Arrangement (Terrane Meeting);

6. on September 26, 2010, Terrane Securityholders and Optionholders approved the Arrangement with an affirmative vote of 99.34% of the votes validly cast at the Terrane Meeting;
7. on September 27, 2010, Terrane received final approval of the Court for the Arrangement;
8. the Arrangement was completed on October 20, 2010;
9. under the Arrangement, in addition to other matters, the following occurred:
  - (a) each outstanding Terrane Option was deemed exercised on a cashless basis for the Arrangement Consideration;
  - (b) Thompson Creek acquired all of the issued and outstanding Terrane Common Shares in exchange for the payment to Terrane Securityholders of the Arrangement Consideration; and
  - (c) Thompson Creek transferred all of the Terrane Common Shares held by it to TCM Subco in exchange for common shares of TCM Subco, following which, TCM Subco and Terrane amalgamated to form Amalco which will continue as one corporation under the *Business Corporations Act* (British Columbia);
10. on completion of the Arrangement and the associated amalgamation of Terrane and TCM Subco to form Amalco, Amalco became a reporting issuer in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador as a result of one or both of Thompson Creek and Terrane having been, for a period of at least twelve months prior to the Arrangement, a reporting issuer in such jurisdictions;
11. each holder of a Terrane Warrant outstanding immediately before completion of the Arrangement, became entitled to receive upon the subsequent exercise of such holder's Terrane Warrant in accordance with its terms, in lieu of each Terrane Common Share to which such holder was entitled, the Arrangement Consideration;

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12. on October 22, 2010, the TSX approved the listing of an additional 27,582,508 TCM Shares issued as a result of the Arrangement (including those TCM Shares to be issued on the exercise of Terrane Warrants);
13. on October 20, 2010, Terrane Common Shares were delisted from the TSX-V;
14. in connection with the Arrangement, Terrane mailed to the Terrane Securityholders and Optionholders a management information circular (Circular) containing prospectus-level disclosure of the business and affairs of each of Terrane and Thompson Creek and information on the Arrangement; the Circular included disclosure that Thompson Creek, on behalf of Amalco, had applied for certain exemptive relief, including relief from the Continuous Disclosure Requirements;
15. Terrane provided the holders of all Terrane Warrants with prior notice of the Arrangement, including a statement that a copy of the Circular would be available for review on SEDAR;
16. as a result of the Arrangement, the only securities of Amalco that are held publicly are the Trading Warrants; the Trading Warrants are, in accordance with their terms, exercisable for the Arrangement Consideration;
17. as required by the terms of warrant indentures governing the Trading Warrants, Amalco and Thompson Creek have entered into supplemental indentures providing: (i) that the holder of each Trading Warrant then outstanding will have the right (until the expiry of such Trading Warrant) to exercise their Trading Warrant only for the Arrangement Consideration; and (ii) for the setting off of the exercise price payable on the exercise of such Trading Warrant against the cash portion of the Arrangement Consideration;
18. Amalco cannot rely on the exemption available in s. 13.3 of NI 51-102 for issuers of exchangeable securities because the Terrane Warrants are not “designated exchangeable securities” as defined in NI 51-102; none of the holders of the Terrane Warrants will have voting rights in respect of Thompson Creek, in their capacity as warrantholders;
19. the terms of the indentures governing the Trading Warrants include a covenant that Terrane use its commercial best efforts to maintain its status as a “reporting issuer” (or the equivalent thereof) not in default of the requirements of applicable securities laws in each of the provinces of Canada, except Quebec;

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20. neither the warrant indentures or the supplemental indentures governing the Trading Warrants require Terrane or any successor to deliver to holders of Trading Warrants any continuous disclosure materials of Terrane or any successor;
21. each of the Filers is not in default of any requirement under securities legislation in the jurisdictions in which it is a reporting issuer;
22. Amalco 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 to the public other than those that are outstanding on completion of the Arrangement; and
23. it is information relating to Thompson Creek, and not to Amalco, that is of primary importance to holders of Terrane Warrants as each of these securities is exercisable into TCM Shares, along with the cash portion of the Arrangement Consideration; in addition, as Amalco is a wholly-owned subsidiary of Thompson Creek, Thompson Creek will consolidate Terrane with Thompson Creek for the purposes of financial statement reporting; as such, the disclosure required by the Continuous Disclosure Requirements and the Insider Reporting Requirements would not be meaningful or of any significant benefit to the holders of the Terrane Warrants and would impose a significant cost on Amalco.

### **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.
1. The decision of the Decision Makers under the Legislation is that the Continuous Disclosure Requirements do not apply to Amalco provided that:
    - (a) Thompson Creek is the beneficial owner of all of the issued and outstanding voting securities of Amalco;
    - (b) Thompson Creek is a reporting issuer in a designated Canadian jurisdiction (as defined in NI 51-102) and has filed all documents it is required to file under NI 51-102;
    - (c) Amalco does not issue any securities, and does not have any securities outstanding other than:
      - (i) the Terrane Warrants;

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- (ii) securities issued to and held by Thompson Creek or an affiliate of Thompson Creek;
  - (iii) debt securities issued to and held by banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches, savings or credit unions, financial services cooperatives, insurance companies or other financial institutions; or
  - (iv) securities issued under exemptions from the registration requirement and prospectus requirement in National Instrument 45-106 *Prospectus and Registration Exemptions*;
- (d) Amalco files in electronic format:
- (i) if Thompson Creek is a reporting issuer in the local jurisdiction, a notice indicating that it is relying on the continuous disclosure documents filed by Thompson Creek and setting out where those documents can be found in electronic format; or
  - (ii) copies of all documents Thompson Creek is required to file under securities legislation, other than in connection with a distribution, at the same time as the filing by Thompson Creek of those documents with a securities regulatory authority or regulator;
- (e) Thompson Creek concurrently sends to all holders of Terrane Warrants all disclosure materials that would be required to be sent to holders of similar warrants of Thompson Creek in the manner and at the time required by securities legislation;
- (f) Thompson Creek complies with securities legislation in respect of making public disclosure of material information on a timely basis;
- (g) Thompson Creek immediately issues in Canada and files any news release that discloses a material change in its affairs; and
- (h) Amalco issues in Canada a news release and files a material change report in accordance with Part 7 of NI 51-102 for all material changes in respect of the affairs of Amalco that are not also material changes in the affairs of Thompson.
2. The further decision of the Decision Makers under the Legislation is that the Certification Requirements do not apply to Amalco provided that:



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- (a) Amalco is not required to, and does not, file its own Interim Filings and Annual Filings (as those terms are defined under NI 52-109);
  - (b) Amalco files in electronic format under its SEDAR profile either: (i) copies of Thompson Creek' annual certificates and interim certificates at the same time as Thompson Creek is required under NI 52-109 to file such documents; or (ii) a notice indicating that it is relying on Thompson Creek's annual certificates and interim certificates and setting out where those documents can be found for viewing on SEDAR; and
  - (c) Amalco is exempt from or otherwise not subject to the Continuous Disclosure Requirements and Amalco and Thompson Creek are in compliance with the conditions set out in paragraph 1 above.
- 3. The further decision of the Decision Makers under the Legislation is that the Insider Reporting Requirements do not apply to any insider of Amalco in respect of securities of Amalco provided that:
  - (a) if the insider is not Thompson Creek;
    - (i) the insider does not receive, in the ordinary course, information as to material facts of material changes concerning Amalco before the material facts or material changes are generally disclosed;
    - (ii) the insider is not an insider of Thompson Creek in any capacity other than by virtue of being an insider of Amalco;
  - (b) Thompson Creek is the beneficial owner of all of the issued and outstanding voting securities of Amalco;
  - (c) if the insider is Thompson Creek, the insider does not beneficially own any Terrane Warrants other than securities acquired through the exercise of the Terrane Warrants and not subsequently traded by the insider;
  - (d) Thompson Creek is a reporting issuer in a designated Canadian jurisdiction;
  - (e) Amalco has not issued any securities, and does not have any securities outstanding, other than:
    - (i) the Terrane Warrants;

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- (ii) securities issued to and held by Thompson Creek or an affiliate of Thompson Creek;
- (iii) debt securities issued to and held by banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches, savings or credit unions, financial services cooperatives, insurance companies or other financial institutions; or
- (iv) securities issued under exemptions from the registration requirement and prospectus requirement in Section 2.35 of NI 45-106; and
- (f) Amalco is exempt from or otherwise not subject to the Continuous Disclosure Requirements and Terrane and Thompson Creek are in compliance with the conditions set out in paragraph 1 above.

Martin Eady, CA  
Director, Corporate Finance  
British Columbia Securities Commission