

## **2003 BCSECCOM 849**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – relief from registration and prospectus requirements for distribution of securities to non-Canadian residents as part of a transaction by which issuer acquired shares of a Brazilian company – issuer is qualified to use short form prospectus – acquisition would be an indirect exempt takeover bid except that no shareholders of Brazilian company are resident in British Columbia – first trade of securities subject to section 2.6(3) of Multilateral Instrument 45-102

### **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, s.34, 48, 61 and 76

### **IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA AND ONTARIO**

**AND**

### **IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

### **IN THE MATTER OF WHEATON RIVER MINERALS LTD.**

### **MRRS DECISION DOCUMENT**

¶ 1 WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia and Ontario (the “Jurisdictions”) has received an application from Wheaton River Minerals Ltd. (“Wheaton River”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that:

- a) the registration requirement and the prospectus requirement shall not apply to the distribution of the Securities (as defined below) distributed in connection with the Acquisition (as defined below); and
- b) the first trade in the Securities will be deemed to be a distribution unless the conditions in section 2.6(3) of Multilateral Instrument 45-102 *Resale of Securities* are satisfied;

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- ¶ 2 AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the British Columbia Securities Commission is the principal regulator for this application;
- ¶ 3 AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions*;
- ¶ 4 AND WHEREAS Wheaton River has represented to the Decision Makers that:
- (a) Wheaton River is a corporation incorporated under the *Business Corporations Act* (Ontario);
  - (b) Wheaton River’s registered office is located at 2100 Scotia Plaza, 40 King Street West, Toronto, Ontario and its principal executive offices are located in Vancouver, British Columbia;
  - (c) Wheaton River owns producing mines in Mexico, Argentina and Australia;
  - (d) Wheaton River is a reporting issuer in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec and Saskatchewan;
  - (e) Wheaton River’s common shares (“Common Shares”) are listed for trading on TSX and Amex;
  - (f) Wheaton River has completed three equity offerings by way of short form prospectus within the past eight months for gross proceeds of approximately \$533 million;
  - (g) on October 7, 2003, a receipt was issued for Wheaton River's Short Form Prospectus for an offering of \$100,012,500 in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador, and is publicly available on SEDAR;
  - (h) on November 6, 2003, Wheaton River announced that it had entered into an agreement to acquire (the “Acquisition”) all of the outstanding common shares (the “EBX Shares”) of EBX Gold Ltda. (“EBX”); as consideration for the EBX Shares, Wheaton River will pay the vendors cash of US \$25,000,000, 33,000,000 Common Shares and 21,500,000 Series B Share Purchase Warrants (the “Warrants” and, collectively, the

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“Securities”); each Warrant will entitle the holder to purchase one Common Share for \$3.10 at any time before August 25, 2008;

- (i) EBX is the owner of the Amapari Gold Project located in the Amapa State, Brazil; Wheaton River is acquiring the EBX Shares in order to acquire the Amapari Gold Project;
- (j) to the knowledge of Wheaton River,
  - (i) EBX is a company incorporated under the laws of Brazil;
  - (ii) all of the issued and outstanding EBX Shares are held by four individuals (the “Vendors”), none of whom are resident in Canada;
- (k) EBX is not a reporting issuer in any province of Canada and the EBX Shares are not listed for trading on any stock exchange or other trading facility;
- (l) Wheaton River and the Vendors entered into a definitive agreement dated as of December 11, 2003 setting out the terms of the Acquisition;
- (m) the Acquisition will occur through a series of steps that involve recently incorporated, single purpose wholly-owned subsidiaries of Wheaton River; Wheaton River will exchange the shares of one of these subsidiaries for the EBX Shares with a company owned by the Vendors;
- (n) as the final step of the Acquisition, one of the indirect subsidiaries of Wheaton River acquired by the Vendors will exercise conversion rights associated with certain securities held by that company and subscribe for the Securities;
- (o) the Acquisition is, in substance, an indirect take over bid under the Legislation as Wheaton River will, indirectly, acquire all of the issued and outstanding EBX Shares in exchange for shares of one of its indirect subsidiaries, except that the offer to acquire EBX Shares is not being made to any person or company who is in British Columbia or Ontario or whose last address as shown on the books of EBX is in British Columbia or Ontario; and
- (p) if the Acquisition were a take over bid under the Legislation, it would be exempt from the take over bid requirements of applicable legislation as:

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- (i) EBX is not a reporting issuer in either of the Jurisdictions;
- (ii) there is not a published market in respect of the EBX Shares; and
- (iii) there are fewer than 50 holders of EBX Shares; and

- (q) following the Acquisition and the exercise of the Warrants, the Vendors will not, either individually or collectively, hold more than 20% of the voting rights attached to securities of Wheaton River;

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

¶ 6 AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

¶ 7 THE DECISION of the Decision Makers under the Legislation is that:

- (a) the registration requirement and the prospectus requirement do not apply to the distribution of the Securities in connection with the Acquisition, provided that at the time of the distribution, there are no material facts or material changes (as defined in the Legislation) with respect to Wheaton River that have not been generally disclosed; and
- (b) the first trade in the Securities will be deemed to be a distribution unless the conditions in section 2.6(3) of Multilateral Instrument 45-102 are satisfied.

¶ 8 December 19, 2003

Adrienne Salvail-Lopez  
Vice-Chair