

# 2012 BCSECCOM 100

March 29, 2012

## Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 51-102, s. 13.1 *Continuous Disclosure Obligations* - National Instrument 52-109, s.8.6 *Certification of Disclosure in Issuer's Annual and Interim Filings* - National Instrument 52-110, Part 8.1 *Audit Committees* - National Instrument 58-101 *Disclosure of Corporate Governance Practices* - An issuer seeks relief to continue its status as a "venture issuer" despite being listed on a market outside Canada and the United States of America – A venture issuer with common shares listed on the TSXV wants to list, or has listed, on a foreign exchange that does not meet the requirements of the definition of a venture issuer; the foreign exchange is a junior market and the issuer must fulfil the same or similar requirements as the TSXV; to remain a venture issuer, the issuer must continue to have its common shares listed on the TSXV and the foreign exchange must remain a junior market

## Applicable British Columbia Provisions

National Instrument 51-102, s. 13.1 *Continuous Disclosure Obligations*  
National Instrument 52-109, s.8.6 *Certification of Disclosure in Issuer's Annual and Interim Filings*  
National Instrument 52-110, Part 8.1 *Audit Committees*  
National Instrument 58-101 *Disclosure of Corporate Governance Practices*

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

and

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

and

In the Matter of  
Hana Mining Ltd.  
(the Filer)

Decision

## 2012 BCSECCOM 100

### Background

- ¶ 1 The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) for relief from the requirement in the definition of venture issuer in section 1.1 of each of National Instrument 51-102 *Continuous Disclosure Obligations*, National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*, National Instrument 52-110 *Audit Committees* and National Instrument 58-101 *Disclosure of Corporate Governance Practices*, that a reporting issuer not, at the relevant time, have any of its securities listed or quoted on any of the Toronto Stock Exchange, a U.S. marketplace or a marketplace outside of Canada or the United States other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operating by PLUS Markets Group plc (the Exemption Sought).

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

- (a) the British Columbia Securities Commission is the principal regulator for this application; and
- (b) the Filer has 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.

### 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 Filer:
- 1. the Filer is incorporated under the *Business Corporations Act* (British Columbia) and its head office is located in Vancouver, British Columbia;
  - 2. the Filer is a mineral exploration company based in Canada with assets in Botswana;
  - 3. the Filer is a reporting issuer in British Columbia and Alberta; the Filer is not in default of securities legislation in any jurisdiction;

## 2012 BCSECCOM 100

4. the Filer is authorized to issue an unlimited number of common shares without par value; as of November 14, 2011, the Filer has 88,372,282 common shares issued and outstanding;
5. the common shares of the Filer are listed on the TSX Venture Exchange (the TSX-V) under the symbol HMG;
6. the Filer has applied to obtain a secondary listing on the Venture Capital Board (the VC Board) of the foreign equity market (the FE Market) of the Botswana Stock Exchange (the BSE);
7. the VC Board of the FE Market of the BSE is a junior market; it is not registered as a national securities exchange under section 6(a) of the *Securities Exchange Act of 1934* (United States);
8. provided that the Filer remains listed on the TSX-V, the requirements of the TSX-V are applicable to the Filer in respect of its listing on the VC Board of the FE Market of the BSE, subject to the discretion of the BSE to require the Filer to comply in certain circumstances with the continuous disclosure requirements applicable to companies listed on the BSE;
9. the VC Board of the FE Market of the BSE requires that the Filer's annual reports be prepared in accordance with applicable laws or other regulations of the Filer's home jurisdiction, which must be prepared and independently audited in accordance with standards regarded by the BSE as appropriate for listed companies, which requirement is satisfied by financial statements prepared, in all respects, in accordance with International Accounting Standards; and
10. the information the Filer provided about the VC Board of the FE Market of the BSE (and its status as a junior market) for the purposes of review by capital markets staff of the British Columbia Securities Commission is accurate as at the date of this decision.

### Decision

- ¶ 4 The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that:

- a. the VC Board of the FE Market of the BSE is not restructured in a manner that makes it unreasonable to conclude that it is still a junior market;

## **2012 BCSECCOM 100**

- b. the representations in sections 7 through 10 above continue to be true;
- c. the Filer continues to have its common shares listed on the TSX-V; and
- d. the Filer does not have any of its securities listed or quoted on any of the Toronto Stock Exchange, a U.S. marketplace, or a marketplace outside of Canada and the United States of America other than the VC Board of the FE Market of the BSE, the Alternative Investment Market of the London Stock Exchange or the PLUS markets operating by PLUS Markets Group plc.

Paul C. Bourque, Q.C.  
Executive Director  
British Columbia Securities Commission