

# 2010 BCSECCOM 480

August 16, 2010

## **Headnote**

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 52-107, s. 9.1 - *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* - An issuer wants relief from the requirement that financial statements required by securities legislation to be audited must be accompanied by an auditor's report that does not contain a reservation - The auditors were not in attendance at the physical inventory taking and not able to satisfy themselves by other auditing procedures as to the opening inventory quantities; the applicant is completing a reverse takeover; the reverse takeover acquirer is acquiring assets from an insolvent company; the insolvent company is unable to provide supporting documentation for property, plant and equipment to enable the auditors to satisfy themselves on the reasonability of net book value or related expenses for depreciation; the auditor's report on the most recent financial year end will not contain a reservation on the closing inventory balance; the applicant has obtained an appraisal of the significant property, plant and equipment from an independent third party; the financial statements will contain note disclosure about the insolvency procedure and the appraised values as at a more recent date; the applicant will provide alternative disclosure in a filing statement about the business model for the project going forward

## **Applicable British Columbia Provisions**

National Instrument 52-107, s. 9.1 - *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*

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

and

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

and

In the Matter of  
Tapestry Resource Corp.  
(the Filer)

# 2010 BCSECCOM 480

## Decision

### **Background**

- ¶ 1 The principal regulator in the Jurisdiction has received an application (the Application) from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) that the requirement that financial statements that are required by the Legislation to be audited must be accompanied by an auditors' report that does not contain a reservation does not apply to the financial statements of Frontino Gold Mines Ltd. (FGM) for each of the years ended December 31, 2009, 2008 and 2007 (the Exemptive Relief 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 the 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 head office of the Filer is located in British Columbia;
  - 2. the Filer is a reporting issuer in British Columbia and Alberta; the Filer's common shares are listed on the NEX Board of the TSX Venture Exchange (the TSXV);
  - 3. the Filer has entered into a definitive agreement effective July 26, 2010, relating to a reverse takeover transaction (the Transaction), pursuant to which the Filer will acquire all of the issued and outstanding securities of Gran Colombia Gold, S.A. (the Reverse Takeover Acquirer) in exchange for the issuance of common shares in the capital of the Filer;

## 2010 BCSECCOM 480

4. the Reverse Takeover Acquirer is not a reporting issuer in any jurisdiction of Canada and its common shares are not listed on any stock exchange or quotation system;
5. on August 12, 2010 the Filer received conditional TSXV approval of the Transaction;
6. prior to completion of the Transaction, the Reverse Takeover Acquirer will acquire a 95% shareholding interest in a joint venture company which will acquire all of the assets of FGM (Frontino Assets);
7. in connection with the Transaction, the Filer filed a filing statement dated August 12, 2010 (the Filing Statement) containing the disclosure required under TSXV policies; the Filing Statement included audited financial statements of FGM for the years ended December 31, 2009, 2008 and 2007; the Filer received a waiver from the policies of the TSXV that would have otherwise required the inclusion in the Filing Statement of an auditors' report without reservation with respect to the audited financial statements of FGM;
8. the Filing Statement contains disclosure about the past operations of FGM and a discussion of the business model for the Frontino Assets going forward;
9. upon closing the Transaction, the Filer would be required to file the financial statements of the Reverse Takeover Acquirer under section 4.10(2) of National Instrument 51-102 *Continuous Disclosure Obligations*; such statements must meet the requirements set out in Form 41-101F1 *Information Required in a Prospectus* (41-101F1), which is the form of prospectus that the Reverse Takeover Acquirer would have been eligible to use prior to the Transaction;
10. under item 32.1 of 41-101F1, the Filer must also file the financial statements of FGM; under 41-101F1, such statements of FGM are required to include (the Required FGM Statements):
  - (a) audited statements of income, retained earnings and cash flows for each of the financial years ended December 31, 2009, 2008 and 2007;
  - (b) audited balance sheets as at December 31, 2009 and 2008; and
  - (c) comparative interim financial statements for the interim periods ended March 31, 2010 and 2009;
11. PricewaterhouseCoopers Ltda. (the Auditors) were appointed as auditors of FGM during the 2010 financial year and were not able to observe the taking of the physical inventory as at December 31, 2006, 2007, 2008 and 2009; the

## 2010 BCSECCOM 480

Auditors were able to satisfy themselves regarding the reasonability of the inventory balance as at December 31, 2009;

12. during the period from 1976 to 2004, FGM operated under an insolvency procedure initiated by the Superintendent of Corporations of Colombia; on September 1, 2004, the Superintendent of Corporations of Colombia ordered the compulsory liquidation of FGM and appointed a liquidator and a liquidation advisory board; the Auditors were unable to satisfy themselves regarding the reasonability of the carrying values for property, plant and equipment due to incomplete documentation and record keeping at FGM that are a result of the compulsory liquidation process;
13. in July, 2010, an independent technical appraisal was performed of the main items of property, plant & equipment, comprised of lands, buildings and the mine machinery (the Technical Appraisal); the technical appraiser has determined the commercial value of those items and accordingly, these appraised values as of July 2010 reasonably approximate the appraised value of the lands, buildings and mine machinery on hand as at December 31, 2009; throughout 2010, no significant acquisitions of fixed assets or other capital additions have been made; accordingly, the appraised values as of July, 2010 reasonably approximate the appraised value of the lands, buildings and mine machinery on hand as at December 31, 2009;
14. the Auditors have opined that, except for the results of the adjustments, if any, which might have been determined to be necessary had they been able to examine inventory quantities and supporting schedules for property, plant and equipment, the balance sheets, statements of income (loss), accumulated losses and cash flows present fairly, in all material respects, the financial position of FGM as at December 31, 2009 and 2008 and the results of its operations and its cash flows for each of the years in the three year period ended December 31, 2009 in accordance with Canadian generally accepted accounting principles.
15. the Filer is not in default of any requirement of securities legislation in any jurisdiction of Canada; and
16. the Reverse Takeover Acquirer is not in default of any requirement of securities legislation in any jurisdiction of Canada.

### 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.

## **2010 BCSECCOM 480**

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

1. the auditor's report accompanying the Required FGM Statements does not contain a reservation with regards to inventory balances as at December 31, 2009;
2. the Required FGM Statements contains:
  - (a) a detailed schedule of the appraisal values of property, plant and equipment broken down by each significant asset class of property, plant and equipment;
  - (b) a narrative description of what the appraisal values represent;
  - (c) disclosure of any instances where appraisal values were not obtained and the reasons why the values were not obtained; and
  - (d) disclosure of any significant property, plant and equipment additions or disposals between December 31, 2009 and the appraisal date.

Noreen Bent  
Acting Director, Corporate Finance  
British Columbia Securities Commission