

2007 BCSECCOM 46

January 5, 2007

Headnote

Mutual Reliance Review System for Exemptive Relief Applications

National Instrument 51-102 Continuous Disclosure Obligations, s. 13.1 – General – An exchangeable share issuer wants an exemption from having to file continuous disclosure documents to permit it to rely on the continuous disclosure documents of its parent issuer - The issuer is an exchangeable share issuer that complies with all of the conditions for continuous disclosure relief in section 13.3 of National Instrument 51-102 Continuous Disclosure Obligations except that its parent issuer is not an SEC issuer; the parent issuer is a Canadian reporting issuer that will send copies of all of its documents to the securityholders of the exchangeable share issuer and explain the reasons the information sent to them relates to the parent, rather than the exchangeable share issuer; the exchangeable share issuer will remain a subsidiary of the parent issuer, and will not issue any securities other than exchangeable shares or debt instruments to certain parties

Multilateral Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, s. 4.5 – An issuer wants relief from the requirements in Parts 2 and 3 of MI 52-109 to file annual and interim certificates - The issuer has applied for and received an exemption from filing interim and annual financial statements

Applicable British Columbia Provisions

National Instrument 51-102, s. 13.1

Multilateral Instrument 52-109, Parts 2 and 3, s. 4.5

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Ontario, Québec, New Brunswick,
Nova Scotia and Newfoundland and Labrador
(the Jurisdictions)

And

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of
US Gold Canadian Acquisition Corporation
(the Filer)

2007 BCSECCOM 46

MRRS Decision Document

Background

1. The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that:
 - 1.1 The Filer be exempted from National Instrument 51-102 – *Continuous Disclosure Obligations* (NI 51-102) and from any comparable continuous disclosure requirements under the Legislation that has not yet been repealed or otherwise rendered ineffective as a consequence of the adoption of NI 51-102 (the Continuous Disclosure Requirements) (collectively, the Continuous Disclosure Relief); and
 - 1.2 The Filer be exempted from Multilateral Instrument 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings* (MI 52-109) (the MI 52-109 Relief).
2. Under the Mutual Reliance Review System for Exemptive Relief (the MRRS):
 - 2.1 The Alberta Securities Commission is the principal regulator for this application; and
 - 2.2 This MRRS decision document evidences the decision of each Decision Maker.

Interpretation

3. Defined terms contained in National Instrument 14-101 – Definitions have the same meaning in this decision unless they are defined in this decision.

Representations

4. The decision is based on the following facts represented by the Filer:
 - 4.1 The Filer is incorporated under the *Business Corporations Act* (Alberta) and has its head office in Edmonton, Alberta. The Filer is a reporting issuer in each of the Jurisdictions, other than Manitoba.
 - 4.2 The Filer is a direct subsidiary of U.S. Gold Corporation. U.S. Gold Corporation is a reporting issuer in each of the provinces of Canada and its shares of common stock are listed on the Toronto Stock Exchange and on the American Stock Exchange under the symbol "UXG".

2007 BCSECCOM 46

- 4.3 The Filer was formed solely for making the take-over bids described below. The Filer is in default of its continuous disclosure obligations as it has not filed interim filings or interim certificates since it became a reporting issuer. The Filer has not carried on any business activities since its incorporation and therefore such disclosure would have no public utility.
- 4.4 On March 5, 2006, U.S. Gold Corporation announced its intention to make securities exchange take-over bids (the Take-Over Bids) for all the outstanding common shares of four companies that have gold exploration properties adjacent to or near U.S. Gold Corporation's Tonkin Springs property. Those companies are White Knight Resources Ltd., Nevada Pacific Gold Ltd., Coral Gold Resources Ltd. and Tone Resources Ltd., all of which are based in British Columbia and listed on the TSX Venture Exchange. On May 1, 2006, U.S. Gold Corporation, the Filer and US Gold Holdings Corporation (US Gold Subco) filed a take-over bid for all of the outstanding common shares of White Knight Resources Ltd. (the White Knight Bid). On June 5, 2006, U.S. Gold Corporation, the Filer and US Gold Subco terminated the White Knight Bid prior to acquiring any securities pursuant to the White Knight Bid.
- 4.5 In order to provide Canadian security holders of the offeree issuers with certain tax benefits, the offeree security holders were to have the option to exchange their securities for either shares of common stock of U.S. Gold Corporation or exchangeable shares (the Exchangeable Shares) of the Filer.
- 4.6 The Exchangeable Shares were structured so that they will be, except for tax implications, the economic equivalent of the shares of common stock of U.S. Gold Corporation.
- 4.7 The Exchangeable Shares provide a limited right to vote to holders of Exchangeable Shares. The number of directors of the Filer will be fixed at three and holders of Exchangeable Shares will be entitled to vote on the election or appointment of one out of three directors of the Filer.
- 4.8 Subject to meeting certain United States securities regulatory requirements, U.S. Gold Corporation intends to carry out its proposal by way of share exchange take-over bids or by way of another transaction that would have the same result.
- 4.9 Application of the Continuous Disclosure Requirements to both U.S. Gold Corporation and the Filer would be costly but provide no real

2007 BCSECCOM 46

benefit to investors. The Exchangeable Shares will provide a holder with a security in an issuer (i.e. the Filer) having participation and voting rights, which are, as nearly as practicable, equivalent to those of shares of common stock of U.S. Gold Corporation. The rights attaching to the Exchangeable Shares and the shares of common stock of U.S. Gold Corporation are practically equivalent and the value of the Exchangeable Shares and shares of common stock of U.S. Gold Corporation is entirely dependent on the assets and operations of only U.S. Gold Corporation, on a consolidated basis. Therefore, the only Continuous Disclosure Requirements relevant to a holder of Exchangeable Shares (or shares of common stock at U.S. Gold Corporation) are Continuous Disclosure Requirements relating to the U.S. Gold Corporation. Further, holders of Exchangeable Shares effectively have a participating interest in U.S. Gold Corporation and do not have a participating interest in the Filer and, therefore, it is the information furnished under the Continuous Disclosure Requirements relating to U.S. Gold Corporation that is directly relevant to the holders of both Exchangeable Shares and shares of common stock of U.S. Gold Corporation. Only U.S. Gold Corporation, as the sole holder of the outstanding voting share of the Filer, not the holders of Exchangeable Shares or shares of common stock of U.S. Gold Corporation, will have a direct participating interest in the Filer.

Decision

5. 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.
6. The decision of the Decision Makers under the Legislation is as follows:
 - 6.1 For so long as there are no Exchangeable Shares of the Filer issued and outstanding and all issued securities of the Filer are owned by U.S. Gold Corporation, the Filer be granted:
 - 6.1.1 the Continuous Disclosure Relief; and
 - 6.1.2 the MI 52-109 Relief.
 - 6.2 Once Exchangeable Shares are issued, the Continuous Disclosure Relief is granted to the Filer for so long as:

2007 BCSECCOM 46

- 6.2.1 U.S. Gold Corporation is the beneficial owner of all the issued and outstanding voting securities of the Filer, other than the Exchangeable Shares;
- 6.2.2 U.S. Gold Corporation is a reporting issuer in a designated Canadian jurisdiction that has filed all the documents it is required to file under NI 51-102;
- 6.2.3 the Filer does not issue any securities, and does not have any securities outstanding, other than:
 - 6.2.3.1 the Exchangeable Shares;
 - 6.2.3.2 securities issued to and held by U.S. Gold Corporation or an affiliate of U.S. Gold Corporation;
 - 6.2.3.3 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
 - 6.2.3.4 securities issued under exemptions from the registration requirement and prospectus requirement in section 2.35 of National Instrument 45-106 *Prospectus and Registration Exemptions*;
- 6.2.4 the Filer files in electronic format a notice indicating that the Filer is relying on the continuous disclosure documents filed by U.S. Gold Corporation and setting out where those documents can be found in electronic format;
- 6.2.5 the Filer concurrently sends to all holders of Exchangeable Shares all disclosure materials that are sent to holders of the shares of common stock of U.S. Gold Corporation in the manner and at the time required by the Legislation;
- 6.2.6 U.S. Gold Corporation
 - 6.2.6.1 complies with the Legislation in respect of making public disclosure of material information on a timely basis; and

2007 BCSECCOM 46

- 6.2.6.2 immediately issues in Canada and files any news release that discloses a material change in its affairs;
- 6.2.7 the Filer 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 the Filer that are not also material changes in the affairs of U.S. Gold Corporation;
- 6.2.8 U.S. Gold Corporation includes in all mailings of proxy solicitation materials to holders of the Exchangeable Shares a clear and concise statement that
 - 6.2.8.1 explains the reason the mailed material relates solely to U.S. Gold Corporation;
 - 6.2.8.2 indicates that the Exchangeable Shares are the economic equivalent to the shares of common stock of U.S. Gold Corporation; and
 - 6.2.8.3 describes the voting rights associated with the Exchangeable Shares; and
- 6.2.9 the Filer prepares and mails proxy solicitation materials as required by the Legislation to holders of Exchangeable Shares in connection with the right of the holders of Exchangeable Shares to elect or appoint one of the three directors of the Filer.
- 6.3 Once Exchangeable Shares are issued, the MI 52-109 Relief is granted for to the Filer for so long as:
 - 6.3.1 U.S. Gold Corporation files in electronic format under the SEDAR profile of the Filer the:
 - 6.3.1.1 interim filings;
 - 6.3.1.2 annual filings;
 - 6.3.1.3 interim certificates; and
 - 6.3.1.4 annual certificates

2007 BCSECCOM 46

of U.S. Gold Corporation, at the same time as such documents are required to be filed under the Legislation by U.S. Gold Corporation.

6.3.2 the Filer is not required to, and does not, file its own interim filings and annual filings (as those terms are defined under MI 52-109); and

6.3.3 the Filer is exempt from or otherwise not subject to the Continuous Disclosure Requirements.

Patricia Leeson
Associate Director, Corporate Finance
Alberta Securities Commission