

## 2008 BCSECCOM 500

### Headnote

An issuer is issuing debentures under a trust indenture and wants an exemption from the trust indenture requirements contained in sections 90 to 101 of the *Business Corporations Act* - A prospectus, securities exchange issuer circular, or take over bid circular has been filed under the Securities Act in respect of the debentures; the trust indenture will be governed by the Trust Indenture Act of 1939 of the United States, which contains provisions that are substantially similar to the requirements of the Act

Securities Act, s. 169 – Confidentiality – An applicant wants to keep an application and order confidential for a limited amount of time after the order is granted – The record provides intimate financial, personal or other information; the disclosure of the information before a specific transaction would be detrimental to the person affected; the information will be made available after a specific date

### Exemption Order

#### The Bank of New York and Northgate Minerals Corporation

#### Section 91 (3) of the *Business Corporations Act*, S.B.C. 2002, c. 57

### Background

- ¶ 1 The British Columbia Securities Commission (the Commission) has received an application from the Bank of New York (the Applicant) for:
- (a) an exemption from the requirements of sections 90 to 101 of the British Columbia *Business Corporations Act* (the Act), and
  - (b) a decision pursuant to the securities legislation of British Columbia (the Legislation) that the application for this decision and this decision be kept confidential (the Confidentiality Relief) until the earliest to occur of:
    - (i) the date on which Northgate Minerals Corporation (Northgate) announces its intention to file a supplemental short form prospectus;
    - (ii) the date on which the Applicant advises the Commission that there is no longer any need for the application for this decision and this decision to remain confidential; and
    - (iii) the date which is 60 days from the date of this decision.

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### Representations

¶ 2 The Applicant represents that:

1. it is a banking corporation organized under the laws of New York and is neither resident nor authorized to do business in British Columbia;
2. it will be the trustee under an indenture (the Indenture) to be entered into with Northgate, the final form of which was filed with the United States Securities and Exchange Commission as an exhibit to Northgate's Amendment No. 1 to the registration statement dated June 5, 2008;
3. it has been advised by Northgate that Northgate is a corporation amalgamated under the laws of British Columbia, with its head office located at Suite 406 - 815 Hornby Street, Vancouver, British Columbia, Canada V6Z 2E6;
4. Northgate proposes to sell debt securities (the Debt Securities) in Canada and the United States under the Indenture;
5. the Debt Securities will be established in a resolution of Northgate's board of directors or one or more supplemental short form prospectus, each of which is to comply with the terms of the Indenture;
6. it has been advised by Northgate that Northgate has filed a short form base shelf prospectus (the Shelf Prospectus) pursuant to National Instrument 44-102 *Shelf Distributions* to qualify the distribution of the Debt Securities in each of the provinces and territories of Canada;
7. it has been advised by Northgate that Northgate currently anticipates that as at the date of this decision document, it may apply for some or all of the Debt Securities that may be issued to be listed on a stock exchange;
8. the Indenture is governed by the laws of the State of New York and is subject to and governed by the provisions of the United States Trust Indenture Act of 1939 (the TIA);
9. as Northgate has filed the Shelf Prospectus in British Columbia, sections 90 to 101 of the Act will apply to the Indenture;
10. the Indenture provides that there will always be a trustee party to it that satisfies the requirements of the TIA and that the terms of such Indenture will be consistent with the requirements of the TIA; and

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11. since the TIA regulates trustees and trust indentures of publicly offered debt securities in the United States in a manner that is consistent with sections 90 to 101 of the Act, holders of Debt Securities in British Columbia will not derive any additional material benefit from having the Indenture be subject to sections 90 to 101 of the Act.

### **Order**

- ¶ 3 Because it is not prejudicial to the public interest, the Executive Director orders under subsection 91(3) of the Act, that sections 90 to 101 of the Act do not apply to the Indenture, provided that:
- (a) the Indenture complies in all material respects with the provisions of the TIA that are substantially similar to the provisions of sections 90 to 101 of the Act; and
  - (b) the Applicant, or any trustee that replaces the Applicant under the terms of the Indenture, has filed with the Commission, a submission to the non-exclusive jurisdiction of the courts and administrative tribunals of British Columbia and appointment of an agent for service of process in Canada.

The decision of the Commission under the Legislation is that the Confidentiality Relief is granted.

- ¶ 4 June 27, 2008

Andrew S. Richardson, CA  
Acting Director, Corporate Finance  
British Columbia Securities Commission