

2006 BCSECCOM 392

June 23, 2006

Headnote

Multilateral Instrument 11-101 Principal Regulator System - National Instrument 51-102, s. 13.1 - Continuous Disclosure Obligations - BAR - An issuer requires relief from the requirement to include certain financial statements in a business acquisition report - The issuer acquired a mineral project that was a significant acquisition through an acquisition of the project assets and a share acquisition; the seller of the project assets acquired the project through a realization of collateral on debt; that seller has accounted for the project based on the amount of the debt, rather than on any financial information about the project; the sellers have not conducted any operations on the mineral project for several years; the project has been maintained on a care and maintenance basis only since operations shut down; the previous owner of the project is unavailable to provide historical financial information, and current financial data was stolen from the project manager, the seller of the shares; the seller of the assets does not maintain financial information on the project sufficient to prepare an audit of the project or carve-out financial statements; the issuer will provide an audited statement of assets acquired and liabilities assumed of the project as of the date of the acquisition, an audited opening balance sheet relating to the issuer of the shares it acquired, and a pro forma balance sheet that gives effect to the acquisition

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 187(c)

National Instrument 51-102 *Continuous Disclosure Obligations*, ss. 8.4, 8.5 and 13.1

In the Matter of
the *Securities Act* (the Act) of British Columbia and
National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102)

and

In the Matter of
Multilateral Instrument 11-101 *Principal Regulator System* (MI 11-101)

and

In the Matter of
Gold Hawk Resources Inc.
(the Filer)

Decision

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Background

¶ 1 The British Columbia Securities Commission (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the Legislation) for an exemption, in connection with the Filer's acquisitions of the Tamboraque project described below and the outstanding shares of Larisbeascoa & Zapata SAC (L&Z), from the requirements of the Legislation to include financial statements of an acquired business in:

- (a) a business acquisition report the Filer will file in connection with the acquisitions; and
- (b) any prospectus of the Filer, or any other document requiring prospectus level disclosure in respect of the Filer, filed with the Decision Maker.

Application of Principal Regulator System

¶ 2 Under MI 11-101:

- (a) the Decision Maker is the principal regulator for the Filer, and
- (b) this Filer is relying on the exemptions in Parts 3 and 4 of MI 11-101 in the provinces of Alberta and Québec.

Representations

¶ 3 This decision is based on the following facts represented by the Filer:

1. the Filer is a corporation existing under the *Canada Business Corporations Act* with its registered and principal office in Vancouver, British Columbia;
2. the Filer's common shares are listed on the TSX Venture Exchange;
3. the Filer is a reporting issuer under the securities legislation of British Columbia, Alberta and Québec and is not in default of its obligations as a reporting issuer under the legislation of any jurisdiction in which it is a reporting issuer;
4. the Filer is a junior exploration company which currently holds interests in the Machacala gold-silver exploration property in Peru and the Barry-Souart gold exploration property in Barry and Souart Townships in Québec;
5. the Filer has acquired the Tamboraque project in Peru which consists of:

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- (a) 99 mining concessions, one transport concession and one milling concession covering an aggregate area of approximately 3,162 hectares located in Peru (collectively the concessions), and
 - (b) the former producing Tamboraque zinc, lead, gold and silver mine, a crushing plant, flotation mill, Biox plant and related infrastructure and equipment (collectively the mine) all located on the concessions;
- 6. Minera Lizandro Proana (Proana), a private Peruvian company, originally owned the concessions and, in 1999, constructed a new mill and placed the expanded mine into production;
- 7. Gestiones Y Recuperaciones de Activos S.A. (formerly known as Wiese Sudameris Leasing) (WSL), a subsidiary of a Peruvian bank, was the major secured creditor to Proana which provided project financing through a loan to Proana for the construction of the mine;
- 8. following the shut down of operations at the Tamboraque project in October 2000, Proana defaulted on the loan from WSL and, in early 2001, WSL seized the mine and had the concessions transferred into its name under its security in respect of the loan;
- 9. in late 2001, WSL hired L&Z, a private Peruvian company, to redesign, restart and manage the mine;
- 10. the mine restarted operations in May 2002 but was shut down again in November 2002;
- 11. except during this six month period in 2002, the Tamboraque project has been maintained on a care and maintenance basis since WSL seized it;
- 12. in early 2004, WSL granted L&Z a lease allowing L&Z to operate the mine and administer its assets;
- 13. since the grant of the lease, operations at the mine have not been restarted;
- 14. the Filer has acquired
 - (a) all of the outstanding shares of L&Z for US\$5.0 million cash consideration, and
 - (b) the Tamboraque project from WSL for US\$7.0 million cash consideration;

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15. each of the acquisitions will constitute a “significant acquisition” under section 8.3 of NI 51-102;
16. the Filer has attempted, but has been unable, to obtain financial information regarding the Tamboraque project and L&Z which would enable it to prepare the financial statements in respect of the Tamboraque project and L&Z required by section 8.4 of NI 51-102;
17. the Filer understands that
 - (a) financial statements for Proana are unavailable,
 - (b) since seizing the Tamboraque project in early 2001, WSL has accounted for the project for internal purposes based upon the unpaid balance of the loan rather than based upon financial information in respect of the project, and WSL does not have financial information regarding the project sufficient to allow for the preparation of audited financial statements in respect of the project; and
 - (c) due to the theft of certain electronic accounting information from L&Z, it is not possible to prepare historical audited financial statements for L&Z unless the Filer reprocesses the historical accounting records of L&Z, which is impracticable;
18. the accounting information for 2004 and 2005 for L&Z is also not relevant since it consists solely of to maintenance fees of the mine to safeguard the assets; and
19. the Filer will prepare the following financial information regarding the project and L&Z:
 - (a) an audited Statement of Assets Acquired and Liabilities Assumed of the project as at the date of the completion of the acquisition,
 - (b) an audited opening balance sheet of L&Z as at the date of the completion of the Filer’s acquisition of L&Z, and
 - (c) a pro forma balance sheet, accompanied by a compilation report of the auditor of the Filer, that gives effect to the completion of the acquisitions as at December 31, 2005,

(collectively the Acquisition Financial Statements).

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Decision

- ¶ 4 The Decision Maker being satisfied that it has the jurisdiction to make the decision and considering that to do so would not be prejudicial to the public interest, the Requested Relief is granted provided that the business acquisition report, and any prospectus or other document requiring financial statements in respect of the acquisitions, include the Acquisition Financial Statements.

Martin Eady, CA
Director, Corporate Finance
British Columbia Securities Commission