

2011 BCSECCOM 229

May 11, 2011

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* - An issuer wants relief from the requirements to file and/or deliver interim financial statements for a particular period – A compulsory acquisition procedure pursuant to corporate legislation has been undertaken, prior to the filing deadline, in relation to the issuer and its shareholders pursuant to which all of the issuer's securities will be acquired by the offeror by a fixed date

National Instrument 52-109, s. 8.6 - *Certification of Disclosure in Issuers' Annual and Interim Filings* – An issuer wants relief from the requirements in Part 5 of NI 52-109 to file interim certificates – The issuer has applied for and received an exemption from filing interim financial statements

Applicable Legislative Provisions

National Instrument 51-102, s. 13.1

National Instrument 52-109, s. 8.6

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

and

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

and

In the Matter of
Ventana Gold Corp.
(the Filer)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for relief from the

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requirements: (a) under National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), to prepare, file and, where required, deliver to shareholders interim financial statements and management's discussion and analysis for the nine months ended March 31, 2011, (the Interim Filings); and (b) under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (NI 52-109), to file interim certificates (the Officer Certificates) relating to the Interim Filings (together, the Exemptive Relief Sought).

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

- (a) the British Columbia Securities Commission is the principal regulator for this application;
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-202 *Passport System* (MI 11-202) is intended to be relied upon in Alberta; and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-202 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 a corporation existing under the *Business Corporations Act* (British Columbia) (the BCBCA); the Filer's head office is at 400 – 837 West Hastings Street, Vancouver, British Columbia V6C 3N6 and its registered and records office is at 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2;
 - 2. the Filer is a reporting issuer in the Jurisdictions and the province of Alberta;
 - 3. the Filer is not in default of any requirement of the Legislation or the securities legislation of Alberta;
 - 4. the common shares of the Filer (the Shares) were delisted from trading on the Toronto Stock Exchange at the close of business on March 25, 2011 and as a

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result, as of March 26, 2011, the Filer became a “venture issuer” as such term is defined in NI 52-109;

5. the authorized capital of the Filer consists of an unlimited number of common shares; the Filer has no outstanding debt securities and in addition to common shares, there are 900,000 warrants to acquire common shares outstanding, all of which are held by one party and which are out of the money with an exercise price of \$15.00 and an expiry date of June 7, 2011. The terms of the warrants expressly disclaim any rights of warrantholders to be considered as shareholders;
6. on December 16, 2010, AUX Canada Acquisition Inc. (the Offeror) commenced an offer (the Offer) to acquire all of the Shares other than Shares beneficially owned by the Offeror and its affiliates and associates;
7. in the take-over bid circular dated December 16, 2010 accompanying the Offer, the Offeror disclosed that if the Offer was accepted by shareholders who, in the aggregate, held not less than 90% of the issued and outstanding Shares, the Offeror intended to acquire those Shares which remained outstanding held by Shareholders who did not accept the Offer (and each person who subsequently acquired any of such Shares) pursuant to the provisions of section 300 of the BCBCA;
8. on March 4, 15 and 17, 2011, the Offeror took up and paid for, and thereby acquired pursuant to the Offer, an aggregate of approximately 96.9% of the issued and outstanding Shares excluding those outstanding Shares already owned by the Offeror and its affiliates;
9. the Offer expired at 8:00 p.m. (Toronto time) on March 16, 2011;
10. together with the Shares already owned by the Offeror and its affiliates, the Offeror now holds approximately 96.7% of the Shares on a fully diluted basis;
11. in a press release dated March 16, 2011 announcing the completion of the Offer, the Filer announced that it would apply to cease to be a reporting issuer and to otherwise terminate its public reporting requirements as soon as possible;
12. on March 22, 2011, pursuant to the provisions of section 300 of the BCBCA, the Offeror sent to those shareholders of the Filer who had not accepted the Offer (the Remaining Shareholders, which definition includes any person who subsequently acquires such Shares) written notice (the Acquisition Notice) that the Offeror will acquire the Shares held by the Remaining Shareholders

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on the same terms, including the price per Share, as the Shares acquired pursuant to the Offer (the Compulsory Acquisition);

13. section 300 of the BCBCA provides that once the Acquisition Notice has been sent, the Offeror is entitled and bound to acquire all of the Shares held by the Remaining Shareholders for the same price and on the same terms contained in the Offer;
14. pursuant to section 300 of the BCBCA, a Remaining Shareholder is entitled to make an application to the court on or before May 23, 2011; neither the Filer nor the Offeror has received notice of any such application. The court may, by order, set the price and terms for payment for the Shares and make consequential orders and give such directions as the court considers appropriate;
15. under the provisions of section 300 of the BCBCA, the Offeror intends to deliver to the Filer on or about May 26, 2011 (the Acquisition Date) a copy of the Acquisition Notice along with a cash payment in the amount equal to the number of Shares held by the Remaining Shareholders multiplied by \$13.06, (being approximately \$51.1 million), the aggregate amount the Remaining Shareholders are entitled to receive as payment for their Shares pursuant to the Compulsory Acquisition;
16. section 300 of the BCBCA provides that such delivery and payment by the Offeror may not be made for a period of at least two months after the date the Acquisition Notice is sent to the Remaining Shareholders; the Acquisition Date is at least two months after the date the Acquisition Notice was sent by the Offeror;
17. section 300 of the BCBCA also provides that upon receipt of the Acquisition Notice and the cash payment referred to in paragraphh 15 above to which the Remaining Shareholders are entitled, the Filer must register the Offeror as the shareholder with respect to all the Shares held by the Remaining Shareholders;
18. as soon as practicable after the Acquisition Date, the Filer intends to apply to the securities regulatory authorities for an order that the Filer cease to be a "reporting issuer" under the laws of the Jurisdictions and the province of Alberta; it is therefore expected that the Filer will be 100% owned by the Offeror by May 27, 2011 and will cease to be a reporting issuer by mid June, 2011;
19. absent the granting of the Exemptive Relief Sought, the Filer would be required to file the Interim Filings and Officer Certificates by May 30, 2011;

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20. the Offeror is entitled and bound to acquire all of the Shares held by the Remaining Shareholders and it is anticipated that the Offeror will acquire 100% of the Shares before the date on which the Interim Filings and Officer Certificates must be filed; however, due to the time required for the Filer to cease to be a reporting issuer, the Filer will still be a reporting issuer at that time;
21. it is unnecessary under the circumstances to prepare the Interim Filings and the Officer Certificates as information regarding the Filer's financial position is no longer relevant to the Remaining Shareholders or other market participants who may wish to purchase Shares held by the Remaining Shareholders; and
22. the Offeror has advised the Filer that it has no need to obtain, in the form of the Interim Filings and Officer Certificates, the information to be set out in the Interim Filings and Officer Certificates.

Decision

- ¶ 4 Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemptive Relief Sought is granted.

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