

# 2009 BCSECCOM 488

## Headnote

*Securities Act*, s. 48, 76 Corp. Acquisitions and Reorgs – requirement to be registered as a dealer and to file a prospectus - Trades in securities of an issuer for the acquisition of an asset by the issuer's subsidiary; the asset is an interest in a resource property; in consideration for the issuer's securities, the owners of the asset will transfer the asset to the issuer's wholly-owned subsidiary

## Exemption Order

### SilverCrest Mines Inc.

### Sections 48 and 76 of the Securities Act, R.S.B.C. 1996, c.418

## Background

- ¶ 1 SilverCrest Mines Inc. (SilverCrest) has applied for an exemption from the requirements to be registered to trade and to file and obtain receipts for a preliminary prospectus and prospectus in sections 34(1)(a) and 61 of the Act (the registration and prospectus requirements) for certain intended trades.

## Representations

- ¶ 2 SilverCrest represents that:
1. it was continued under the laws of British Columbia on May 15, 1998;
  2. its authorized share capital consists of an unlimited number of common shares and an unlimited number of preferred shares, of which 58,149,489 common shares and no preferred shares were issued and outstanding as at August 18, 2009;
  3. it is a reporting issuer in British Columbia, Alberta and Ontario and is not in default of any requirements of the securities legislation in these jurisdictions;
  4. its common shares are listed for trading on the TSX Venture Exchange (the Exchange);
  5. it is the beneficial owner of 100% of the issued and outstanding share capital of Nusantara de Mexico, S.A. de C.V. (the SilverCrest Subsidiary);
  6. the SilverCrest Subsidiary is a corporation incorporated under the laws of Mexico and is not a reporting issuer in any province or territory of Canada;

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7. the SilverCrest Subsidiary is a party to an option agreement dated December 8, 2005 (the Option Agreement) with the third party owners (the Owners), under which the SilverCrest Subsidiary has an option to acquire a 100% interest (the Option) in certain mining concessions located in Mexico (the Property) from the Owners;
8. under the laws of Mexico, only Mexican citizens and Mexican corporations can hold mining concessions;
9. the Option Agreement provides that the SilverCrest Subsidiary may acquire the Property by making staged payments to the Owners totaling US\$3.0 million over a period of 5 years and by making a final US\$1.0 million payment conditional upon receipt of a feasibility study and all operating and environmental permits relating to the Santa Elena project;
10. the Option Agreement further provides that the SilverCrest Subsidiary may satisfy a portion of the staged payments by way of delivering common shares of SilverCrest (SilverCrest Shares) to the Owners;
11. the SilverCrest Subsidiary has maintained the Option in good standing over the last three and a half years by making staged payments totalling US\$1.9 million in cash over that period;
12. all required operating and environmental permits have been received and the requisite feasibility study in respect of the Santa Elena Project has been completed;
13. further to a supplemental agreement dated July 9, 2009 (the Supplemental Agreement) between, inter alia, the SilverCrest Subsidiary and the Owners, the SilverCrest Subsidiary has agreed to exercise the Option and accelerate the acquisition of the Property by making a final payment of US\$2.1 million;
14. pursuant to the Supplemental Agreement, the payment of US\$525,000 (Cdn\$608,484) of the final purchase price of US\$2.1 million will be satisfied by delivering 1,216,968 SilverCrest Shares to the Owners at an issue price of \$0.50 per share;
15. upon the exercise of the Option under the Option Agreement and the Supplemental Agreement, the SilverCrest Subsidiary will have acquired all of the Owners' right, title and interest in and to the Property;

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16. the Exchange has accepted the Supplemental Agreement, including the issuance of 1,216,968 SilverCrest Shares, for filing;
17. if SilverCrest acquired the Property directly rather than through its wholly-owned subsidiary, the SilverCrest Subsidiary, SilverCrest could rely on the registration and prospectus exemptions in sections 45(2)(21) and 74(2)(18) of the Act or section 2.13 of National Instrument 45-106 – *Prospectus and Registration Exemptions* to distribute the SilverCrest Shares as part of the consideration for the Property.

### Order

- ¶ 3 Considering that it is not prejudicial to the public interest, the Commission orders that:
1. under sections 48 and 76 of the Act, SilverCrest is exempt from the registration and prospectus requirements for trades of the SilverCrest Shares to the Owners or the Owners' designees under the Supplemental Agreement, provided that SilverCrest files a Form 45-106F1 and pays the required fee within 10 days of each distribution; and
  2. under section 76 of the Act, any trade in the SilverCrest Shares issued under this Order is deemed to be a distribution unless the conditions in subsection 2.5(2) of National Instrument 45-102 *Resale of Securities* are satisfied.
- ¶ 4 August 19, 2009

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British Columbia Securities Commission