

2009 BCSECCOM 244

May 5, 2009

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Securities Act s. 88 - Cease to be a reporting issuer in BC - The securities of the issuer are beneficially owned by not more than 50 persons and are not traded through any exchange or market - The issuer falls within the definition of “closely held reporting issuer” contained in BC Instrument 11-502 Voluntary Surrender of Reporting Issuer Status as the securities of the issuer are beneficially owned by not more than 50 persons and are not traded through any exchange or market

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 88

In the Matter of
the Securities Legislation of
Alberta, 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
Waratah Coal Inc.
(the Filer)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the Filer be deemed to have ceased to be a reporting issuer in the Jurisdictions (the Exemptive Relief Sought).

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

- (a) the British Columbia Securities Commission is the principal regulator for this application, and
- (b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 *Passport System* 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 governed by the *Business Corporations Act* (British Columbia) (the BCBCA) with its registered address located at 2080 – 777 Hornby Street, Vancouver British Columbia, V6Z 1S4;
 2. the Filer is a reporting issuer in the provinces of Alberta, British Columbia and Ontario;
 3. the Filer's authorized share capital consists of an unlimited number of common shares (Shares);
 4. the Filer also has outstanding common share purchase warrants previously exercisable to acquire up to 761,904 Shares at a price of \$3.15 per Share and common share purchase warrants previously exercisable to acquire up to 6,333,207 Shares at a price of \$4.50 per Share, all of which expire on March 28, 2010 (collectively, the Warrants);
 5. pursuant to a take-over bid (the Offer) commenced by Mineralogy Pty Ltd. (Mineralogy) on October 3, 2008, and which expired on January 5, 2009, Mineralogy Canada Acquisition Corp. (the Acquiror) acquired, in the aggregate, 46,168,517 Shares at a price of \$1.60 per Share, representing approximately 91.3% of the issued and outstanding Shares, excluding those Shares already owned by the Acquiror and Mineralogy prior to the Offer; taking into account the Shares owned by Mineralogy and the Acquiror prior to the Offer, as at January 5, 2009, the Acquiror owned 56,923,017 Shares, being approximately 92.8% of the outstanding Shares;

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6. on January 12, 2009, the Acquiror commenced a compulsory acquisition of the remaining outstanding Shares not already owned by it at a price of \$1.60 per Share pursuant to section 300 of the *Business Corporation Act* (British Columbia) (the Compulsory Acquisition);
7. on March 30, 2009, the Acquiror completed the Compulsory Acquisition and became the owner of all of the issued and outstanding Shares;
8. although the Offer included an offer to acquire all Shares issued upon the exercise of options, warrants and other rights to acquire Shares, the Warrants remained outstanding and unexercised following the Compulsory Acquisition as their respective exercise prices, being \$3.15 and \$4.50, were significantly greater than the price at which the Shares were acquired under the Offer and the Compulsory Acquisition, being \$1.60;
9. the Warrants are held by 39 registered holders, of which 35 are located in Canada; the terms of the Warrants do not include any requirement that the Filer remain a reporting issuer in any jurisdiction; on February 23, 2009, the Filer provided at least 21 days' written notice, in accordance with the terms of the Warrants, to the holders of the Warrants that following the completion of the Compulsory Acquisition, the Filer intended to effect a capital reorganization that would result in the Warrants no longer being exercisable to acquire Shares;
10. as at April 7, 2009, or 43 days following the date on which the above described notices were sent to the registered holders of the Warrants, the Filer had not received any communications from holders of the Warrants objecting to or otherwise questioning the proposed capital reorganization; on April 7, 2009, as permitted by the terms of the Warrants, the Filer completed the proposed capital reorganization, and as a result, the Warrants are no longer exercisable to acquire Shares;
11. prior to consummation of the transactions described above, the Shares were listed for trading on the TSX Venture Exchange under the symbol "WCI", and the Filer's CHESD Depository Interests (representing the Shares) (CDIs) were listed on the Australian Securities Exchange under the symbol "WCI";
12. on March 30, 2009, an application was made to de-list the Shares from the TSX Venture Exchange; such Shares were de-listed at the close of business on April 3, 2009; trading of the Filer's CDIs on the Australian Securities Exchange was halted at the close of business on January 15, 2009; on March 30, 2009, an application was made to de-list the CDIs from the Australian

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Securities Exchange; such CDIs were de-listed at the close of business on April 1, 2009;

13. no securities of the Filer are traded on any marketplace as defined in NI 21-101 *Marketplace Operation*;
14. other than the Shares and the Warrants, the Filer has no other securities, including debt securities, outstanding;
15. the Filer has no current intention to seek public financing by way of an offering of securities;
16. the Filer is applying for relief to cease to be a reporting issuer in all jurisdictions of Canada in which it is currently a reporting issuer;
17. the Filer is not in default of any of its obligations under the Legislation as a reporting issuer, except for the obligation to file its annual information form and annual financial statements for the period ended December 31, 2008 and its management discussion and analysis in respect of such financial statements, as required under National Instrument 51-102 *Continuous Disclosure Obligations* and the related certification of such financial statements, as required under Multilateral Instrument 52-109 *Certification of Disclosure in Filers' Annual and Interim Filings*, all of which became due on March 31, 2009;
18. all of the Shares are owned by the Acquiror; there are 39 registered holders of the Warrants, of which 35 are located in Canada; although the Warrants will remain outstanding until their expiry on March 28, 2010, they are no longer exercisable to acquire Shares or any other securities of the Filer; and
19. upon the granting of the Exemptive Relief Sought, the Filer will no longer be a reporting issuer or the equivalent in any jurisdiction in Canada.

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.

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

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