

# 2005 BCSECCOM 132

January 28, 2005

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 114(2) Takeover Bids - Exemption from the formal take over bid requirements in Part 13 of the Act - Issuer needs relief from certain disclosure requirements for the takeover bid circular required by Item 15(1) of BC Form 62-902F - As the result of the applicant previously completing a "significant acquisition", it must include in the circular historical financial statements for the acquired business; the applicant had previously filed a prospectus with prospectus-level disclosure relating to the acquisition; in the circular, the applicant will include audited consolidated financial statements for a financial year that ended considerably after the significant acquisition was completed that consolidates in the financial statements of the acquired business; the circular will contain adequate alternative disclosure sufficient for shareholders to assess the transaction as a whole

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 108 and 114(2)  
Form 62-902F, Item 15

In the Matter of  
the Securities Legislation  
of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New  
Brunswick, Nova Scotia, Newfoundland and Labrador, the Yukon, the Northwest  
Territories and Nunavut (the Jurisdictions)

and

In the Matter of  
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of  
Bema Gold Corporation (the Filer)

## MRRS Decision Document

## **Background**

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

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the securities legislation of the Jurisdictions (the Legislation) that, in connection with the Filer's offer to acquire all of the outstanding common shares (the Arizona Shares) of Arizona Star Resource Corp (Arizona Star) by way of a take over bid (the Bid), the Filer be exempt from the requirement to include the following financial statements in its take over bid circular (the Requested Relief):

- (a) audited statements of income, retained earnings and cash flows of EAGC Ventures Corp. (EAGC) for its financial years ended March 31, 2002, 2001 and 2000 (the EAGC Audited Statements),
  - (b) unaudited statements of income, retained earnings and cash flows of EAGC for the interim nine month period ended December 31, 2002 and 2001 (the EAGC December 2002 Interim Statements),
  - (c) audited statements of income, retained earnings and cash flows of Petrex (Pty) Limited (Petrex) for its financial years ended June 30, 2002, 2001 and 2000 (the Petrex Audited Statements), and
  - (d) unaudited statements of income, retained earnings and cash flows of Petrex for the interim six month period ended December 31, 2002 and December 31, 2001 (the Petrex Interim Statements),
- (collectively, the Acquisition Statements).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

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

### **Interpretation**

- ¶ 2 Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

### **Representations**

- ¶ 3 The decision is based on the following facts represented by the Filer:
  1. the Filer is a corporation continued under the *Canada Business Corporations Act* with its head office in British Columbia;

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2. the Filer's authorized capital consists of an unlimited number of common shares of which 400,648,902 shares were outstanding on January 10, 2005;
3. the Filer's shares trade on the Toronto Stock Exchange and the American Stock Exchange under the symbol "BGO" and on the Alternative Investment Market of the London Stock Exchange under the symbol "BAU";
4. the Filer is a reporting issuer in each of the Jurisdictions where that status exists and is not, to its knowledge, in default of the Legislation;
5. on February 14, 2003, the Filer completed a business combination with EAGC, a then TSX Venture Exchange listed issuer, under which EAGC became a wholly-owned subsidiary of the Filer;
6. as a result of the business combination, the Filer acquired control of Petrex, a South African company, which EAGC had acquired in October 2002;
7. the Filer's principal assets are its two operating gold mines (the 79% owned Julietta mine in Russia and the 100% owned Petrex mines in South Africa), its 50% interest in the Refugio mine in Chile, its 24% interest in the Aldebaran property in Chile, (in which Arizona Star holds a 25% interest), and its right to acquire up to a 75% interest (40% of which has been earned) in the Kupol property, a development stage gold-silver deposit in Russia;
8. the Filer's financial year end is December 31, EAGC's financial year end is March 31 and Petrex's financial year end is June 30;
9. the financial results for EAGC and Petrex, now subsidiaries of the Filer, have been consolidated in the Filer's financial statements since the date the business combination closed;
10. on December 20, 2004, the Filer announced its intention to make an offer to all Arizona Star shareholders for all of the outstanding Arizona Shares on the basis of 1.85 of the Filer's shares for each one Arizona Share;
11. as the Bid involves the issuance of the Filer's common shares, the Filer must include in its take over bid circular the information prescribed by the form of prospectus appropriate for the Filer;
12. the Filer is qualified to file a prospectus in the form of a short form prospectus under National Instrument 44-101 *Short Form Prospectus Distributions* (NI 44-101);

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13. because the business combination was a “significant acquisition”, within the meaning of NI 44-101, completed within the Filer’s three most recently completed financial years, the Filer must include the Acquisition Statements in the take over bid circular;
14. On
- (i) November 28, 2002, the Filer received a receipt in British Columbia, Alberta, Manitoba and Ontario for a final short form prospectus that included the following financial statements:
    - (a) the EAGC Audited Statements,
    - (b) unaudited interim financial statements of EAGC for the three months ended June 30, 2002 and 2001,
    - (c) the Petrex Audited Statements, and
    - (d) pro forma consolidated financial statements of the Filer as at June 30, 2002,(collectively, the 2002 Prospectus Statements);
  - (ii) September 4, 2003, the Filer received a receipt in British Columbia, Alberta, Manitoba and Ontario for a final short form prospectus that contained or incorporated by reference the following financial statements:
    - (a) the 2002 Prospectus Statements,
    - (b) unaudited interim financial statements of EAGC for the six month period ended September 30, 2002,
    - (c) the EAGC December 2002 Interim Statements,
    - (d) pro forma consolidated financial statements of the Filer as at December 31, 2002 (the December 2002 Pro forma Statements); and
  - (iii) November 12, 2004, the Filer received a receipt in each of the provinces of Canada for a final short form prospectus that incorporated by reference the following financial statements:

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- (a) the Acquisition Statements, other than the Petrex Interim Statements, and
  - (b) the December 2002 Pro forma Statements;
15. the Filer was exempted from having to include interim financial statements of Petrex with the prospectuses it filed in 2002 and 2004; and
16. the Filer will include, or incorporate by reference, the following financial statements in the take over bid circular:
- (i) the Filer's audited financial statements for the its financial years ended December 31, 2003, 2002 and 2001, and
  - (ii) the Filer's unaudited financial statements for the nine month period ended September 30, 2004 and 2003.

### **Decision**

- ¶ 4 Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met.

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

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