

2009 BCSECCOM 551

September 24, 2009

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 52-107, s. 9.1 – acceptable auditing standards - An issuer wants relief from the requirement to audit acquisition statements in accordance with Canadian or U.S. GAAS - The issuer acquired a business whose historical financial statements have not been audited in accordance with Canadian or U.S. GAAS; the acquired business' financial statements have been audited in accordance with International Standards on Auditing; for various reasons, it would be practically impossible to re-audit the business' financial statements in accordance with Canadian or U.S. GAAS; the audit report will be accompanied by a statement by the auditor that describes any material differences in the form of report as compared to a Canadian GAAS audit report, and indicates that its report would not contain a reservation if it were prepared in accordance with Canadian GAAS

Applicable British Columbia Provisions

National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*, ss. 6.2 and 9.1

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
Western Canadian Coal Corp.
(the Filer)

Decision

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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) that the Filer be exempted from complying with section 6.2 of National Instrument 52-107, *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (NI 52-107), pursuant to which the financial statements of an acquired company that are included in a business acquisition report filed under section 8.2 of National Instrument 51-102, *Continuous Disclosure Obligations* must be audited in accordance with Canadian or United States generally accepted auditing standards (the Requested Relief).

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 11-102 – Passport System (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Newfoundland and Labrador and Prince Edward Island; and
- (c) the decision is the decision of the principal regulator and evidences the decision of the other securities regulatory authority or regulator in Ontario.

Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* have the same meaning as is 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 company incorporated under the laws of British Columbia;
 - 2. the Filer's registered office is located at 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2 and its head office is located at 900-580 Hornby Street, Vancouver, British Columbia, V6C 3B6;
 - 3. the Filer's primary business is acquiring, exploring and developing coal mining properties for the international metallurgical coal markets, with a

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current focus on coal mining in northeastern British Columbia, West Virginia and Wales;

4. the Filer is a reporting issuer each of the provinces of Canada, except Québec, and is not in default of its reporting issuer obligations in any jurisdiction;
5. the Filer's common shares are listed on the Toronto Stock Exchange (TSX) and the Alternative Investment Market of the London Stock Exchange (AIM) under the symbol "WTN"; certain share purchase warrants and convertible debentures of the Filer are also listed on the TSX under the symbol "WTN.WT" and "WTN.DB", respectively;
6. as disclosed in a press release dated May 20, 2009 and a material change report dated May 26, 2009, the Filer and Cambrian Mining plc (Cambrian) entered into a combination agreement, pursuant to which the Filer agreed to acquire all of the issued and outstanding ordinary shares of Cambrian (the Combination);
7. as disclosed in a press release dated July 13, 2009 and a material change report dated July 23, 2009, the Combination was completed on July 13, 2009 and the Filer became the sole beneficial holder of all of the ordinary shares of Cambrian; in connection with the Combination, the name of Cambrian was changed from Cambrian Mining plc to Cambrian Mining Limited;
8. Cambrian is a corporation incorporated under the laws of the United Kingdom. Cambrian's registered office is located at 27 Albemarle Street, London W1S 4DW United Kingdom;
9. prior to the Combination, Cambrian was a public company in the United Kingdom whose shares were admitted to trading on AIM under the symbol "CBM";
10. the financial statements of Cambrian have been prepared in accordance with International Financial Reporting Standards and audited in accordance with International Standards on Accounting (ISA);
11. the Combination was a "significant acquisition" for the Filer, within the meaning of section 8.3 of National Instrument 51-102, *Continuous Disclosure Obligations* (NI 51-102), for which the Filer is required to file a business acquisition report (BAR) in accordance with section 8.2 of NI 51-102;
12. pursuant to section 8.4 of NI 51-102, audited financial statements of Cambrian for the financial year ended June 30, 2009 (the Audited Financial Statements)

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are required to be included in the BAR; the Audited Financial Statements will include a reconciliation note prepared in accordance with the requirements of section 6.1 of NI 52-107;

13. section 6.2 of NI 52-107 does not permit the Filer to file the Audited Financial Statements audited in accordance with ISA as the Filer is not a “foreign issuer” within the meaning of NI 52-107;
14. as announced by the Canadian Institute of Chartered Accountants, the Canadian Auditing and Assurance Standards Board is adopting ISA as Canadian Auditing Standards (CAS) for the audits of financial statements; once effective, the CAS will constitute Canadian generally accepted auditing standards for financial statement audits; the CAS will come into effect for audits of financial statements for periods ending on or after December 14, 2010;
15. the Audited Financial Statements have been prepared in accordance with International Financial Reporting Standards and audited in accordance with ISA pursuant to requirements governing publicly-traded companies in the United Kingdom, including the requirements of AIM;
16. having the Audited Financial Statements audited a second time in accordance with Canadian GAAS would cause the Filer to incur substantial additional costs and management time and potentially cause a material delay in the filing of its BAR in respect of the Combination.

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 Requested Relief is granted provided that the Audited Financial Statements:

- (a) are audited in accordance with ISA; and
- (b) are accompanied by an auditor’s report from the auditor of Cambrian that contains, or is accompanied by, a statement by the auditor that:
 - (i) describes any material differences in the form and content of the auditor’s report as compared to an auditor’s report prepared in accordance with Canadian GAAS; and

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- (ii) indicates that an auditor's report prepared in accordance with Canadian GAAS would not contain a reservation.

Andrew S. Richardson, CA
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British Columbia Securities Commission