

# 2009 BCSECCOM 599

October 26, 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  
Orvana Minerals Asturias Corp.  
(the Filer)

## Decision

## **Background**

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 is not a reporting issuer (the Exemptive Relief Sought).

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

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- (a) the Ontario 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**

Terms defined in National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined.

### **Representations**

This decision is based on the following facts represented by the Filer:

1. The Filer is a corporation governed by the *Canada Business Corporations Act* (the CBCA) with its registered address located at 320 Bay Street, Suite 1530, Toronto, Ontario, M5H 4A6.
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 (Common Shares) and an unlimited number of redeemable preferred shares (Preferred Shares) that are redeemable by the Filer at a price of \$0.75 per Preferred Share.
4. Orvana Minerals Corp. (Orvana) is the registered and beneficial owner of all of the issued and outstanding Common Shares. The Filer has not issued any Preferred Shares.
5. The Filer also has outstanding a share purchase warrant exercisable to acquire up to 1,500,000 Preferred Shares at a price of \$0.90 per share expiring on March 11, 2010 (the Warrant) and a senior secured convertible debenture in the principal amount of \$7,500,000.00 (the Convertible Debenture) that is convertible into Preferred Shares. A single party located outside of Canada is the registered and beneficial holder of the Warrant and the Convertible Debenture.
6. Pursuant to a take-over bid (the Offer) commenced by Orvana Minerals Acquisition Corp. (the Acquiror), a wholly-owned subsidiary of Orvana, on May 25, 2009 and which expired on August 28, 2009, for all of the outstanding common shares (Kinbauri Shares) of Kinbauri Gold Corp. (Kinbauri), the Acquiror acquired, in the aggregate, 61,688,845 Kinbauri

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Shares at a price of \$0.75 per share, representing approximately 95% of the issued and outstanding Kinbauri Shares.

7. On September 24, 2009, the Acquiror commenced a compulsory acquisition of the outstanding Kinbauri Shares not owned by it at a price of \$0.75 per share pursuant to section 206 of the CBCA (the Compulsory Acquisition).
8. On September 25, 2009, the Acquiror completed the Compulsory Acquisition and became the owner of all of the issued and outstanding Kinbauri Shares.
9. On October 1, 2009, the Acquiror and Kinbauri amalgamated under the CBCA (the Amalgamation), with the Filer being the corporation resulting from the Amalgamation. Pursuant to the Amalgamation, the outstanding Kinbauri Shares were cancelled without payment of any consideration and the outstanding common shares of the Acquiror were converted into Common Shares.
10. Kinbauri was a reporting issuer in the provinces of Alberta, British Columbia and Ontario and, consequently, the Filer, as the successor to Kinbauri, became a reporting issuer in the provinces of Alberta, British Columbia and Ontario following the Amalgamation.
11. Other than as described above, the Filer has no other securities issued and outstanding.
12. The outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the jurisdictions in Canada and fewer than 51 security holders in total in Canada.
13. Prior to consummation of the transactions described above, the Kinbauri Shares were listed for trading on the TSX Venture Exchange under the symbol "KNB".
14. On September 3, 2009, an application was made to de-list the Kinbauri Shares from the TSX Venture Exchange. Such shares were de-listed following the close of trading on September 25, 2009.
15. No securities of the Filer are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*.
16. The Filer has no current intention to seek public financing by way of an offering of securities.

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17. 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.
18. 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 financial statements for the year ended May 31, 2009 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 September 28, 2009.
19. The Filer did not surrender its status as a reporting issuer in British Columbia pursuant to BC Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status* (the BC Instrument) in order to avoid the 10-day waiting period under the BC Instrument.
20. The Filer is not eligible to use the simplified procedure under CSA Staff Notice 12-307 *Applications for a Decision that an Issuer is not a Reporting Issuer* in order to apply for the Exemptive Relief Sought.
21. The Filer, upon the grant of the Exemptive Relief Sought, will no longer be a reporting issuer or the equivalent in any jurisdiction in Canada.

### Decision

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.

Paulette Kennedy  
Commissioner  
Ontario Securities Commission

Carol S. Perry  
Commissioner  
Ontario Securities Commission