

2010 BCSECCOM 485

August 19, 2010

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Securities Act s. 91 *Financial Statements & Report* – Exemption from the filing and delivery requirements for financial statements, annual reports, and quarterly reports - An issuer wants relief from the requirement to file and deliver comparative annual financial statements for a particular year (the statements) and to include the statements in any document requiring prospectus level disclosure about the issuer filed prior to the date on which the issuer has sufficient information to prepare the statements for that particular year - The issuer has acquired a business out of bankruptcy or insolvency; required financial information about the acquired business is not available; alternate financial information about the acquired business will be provided; sufficient information will be provided about the parties to the transaction to enable shareholders to assess it as a whole

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418 s. 91

National Instrument 51-102 *Continuous Disclosure Obligations*, s. 13.1

In the Matter of
the Securities Legislation of
British Columbia
(the Jurisdiction)

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
Salares Lithium Inc.
(the Filer)

Decision

Background

- ¶ 1 The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the

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principal regulator (the Legislation) that the requirement to include the Sons of Gwalia Disclosure (as defined below) in the Circular (as defined below) does not apply (the Exemption Sought).

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

- (a) the British Columbia Securities Commission is the principal regulator for this application, and
- (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.

Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 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 was incorporated under the *Business Corporations Act* (British Columbia) on April 12, 2000; the head office of the Filer is in Vancouver, British Columbia;
 - 2. the Filer is currently a reporting issuer in British Columbia and Alberta and its common shares are listed on the TSX Venture Exchange under the trading symbol LIT; the Filer is not in default of securities legislation in any jurisdiction in Canada;
 - 3. Talison Minerals Pty Ltd (Talison Minerals) was incorporated on May 24, 2007 under the *Corporations Act 2001* (Commonwealth of Australia) for the purposes of acquiring the lithium and tantalum mining, processing and marketing operations at Greenbushes, Western Australia (Greenbushes) and the tantalum mining, processing and marketing operations at Wodgina, Western Australia (Wodgina) from Sons of Gwalia Limited (Sons of Gwalia) on August 27, 2007 in connection with the insolvency and administration of Sons of Gwalia; Talison Minerals had no business or operations prior to that date and has operated the Greenbushes and Wodgina businesses since that date;
 - 4. Talison Lithium Limited (Talison Lithium) was incorporated on October 22, 2009 as a public company under the *Australian Corporations Act* for the

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purposes of entering into a reorganization transaction with Talison Minerals and certain of its subsidiaries, which was completed on August 12, 2010 (the Pre-Transaction Reorganization), and publicly listing its ordinary shares; Talison Lithium is not a “reporting issuer” within the meaning of applicable securities legislation in any jurisdiction of Canada; Talison Lithium’s ordinary shares are not listed on any stock exchange or quotation system;

5. under the Pre-Transaction Reorganization, Talison Minerals:
 - (a) retained all of its assets related to the lithium operations at Greenbushes (the Lithium Business);
 - (b) transferred all of its assets related to the tantalum operations at Wodgina and Greenbushes to a newly-incorporated holding company to be ultimately owned by the existing Talison Minerals shareholders; and
 - (c) became a wholly-owned subsidiary of Talison Lithium;
6. following the completion of the Pre-Transaction Reorganization, Talison Lithium’s sole asset is the Lithium Business, which it owns indirectly through Talison Minerals;
7. the Filer will seek shareholder approval of a plan of arrangement involving the Filer and Talison Lithium (the Transaction); under section 9.1 of National Instrument 51-102 *Continuous Disclosure Obligations*, the Filer must send an information circular (Circular) that complies with Form 51-102F5 *Information Circular* (51-102F5) to its shareholders;
8. section 14.2 of 51-102F5 requires that the Circular include prospectus-level disclosure including financial statements; Item 32 of Form 41-101F1 *Information Required in a Prospectus* requires the Filer to include audited financial statements for the Lithium Business for the year ended June 30, 2007 and the period from July 1, 2007 to August 27, 2007, which at the time formed part of the assets and operations of Sons of Gwalia, and the associated MD&A (the Sons of Gwalia Disclosure);
9. the court appointed administrator of Sons of Gwalia has advised that no historical financial statements exist with respect to the year ended June 30, 2007 and for the period from July 1, 2007 to August 27, 2007 and that it would not be willing to prepare such historical financial statements; and

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10. Talison Lithium has made every reasonable effort to obtain access to or copies of the historical accounting record necessary to audit the financial statements but such efforts were unsuccessful.

Decision

¶ 4 The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that the Filer discloses in the Circular:

- (i) that Talison Lithium has made every reasonable effort to obtain access to, or copies of, the historical accounting records necessary to audit the financial statements but that such efforts were unsuccessful, and
- (ii) that the Lithium Business was purchased out of insolvency and Talison Lithium has been denied access to the historical accounting records.

Noreen Bent
Acting, Director, Corporate Finance
British Columbia Securities Commission