

# 2009 BCSECCOM 708

December 2, 2009

## Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 51-102 *Continuous Disclosure Obligations* – NI 51-102 relief - BAR – An issuer requires relief from the requirement to include certain financial statements in a business acquisition report - The issuer acquired one or more holding companies that own 100% of the business that is a significant acquisition for the issuer; the holding companies functioned solely as holding companies with no material liabilities, business operations or other investments; the necessary information to prepare the required financial statements for the holding companies is unavailable; the business acquisition report will contain sufficient alternative information about the significant acquisition

## Applicable British Columbia Provisions

National Instrument 51-102 *Continuous Disclosure Obligations*, ss. 8.4 and 9.1

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  
Calibre Mining Corp.  
(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 principal regulator (the Legislation) for an exemption, in connection with the

## 2009 BCSECCOM 708

Filer's acquisition of the NEN Project (defined below), from the requirements of the Legislation to include certain financial statements of an acquired business in:

- (a) a business acquisition report the Filer will file in connection with the Acquisition (defined below); and
- (b) any prospectus of the Filer or other document requiring prospectus level disclosure in respect of the Filer

(the "Requested Relief").

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:

The Filer represents that:

1. it is a corporation existing under the laws of British Columbia with its registered and principal office in Vancouver, British Columbia;
2. its common shares are listed on the TSX Venture Exchange;
3. it is a reporting issuer in British Columbia and Alberta and, except for its failure to file a business acquisition report for the Acquisition (defined below) by the due date of October 5, 2009, is not in default of its obligations as a reporting issuer under the securities legislation of either jurisdiction;
4. it is a junior exploration company which currently holds interests in the NEN Project (defined below) and a mining lease in Point Leamington, Newfoundland, Canada;

## 2009 BCSECCOM 708

5. on July 21, 2009, it acquired the NEN Gold-Copper Project (the “NEN Project”) located in the North Atlantic Autonomous Region of Nicaragua, Central America from Yamana Gold Inc. by acquiring all of the shares of Yamana Nicaragua Ltd. (“Belize”)(the “Acquisition”); Belize beneficially owns all of the shares of Yamana Nicaragua, S.A. (“Yamana”), which is the registered holder of the NEN Project; the NEN Project is a land package of 70,976 hectares (710 sq km) of mining and exploration concessions covering part of the historic “Mining Triangle” of the Siuna-Rosita-Bonanza areas of northeast Nicaragua;
6. it acquired all of the issued and outstanding shares of Belize for consideration of \$7,000,000, by the issuance of 12,000,000 common shares of the Filer, and \$4,420,000 in cash and bonus payments and warrants which were tied to exploration and production, if any, from the NEN Project;
7. the Acquisition constitutes a “significant acquisition” under section 8.3 of NI 51-102;
8. its financial year end, and the financial year end of Belize and Yamana, is December 31;
9. throughout the period commencing two years prior to the Acquisition and at the time of the Acquisition, Belize:
  - (a) owned 100% of the issued and outstanding Yamana shares;
  - (b) did not have any revenues;
  - (c) did not have any assets other than the Yamana shares, cash, taxes recoverable and notes receivable due from Yamana;
  - (d) did not have any expenses except those nominal expenses associated with general administrative matters of minimal significance;
  - (e) did not have any liabilities other than accounts payable;
  - (f) did not conduct any operations or business; and
  - (g) functioned solely as a corporate holding company;

## **2009 BCSECCOM 708**

10. throughout the period commencing two years prior to the Acquisition and at the time of the Acquisition, Yamana was the operating entity which conducted all of the business that the Filer acquired pursuant to the Acquisition;
11. under s. 8.4 of NI 51-102, it is required to include in its business acquisition report (“BAR”) for the Acquisition:
  - (a) the following consolidated financial statements of Belize:
    - an audited income statement, statement of retained earnings and cash flow statement for the financial year ended December 31, 2008;
    - an unaudited income statement, statement of retained earnings and cash flow statement for the financial year ended December 31, 2007;
    - an audited balance sheet as at December 31, 2008;
    - an unaudited balance sheet as at December 31, 2007;
    - unaudited financial statements for the period from January 1, 2009 to June 30, 2009, and the comparable period ended June 30, 2008 in the preceding year; and
  - (b) pro forma financial statements of the Filer giving effect to the Acquisition, including a pro forma balance sheet as at June 30, 2009, pro forma income statements for the year ended December 31, 2008 and the six months ended June 30, 2009, and pro forma earnings per share

(together, the “51-102 Financials”);
12. the financial and accounting information necessary to prepare the 51-102 Financials is limited because the previous parent company, Yamana Gold Inc., did not request full accounting statements and financial information was for management reporting purposes only;
13. no significant transactions or operations were carried out by Yamana or Belize in fiscal 2009; financial statements for Belize have not been prepared;
14. it will include in the BAR the following alternative financial statements regarding the NEN Project (the “Acquisition Financial Statements”):

## 2009 BCSECCOM 708

- (a) an audited income statement, statement of retained earnings and cash flow statement for Yamana for the year ended December 31, 2008, with unaudited comparative statements for the year ended December 31, 2007;
  - (b) an audited balance sheet of Yamana as at December 31, 2008, with an unaudited comparative balance sheet as at December 31, 2007;
  - (c) unaudited financial statements of Yamana for the period from January 1, 2009 to June 30, 2009;
  - (d) a pro forma consolidated balance sheet of the Filer that gives effect to the completion of the Acquisition as at June 30, 2009; and
  - (e) a pro forma income statement of the Filer for the six months ended June 30, 2009, and the year ended December 31, 2008, which will utilise the income statements of Yamana for the comparable periods in 2008 as representative of the income statements for those periods, and pro forma earnings per share;
- (together, the “Acquisition Financial Statements”); and
15. the financial statements of Yamana and the Filer’s pro forma financial statements giving effect to the Acquisition, as referred to in paragraph 14, will provide investors with all necessary disclosure regarding the Filer and the Acquisition.

### **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 Requested Relief is granted provided that the BAR, and any prospectus or other document of the Filer requiring financial statements in respect of the Acquisition, includes the Acquisition Financial Statements.

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