

2007 BCSECCOM 591

August 1, 2007

Headnote

Mutual Reliance Review System for Exemptive Relief Applications

Securities Act, s. 114(2) - 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 of BC Form 62-902F - The offeror is a foreign issuer and is not a reporting issuer in Canada; the offeror is not required under its home jurisdiction's laws to prepare certain financial statements; the bid circular will include the financial statements the offeror is required to prepare under the laws of its home jurisdiction; the bid circular will include certain financial statements of the offeror's indirect subsidiary because it is the most significant asset of the offeror; the offeror will provide relevant financial disclosure regarding the target which the target's shareholder's have not already had access to as a result of the target being a reporting issuer in Canada; the offeror will comply with NI 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*

National Instrument 45-102 – Exemption in section 2.11 from seasoning period requirement in section 2.6 - Offeror issuer wants relief to rely on s. 2.11 of NI 45-102 in connection with a securities exchange take-over bid despite not being a reporting issuer on the date the securities of the offeree issuer were first taken up under the take-over bid - Due to the definitions of “reporting issuer” and the operation of section 2.11 of NI 45-102, Canadian shareholders will be subject to a four month seasoning period in certain jurisdictions and not in others; shareholders in BC can only receive freely-tradable securities as consideration for the take-over bid if the offeror issuer takes up and pays for the offeree issuer's shares it first takes up under the bid on the same day

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 108(7), 114(2), BC Form 62-902F,
Instrument 41-501
NI 45-102 – ss. 2.6, 2.11

In the Matter of
the Securities Legislation of

2007 BCSECCOM 591

the Provinces of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba,
Québec, New Brunswick, Nova Scotia, Newfoundland & Labrador, Prince
Edward Island, Nunavut and Northwest Territories
(the “Jurisdictions”)

and

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

and

In the Matter of
Mwana Africa PLC
(the “Filer”)

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the “Decision Maker”) in each of the Jurisdictions except New Brunswick, Prince Edward Island, Nunavut and Northwest Territories (the “Financial Information Jurisdictions”) has received an application from the Filer, in connection with the Filer’s unsolicited securities exchange take-over bid (the “Offer”) for all of the issued and outstanding Class A common shares in the capital of SouthernEra Diamonds Inc. (“SouthernEra”), together with the associated rights issued under the shareholder rights plan of SouthernEra (together, the “SouthernEra Shares”), other than SouthernEra Shares already owned by the Filer and its affiliates, on the basis of one ordinary share of the Filer (each a “Mwana Share”) in exchange for every 2.3333 SouthernEra Shares, for a decision under the securities legislation (the “Legislation”) of the Financial Information Jurisdictions for relief from:

- (a) the requirement to include in the take-over bid circular (the “Circular”) prepared in connection with the Offer:
 - (i) the Mwana Holdings Acquisition Statements (as defined below); and
 - (ii) the SouthernEra Historical Statements (as defined below); and
- (b) the Canadian Accounting Requirements (as defined below) (the relief requested in paragraphs (a) and (b) collectively referred to as the “Financial Information Relief”).

2007 BCSECCOM 591

The Decision Maker in each of the provinces of Alberta, Ontario, New Brunswick, Nova Scotia, British Columbia, Saskatchewan and Prince Edward Island and in the Northwest Territories and Nunavut (collectively, the “First Trade Jurisdictions”) has received an application from the Filer for a decision under the Legislation of the First Trade Jurisdictions for an exemption from the prospectus requirement as it relates to the first trade of Mwana Shares distributed pursuant to the Offer (the “First Trade Relief”).

Under the Mutual Reliance Review System (the “MRRS”) for Exemptive Relief Applications

- (a) the Ontario Securities Commission (the “OSC”) is the principal regulator for this application, and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

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

Representations

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

1. The Filer is a public limited company existing under the laws of England and Wales with its registered and executive head office located in London, England. The Filer is a natural resources company which controls nickel, copper, zinc, cobalt, gold and diamond assets across Africa, including Ghana, Zimbabwe and the Democratic Republic of Congo.
2. The Filer’s share capital is comprised of one class of shares designated as ordinary shares with a nominal value of 10 pence per share. As at June 13, 2007:
 - (a) 262,881,786 Mwana Shares were issued and outstanding;
 - (b) 2,666,600 of the 262,881,786 issued and outstanding Mwana Shares have been repurchased and were held by the Filer pending their cancellation, sale or transfer in accordance with all applicable regulatory and legal requirements; and
 - (c) options to purchase 21,925,000 Mwana Shares were issued and outstanding.

2007 BCSECCOM 591

3. The Mwana Shares trade on the Alternative Investment Market (“AIM”), a market operated by London Stock Exchange plc, under the symbol “MWA”. The Filer does not currently intend to list the Mwana Shares on any exchange in Canada.
4. The Filer is not currently a reporting issuer in any of the provinces or territories of Canada. By virtue of the definitions of “reporting issuer” contained in the Legislation, the Filer will become a reporting issuer (i) in Québec and Newfoundland and Labrador (the “Reporting Issuer Jurisdictions”) upon the filing of the Circular, and (ii) in British Columbia, Saskatchewan and Manitoba upon first taking up and paying for SouthernEra Shares under the Offer, while the Filer will not become a reporting issuer in the remaining Jurisdictions as a result of filing the Circular or any subsequent take-up and payment for SouthernEra Shares.
5. As of the date hereof, the Filer is a “designated foreign issuer” as defined in National Instrument 52-107 - *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (“NI 52-107”).
6. SouthernEra is a corporation continued under the *Canada Business Corporation Act* with its registered and executive head office located in Toronto, Ontario. SouthernEra is a reporting issuer in each of the provinces of Canada, and the SouthernEra Shares are listed on the Toronto Stock Exchange (the “TSX”) under the trading symbol “SDM”. In addition, SouthernEra has a class of outstanding Series A warrants to purchase SouthernEra Shares listed on the TSX under the symbol “SDM-WT” which expire on November 17, 2008.
7. On March 16, 2007, prior to the opening of trading on the TSX and AIM, the Filer publicly announced its intention to make the Offer (the “Mwana Announcement”).
8. The Filer has entered into lock-up agreements with three shareholders with respect to an aggregate of 52,427,350 SouthernEra Shares, representing approximately 30.2% of the outstanding SouthernEra Shares as at May 15, 2007. In addition, the Filer beneficially owns 16,457,500 SouthernEra Shares, representing approximately 9.5% of the outstanding SouthernEra Shares as at May 15, 2007.
9. As publicly disclosed by SouthernEra, there are outstanding 173,316,179 SouthernEra Shares as at May 15, 2007. In addition, as provided in

2007 BCSECCOM 591

SouthernEra's MD&A for its year ended December 31, 2006 there were outstanding as at March 30, 2007:

- (a) 6,025,000 Series A warrants exercisable into SouthernEra Shares at a price of \$2.00 per share which expire on November 17, 2008;
 - (b) 715,000 Series D warrants exercisable into SouthernEra Shares at a price of \$0.65 per share which expire on August 25, 2007;
 - (c) 1,000,000 Series E warrants exercisable into SouthernEra Shares at a price of \$0.475 per share (provided that if the price of the SouthernEra Shares on the TSX falls below that price, the warrants may be exercised at a lower price but not below \$0.43) which expire on October 11, 2007;
 - (d) certain additional warrants that the Filer understands have expired in accordance with their terms; and
 - (e) options exercisable into 7,002,000 SouthernEra Shares at prices ranging from \$0.32 to \$1.52 per share which expire within the next five years.
10. The Filer does not currently intend to make an offer to purchase any warrants, options or other convertible securities of SouthernEra. The Filer has determined that it will not be extending the Offer to SouthernEra shareholders resident in the United States.
11. The Filer intends to make the Offer by mailing the Circular, together with all related documents, to holders of SouthernEra Shares whose last address on the books of SouthernEra is shown as being in Canada (the "Shareholders"), which Circular will describe, among other things, the Offer. The Filer will also file the Circular on the System for Electronic Document Analysis and Retrieval ("SEDAR").
12. As the consideration being offered for the purchase of the SouthernEra Shares is Mwana Shares, as required by form requirements for a take-over bid circular in the Jurisdictions, the Filer is obligated to include in the Circular disclosure about the Filer prescribed by the form of prospectus appropriate for the Filer (collectively, the "Form Requirements").
13. In the Circular, the Filer intends to include the following historical financial statements of the Filer (as required by the Form Requirements) prepared in accordance with UK generally accepted accounting principles ("UK GAAP") and audited in accordance with UK generally accepted auditing standards:

2007 BCSECCOM 591

(a) audited consolidated profit and loss account, cash flow statement, statement of total recognised gains and losses, and reconciliation of movement in shareholders funds for the years ended March 31, 2007, 2006 and 2005; and

(b) audited consolidated balance sheet as at March 31, 2007 and 2006;

(the financial statements in (a) and (b) being referred to as the “Mwana Historical Statements”).

14. The Filer has two main indirectly held subsidiaries, Bindura Nickel Corporation Limited (“Bindura Zimbabwe”) and Ashanti Goldfields Zimbabwe Limited (“Ashanti Zimbabwe”), each of which is incorporated under the laws of Zimbabwe and is held through Mwana Africa Holdings (Proprietary) Limited (“Mwana Holdings”), a wholly-owned subsidiary of the Filer.

15. During the Filer’s financial year ended March 31, 2006, the Filer (then named African Gold plc) acquired all of the shares of Mwana Holdings in exchange for Mwana Shares (the “Mwana Holdings Acquisition”). The Mwana Holdings Acquisition was completed effective October 26, 2005 and the results of Mwana Holdings and its subsidiaries were consolidated into the Filer with effect from October 1, 2005.

16. The Mwana Holdings Acquisition was a “significant acquisition” as defined in OSC Rule 41-501 – *General Prospectus Requirements* (“Rule 41-501”), as the acquisition satisfied each of the applicable significance tests. Absent the requested relief, the Form Requirements would require the Filer to include in the Circular the following financial statement disclosure in connection with the Mwana Holdings Acquisition:

(a) audited consolidated balance sheet, statements of income, retained earnings and cash flows of Mwana Holdings as at and for the financial year ended February 28, 2005 and February 28, 2004, reconciled to Canadian GAAP and the auditor’s report being accompanied by a statement by the auditor disclosing any material differences in the form and content of the foreign auditor’s report as compared to a Canadian auditor’s report and confirming that the auditing standards applied are substantially equivalent to Canadian auditing standards;

(b) unaudited consolidated balance sheet, statements of income, retained earnings and cash flows of Mwana Holdings as at and for the six months

2007 BCSECCOM 591

ended August 31, 2005 and August 31, 2004, including a reconciliation to Canadian GAAP,

(the financial statements in (a) and (b) being referred to as the “Mwana Holdings Acquisition Statements”).

17. During its financial year ended February 28, 2004, Mwana Holdings acquired a 53% interest in Bindura Zimbabwe, a public company in Zimbabwe whose shares are listed on the Zimbabwe Stock Exchange, effective June 30, 2003.
18. Mwana Holdings is a private company incorporated under the laws of South Africa in 2003. Prior to the Mwana Holdings Acquisition, as a private company, Mwana Holdings was not required to, and did not, prepare interim financial statements. In addition, Mwana Holdings did not consolidate its subsidiaries located in Zimbabwe, including Bindura Zimbabwe, as it was permitted to do so under applicable South African law and generally accepted accounting principals of South Africa (“SA GAAP”). In particular, at the time of the Mwana Holdings Acquisition and for periods prior thereto, SA GAAP provided that Bindura Zimbabwe could be excluded from consolidation because it was operating under severe long-term restrictions that significantly impaired its ability to transfer funds to Mwana Holdings.
19. For Mwana Holdings’ financial year ended February 28, 2004, Bindura Zimbabwe accounted for substantially all of the turnover and fixed assets, and all of the income, of Mwana Holdings and its subsidiaries, considered as a whole. For Mwana Holdings’ financial year ended February 28, 2005, Bindura Zimbabwe accounted for an estimated 97% of the turnover, an estimated 87% of the income and an estimated 65% of the fixed assets of Mwana Holdings and its subsidiaries, considered as a whole.
20. For the Filer’s financial year ended March 31, 2006, Bindura Zimbabwe accounted for an estimated 91% of the turnover, an estimated 85% of the income, excluding head office costs, and an estimated 65% of the fixed assets (prior to consolidation adjustment) of the Filer and its subsidiaries, considered as a whole. For the Filer’s financial year ended March 31, 2007, Bindura Zimbabwe accounted for approximately 97% of the turnover, approximately 93% of the income and approximately 69% of the fixed assets (prior to consolidation adjustment) of the Filer and its subsidiaries, considered as a whole.
21. Relative to the other assets of Mwana Holdings, Bindura Zimbabwe was by far the most significant asset of Mwana Holdings and, relative to the other

2007 BCSECCOM 591

assets of the Filer, Bindura Zimbabwe continues to be the most significant asset of the Filer.

22. The Filer's next most significant asset is Ashanti Zimbabwe. Ashanti Zimbabwe's sole operating asset is a 100% interest in the Freda-Rebecca gold mine located in Zimbabwe. This asset accounted for an estimated 34% of the consolidated fixed assets of Mwana Holdings for the financial year ended February 28, 2005 and approximately 34% and 30% of the consolidated fixed assets of the Filer for the financial years ended March 31, 2006 and 2007, respectively. The majority of this asset is made up of capitalized mine development costs. The mine has experienced various operational difficulties since it was acquired by Mwana Holdings in January 2005 and its turnover and revenues following the acquisition have been immaterial to Mwana Holdings and its subsidiaries and to the Filer and its subsidiaries, in each case considered as a whole.
23. The majority of Mwana Holdings' remaining assets for the relevant periods consisted of investments in its subsidiaries and inter company loan accounts which are eliminated on consolidation.
24. The Filer proposes to include in the Circular, as an alternative to the Mwana Holdings Acquisition Statements, the following financial statements of Bindura Zimbabwe:
 - (a) audited consolidated balance sheets as at December 31, 2005 and 2004;
 - (b) audited consolidated income statements for the years ended December 31, 2005 and 2004;
 - (c) audited consolidated statements of changes in equity for the years ended December 31, 2005 and 2004; and
 - (d) audited consolidated cash flow statements for the years ended December 31, 2005 and 2004,

in each case reported in Zimbabwe dollars and prepared in accordance with International Financial Reporting Standards, audited in accordance with International Standards on Auditing and, in accordance with NI 52-107, (i) reconciled to UK GAAP, and (ii) the auditor's report being accompanied by a statement by the auditor that 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 indicates that an auditor's report

2007 BCSECCOM 591

prepared in accordance with Canadian GAAS would not contain a reservation (collectively, the “Bindura Historical Statements”).

25. If the Filer were to complete the acquisition of all of the SouthernEra Shares, the acquisition would constitute a “significant acquisition” under Rule 41-501 as it satisfies the income test at approximately 26.5%.
26. Pursuant to the Form Requirements, the Filer is required to include in the Circular the following financial statement disclosure in connection with the proposed acquisition of SouthernEra:
 - (a) audited consolidated statements of income, retained earnings and cash flows of SouthernEra for the financial year ended December 31, 2006;
 - (b) audited consolidated balance sheet as at December 31, 2006;
 - (c) unaudited consolidated statements of income, retained earnings and cash flows of SouthernEra for the three months ended March 31, 2007 and 2006;
 - (d) unaudited consolidated balance sheet as at March 31, 2007 and 2006,in each case prepared in accordance with Canadian GAAP, audited in accordance with Canadian GAAS (the financial statements in (a) to (d) being referred to as the “SouthernEra Historical Statements”);
 - (e) unaudited *pro forma* balance sheet as at March 31, 2007 to give effect to the acquisition of SouthernEra as if it had taken place as at March 31, 2007 and, in accordance with NI 52-107, prepared in accordance with UK GAAP or prepared in Canadian GAAP and reconciled to UK GAAP;
 - (f) unaudited *pro forma* profit and loss account of the Filer for the year ended March 31, 2007 to give effect to the acquisition of SouthernEra as if it had taken place on April 1, 2006, being the beginning of the most recently completed financial year of the Filer for which audited financial statements are included in the Circular in and, in accordance with NI 52-107, prepared in accordance with UK GAAP or prepared in Canadian GAAP and reconciled to UK GAAP, and *pro forma* earnings per share based on the *pro forma* income statement prepared;(the financial statements in (e) to (f) being referred to as the “SouthernEra Pro Forma Statements”); and

2007 BCSECCOM 591

- (g) a compilation report.
27. Shareholders have been provided with and have access to the SouthernEra Historical Statements. In addition, if the Filer were required to include such financial information in the Circular, the Filer would be required to obtain the consent of SouthernEra's auditors to the use of their audit report.
28. Shareholders will be provided with the SouthernEra Pro Forma Statements and a compilation report which will provide Shareholders with relevant information to evaluate the combined company.
29. Pursuant to the Form Requirements:
- (a) the Mwana Historical Statements and the Bindura Historical Statements must:
 - (i) be prepared or reconciled to Canadian GAAP;
 - (ii) be audited in accordance with Canadian GAAS or foreign GAAS provided that foreign GAAS is substantially equivalent to Canadian GAAS;
 - (iii) include with the auditor's report a statement by the auditor disclosing the material differences in the form and content of the foreign auditor's report as compared to a Canadian auditor's report and confirming that the auditing standards applied are substantially equivalent to Canadian GAAS; and
 - (iv) be accompanied by a foreign auditor's report together with a foreign auditor's proficiency letter; and
 - (b) the SouthernEra Pro Forma Statements must be prepared in accordance with UK GAAP or prepared in Canadian GAAP and reconciled to UK GAAP,
- (the requirements in (a) and (b) referred to as the "Canadian Accounting Requirements").
30. Pursuant to CSA Staff Notice 42-303 – *Prospectus Requirements*, the Filer is requesting relief from Canadian Accounting Requirements in respect of the Circular on the basis that these requirements are not consistent with NI 52-107.

2007 BCSECCOM 591

31. The distribution of the Mwana Shares pursuant to the Offer will be exempt from the registration and prospectus requirements in all Jurisdictions pursuant to exemptions under National Instrument 45-106 - *Prospectus and Registration Exemptions* (except in the case of Prince Edward Island under Prince Edward Island Local Rule 45-510 and in the territories under existing local orders).
32. The first trade of the Mwana Shares issued to Shareholders in the Jurisdictions (other than Manitoba) will be subject to Section 2.6 of National Instrument 45-102 - *Resale of Securities* ("NI 45-102"), with the result that such Mwana Shares will be subject to a four month seasoning period following the Filer becoming a reporting issuer in those jurisdictions, unless an exemption from the requirements of that section is available.
33. Pursuant to Section 2.11 of NI 45-102, first trades that would otherwise be subject to Section 2.6 of NI 45-102 are exempt from the seasoning period provided that, among other things, a securities exchange take-over bid circular relating to the distribution of the security was filed by the offeror on SEDAR and the offeror was a reporting issuer on the date the securities of the offeree issuer were first taken up under the bid.
34. The differences between the definitions of "reporting issuer" in the Jurisdictions and the operation of Section 2.11 of NI 45-102 will result in: (i) Shareholders in the Reporting Issuer Jurisdictions receiving Mwana Shares that are freely-tradable and (ii) Shareholders in the First Trade Jurisdictions receiving Mwana Shares that are subject to a four month seasoning period (Shareholders in British Columbia and Saskatchewan will only receive Mwana Shares that are freely-tradable if the Filer takes up and pays for the SouthernEra Shares it first takes up under the Offer on the same day).

Decision

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 in the Financial Information Jurisdictions under the Legislation is that the Financial Information Relief is granted provided that the Circular:

- (i) contains the Bindura Historical Statements; and
- (ii) complies with NI 52-107 with respect to the exemptions from the Canadian Accounting Requirements.

2007 BCSECCOM 591

The decision of the Decision Makers in the First Trade Jurisdictions under the Legislation is that the First Trade Relief is granted provided that such first trade of Mwana Shares is not a control distribution as defined in the Legislation.

Carol Perry
Commissioner
Ontario Securities Commission

David Knight
Commissioner
Ontario Securities Commission