



Citation: 2019 BCSECCOM 428

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Takeover Bids and Issuer Bids - Exemption from the issuer bid requirements of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* - An issuer requires an exemption from all issuer bid requirements to acquire its own shares in connection with a negotiated agreement - The issuer will acquire securities as part of a commercial agreement; the acquisition is not an independent transaction in which the issuer is repurchasing its own securities from one securityholder in preference to other shareholders; the agreement was negotiated at arm's length between the issuer and the transferring securityholder; the value of the consideration being paid to the transferring securityholder will not exceed the market value of the securities being acquired by the issuer at the time of such acquisition

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 114(2)
Multilateral Instrument 62-104, Part 2

November 26, 2019

Exemption Order

Arcus Development Group Inc.

Section 114(2) of the *Securities Act*, R.S.B.C. 1996, c. 418

Section 6.1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids*

Background

- ¶1 Arcus Development Group Inc. (Arcus) has applied to the British Columbia Securities Commission (the Commission) under section 114(2) of the *Securities Act* (British Columbia) (the Act) for an exemption from the issuer bid requirements of Part 2 of National Instrument 62-104 (NI 62-104).

Interpretation

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

Representations

- ¶3 Arcus represents that:

1. Arcus is a company incorporated under the laws of British Columbia and its head office is located in Vancouver, British Columbia;
2. Arcus is a reporting issuer in British Columbia, Alberta and Ontario, and is not in default of securities legislation of any jurisdiction;
3. there were 76,278,065 common shares of Arcus issued and outstanding as of October 23, 2019;
4. Arcus' common shares are listed on the TSX Venture Exchange under the symbol "ADG";
5. Arcus holds an undivided 100% interest in the Dan Man Project comprised of 413 quartz mining claims and located in the Whitehorse Mining District, Yukon Territory (Property);
6. Goldcorp Inc. (Goldcorp) is a company incorporated under the laws of Ontario and its head office is located in Vancouver, British Columbia;
7. Goldcorp is not a reporting issuer;
8. on October 24, 2016, Goldcorp acquired 14,400,000 common shares of Arcus (Consideration Shares), representing approximately 18.9% of Arcus' currently outstanding shares, under a private placement and entered into an investor rights agreement with Arcus (Investor Rights Agreement);
9. Goldcorp Kaminak Ltd. (Goldcorp Kaminak), a wholly owned subsidiary of Goldcorp, is a company incorporated under the laws of British Columbia and its head office is located in Vancouver, British Columbia;
10. under the terms of the property purchase agreement dated October 22, 2019 between Arcus, Goldcorp Kaminak, ATAC Resources Ltd. (ATAC) and Archer, Cathro & Associates (1981) Limited (Archer Cathro):
 - (a) Arcus agreed to sell to Goldcorp Kaminak, and Goldcorp Kaminak agreed to purchase from Arcus, an undivided 100% interest in the Property;
 - (b) in consideration for an undivided 100% interest in the Property, Goldcorp agreed to:
 - (i) deliver the Consideration Shares to Arcus; and (ii) terminate the Investor Rights Agreement;
 - (c) Archer Cathro holds legal title to the Property as trustee for Arcus and agreed to transfer the registered title to the Property to Goldcorp Kaminak;
 - (d) Goldcorp Kaminak agreed to assume Arcus' obligation to pay a 1% net smelter returns from commercial production from all or any part of the Property to ATAC (ATAC Royalty) and grant a 1% net smelter returns from commercial production from all or any part of the Property to Arcus (Arcus Royalty); and

- (e) Goldcorp Kaminak has the exclusive, irrevocable right to purchase 100% of the Arcus Royalty, which Goldcorp Kaminak may exercise at any time after the closing of the transaction by paying Arcus \$1,000,000;
11. Arcus will cancel the Consideration Shares following the completion of the transaction;
 12. none of Arcus, Goldcorp or Goldcorp Kaminak have any representatives on the boards of directors of each other, nor do they have the right to appoint any such representatives;
 13. other than the ownership of the Consideration Shares by Goldcorp, Arcus, Goldcorp and Goldcorp Kaminak are at arm's length to each other; the sale of the Property by Arcus was agreed to by Arcus and Goldcorp Kaminak following arm's length negotiations between them;
 14. the sale of the Property by Arcus is conditional upon, among other things, receipt of acceptance by the TSX Venture Exchange and the Commission's exemption order;
 15. Arcus' board of directors resolved that:
 - (a) the sale of the Property and acquisition of the Consideration Shares is in the best interests of Arcus and its shareholders;
 - (b) the consideration deemed to be paid for the Consideration Shares will not be greater than the market price, determined in accordance with section 1.11 of NI 62-104, of Arcus' shares on the TSX Venture Exchange; and
 - (c) the acquisition of the Consideration Shares will not adversely affect the financial position of Arcus;
 16. the purpose of the acquisition of the Consideration Shares is not to give preferential treatment to Goldcorp or provide a method for Arcus to purchase the Consideration Shares but rather to facilitate the sale of the Property;
 17. shareholders of Arcus not offered the opportunity to sell their shares to Arcus under the proposed transaction are otherwise entitled to sell their shares into the market for cash proceeds;
 18. the acquisition of the Consideration Shares is an issuer bid by the Filer under NI 62-104 and cannot be made in reliance upon any exemptions from the issuer bid requirements contained in NI 62-104; and
 19. no shareholder, including Goldcorp, is receiving cash consideration for Arcus' acquisition of the Consideration Shares and it is impossible for Arcus to offer to acquire its shares from its shareholders on the same terms.

Order

¶4 Considering that to do so would not be prejudicial to the public interest, the Commission orders under section 114(2) of the Act that the transaction is exempt from Part 2 of NI 62-104.

John Hinze
Director, Corporate Finance
British Columbia Securities Commission