

# 2007 BCSECCOM 180

April 3, 2007

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications and Multilateral Instrument 11-101 *Principal Regulator System* - National Instrument 51-102, s. 13.1 - *Continuous Disclosure Obligations* – BAR – An issuer requires relief from the requirement to include certain financial statements in a business acquisition report – The acquired company filed an information circular before the date of the acquisition; the information circular included financial information for a period that ended not more than one interim period before the financial information that the issuer would be required to include in its BAR; the issuer could rely on the exemptions in subsections 8.4(4) and (6) but for the fact that the acquired company, and not the issuer, filed the information circular; the issuer will file the information circular under its SEDAR profile and will include in the BAR all of the financial statements included in the information circular

## Applicable British Columbia Provisions

National Instrument 51-102 *Continuous Disclosure Obligations*, ss. 8.4 and 13.1

In the Matter of  
the Securities Legislation of  
British Columbia and Ontario  
(the Jurisdictions)

and

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

and

In the Matter of  
Energy Metals Corporation  
(the Filer)

MRRS Decision Document

## Background

- ¶ 1 The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) exempting the Filer from the requirement in the Legislation to include certain financial statements in a

## 2007 BCSECCOM 180

business acquisition report relating to the January 19, 2007 acquisition of High Plains Uranium, Inc. (the Requested Relief).

### **Application of the Principal Regulator System**

¶ 2 Under Multilateral Instrument 11-101 – *Principal Regulator System* (MI 11-101) and the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the British Columbia Securities Commission is the principal regulator for the Filer;
- (b) the Filer is relying on the exemption in Part 3 of MI 11-101 in Alberta and Quebec; and
- (c) this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

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

### **Representations**

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

1. the Filer was incorporated under the laws of the province of British Columbia on July 9, 1987;
2. the Filer's head office is located in Vancouver, British Columbia;
3. the authorized capital of the Filer consists of an unlimited number of common shares.
4. the common shares of the Filer are listed for trading on the Toronto Stock Exchange and NYSE Arca;
5. the Filer is a reporting issuer or the equivalent in the provinces of British Columbia, Alberta, Ontario and Quebec;
6. to its knowledge, the Filer is not in default of any of the requirements of the applicable securities legislation in any of the provinces in which it is a reporting issuer;
7. High Plains Uranium, Inc. (HPU) was incorporated under the laws of the province of New Brunswick on February 8, 2005;

## 2007 BCSECCOM 180

8. on January 19, 2007, the Filer acquired all of the common shares of HPU (the Acquisition);
9. the Acquisition was carried out by way of plan of arrangement pursuant to the *Business Corporations Act* (New Brunswick) (the Arrangement);
10. under the terms of the Arrangement, the common shares of HPU were exchanged for common shares of the Filer and HPU became a wholly owned subsidiary of the Filer;
11. the Arrangement and the resulting Acquisition were approved by the Court of Queen's Bench of New Brunswick (the Court), the Toronto Stock Exchange and by special resolution of the shareholders of HPU;
12. HPU delivered an information circular (the Information Circular) describing the Acquisition to its shareholders prior to the meeting at which shareholder approval of the Acquisition was obtained;
13. the contents of the Information Circular and a draft order respecting the Arrangement were approved by the Court prior to delivery to the shareholders of HPU;
14. under National Instrument 51-102 – *Continuous Disclosure Obligations* (NI-51-102), the Information Circular was required to contain prospectus level disclosure and include or incorporate by reference the financial statements required by a prospectus;
15. HPU filed the Information Circular under its SEDAR profile on December 13, 2006; the Information Circular was, therefore, available to the public and to the shareholders of HPU and the Filer on the SEDAR website;
16. to the knowledge of the Filer, since the time the Information Circular was filed, there has not been any change in the HPU business that is material and adverse to the Filer, taken as a whole;
17. the Acquisition constitutes a "significant acquisition" for the Filer for the purposes of NI 51-102; consequently, under NI-51-102, the Filer is required to file a business acquisition report by April 4, 2007;
18. under NI 51-102, the business acquisition report must include the following financial statements:

## 2007 BCSECCOM 180

- (a) the audited financial statements of HPU for the year ended March 31, 2006 and the period from incorporation on April 6, 2004 to March 31, 2005, together with the relevant notes and auditor's report ;
  - (b) unaudited financial statements of HPU for the nine month interim period ended December 31, 2006 (the Interim Statements);
  - (c) a pro forma consolidated balance sheet of the Filer as at December 31, 2006 and pro forma consolidated statements of operations of the Filer for the six months ended December 31, 2006 and the year ended June 30, 2006 (the Pro Forma Statements);
19. the exemption in s. 8.4(4) of NI 51-102 permits an issuer to include in its business acquisition report financial statements for a period ending not more than one interim period before the interim period for which financial statements would be required to be included in the business acquisition report, if
- (a) before the date of acquisition, the issuer filed a document that included financial statements for the acquired business that would have been required to be included if the document were a prospectus, and
  - (b) those financial statements are for a period ending not more than one interim period before the interim period for which financial statements would be required to be included in the business acquisition report;
20. the exemption in s. 8.4(6) of NI 51-102 permits an issuer to include in its business acquisition report pro forma financial statements based on the interim financial statements permitted to be filed under s. 8.4(4);
21. because HPU, and not the Filer, filed the Information Circular as required under subparagraph 8.4(4)(c)(ii) of NI 51-102, the Filer is not able to rely on the exemptions in subsections 8.4(4) and 8.4(6) of NI 51-102; the Filer satisfies all the other conditions of these exemptions;
22. the Filer is seeking an exemption from the requirement under NI 51-102 to include the Interim Statements and the Pro Forma Statements in the business acquisition report.

### Decision

- ¶ 5 The Decision Makers being satisfied that each has the jurisdiction to make this decision and that the relevant test under the Legislation has been met, the Requested Relief is granted, provided that:

## **2007 BCSECCOM 180**

- (a) the Filer files the Information Circular under its SEDAR profile; and
- (b) the Filer includes in its business acquisition report, and does not incorporate by reference, all of the financial statements that were included in the Information Circular.

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