

2007 BCSECCOM 171

March 30, 2007

Headnote

Mutual Reliance Review System for Exemptive Relief Applications and Multilateral Instrument 11-101 *Principal Regulator System* - National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, s. 9.1 – requirement to file technical report with AIF – An issuer wants relief from the timing requirements for filing a technical report – The issuer is completing a feasibility study and having a technical report prepared on a material property; the timing of completion of the feasibility study and technical report is uncertain; the AIF will contain the feasibility study results; the issuer will file the technical report within 30 days of the AIF; the AIF will include appropriate cautionary language

Applicable British Columbia Provisions

National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, ss. 4.2 and 9.1

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
New Gold Inc.
(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) that the Filer is exempt from the requirement in National Instrument 43-101 *Standards of*

2007 BCSECCOM 171

Disclosure for Mineral Projects (NI 43-101) that an issuer file a supporting technical report not later than filing its annual information form (AIF) which contains new material scientific or technical information (the Requested Relief).

Application of Principal Regulator System

- ¶ 2 Under Multilateral Instrument MI 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, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador, 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 otherwise defined in this decision.

Representations

- ¶ 4 This decision is based on the following facts represented by the Filer:
1. the Filer is a corporation with its head office located in Vancouver, British Columbia; in addition to British Columbia, the Filer is also a reporting issuer, or equivalent, in the jurisdictions of Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland;
 2. to its knowledge the Filer is not in default of any requirement under the securities legislation of any jurisdiction in which it is a reporting issuer or equivalent;
 3. the Filer is a junior natural resource issuer listed on the Toronto Stock Exchange and American Stock Exchange and has a year end of December 31, and must file its AIF by April 2, 2007;
 4. the Filer's principal development project is a 100% interest in a copper-gold project located near Kamloops, British Columbia (the New Afton Project);

2007 BCSECCOM 171

5. in December 2005 the Filer retained Hatch Ltd. (Hatch) to coordinate a feasibility study of the New Afton Project (the Feasibility Study) and to prepare a NI 43-101 compliant technical report on the New Afton Project (the Technical Report); a team of engineering consultants including Hatch, Australian Mining Consultants Pty Ltd., Scott Wilson Roscoe Postle Associates and Rescan Environmental Services Ltd. is preparing the Feasibility Study; at this time it is not known whether the Technical Report will be finalized and capable of being filed contemporaneously with the AIF, not later than April 2, 2007;
6. the Filer believes that in order to provide up-to-date, full, true and plain disclosure, it is necessary that the information contained in the Feasibility Study form the basis of the AIF;
7. however, as the Feasibility Study information is new material scientific or technical information, filing an AIF containing this information will trigger the requirement under NI 43-101 sections 4.2(1)(f) and 4.2(4) to file the Technical Report to support such information, not later than filing the AIF;
8. Hatch, the lead engineering firm, has not provided a precise date for release of the Technical Report, and representatives of Hatch, the engineering consultants referred to in 3.above and the Filer are working diligently to complete the Technical Report so that it can be filed contemporaneously with the AIF; however, as a cautionary measure the Filer has determined that it would be prudent to seek the relief contemplated by this application in the event it is unable to comply with the applicable filing requirement of NI 43-101;
9. the Filer proposes to issue a news release with the results of the Feasibility Study prior to or contemporaneously with the filing of the AIF;
10. under NI 43-101 sections 4.2(1)(j) and 4.2(5), the Filer would normally have 45 days following the issuance of a news release announcing the results of the Feasibility Study that discloses mineral reserves for the first time, to file the supporting Technical Report; this 45-day period will be truncated when the Filer files its AIF on April 2, 2007;
11. the AIF will contain the following statement (the Cautionary Language) in close proximity to the information regarding the Feasibility Study results:

“The technical disclosure in this annual information form relating to the New Afton Project has not been supported by a technical report prepared in accordance with National Instrument 43-101. The technical report is being

2007 BCSECCOM 171

prepared by a qualified person as defined under National Instrument 43-101 and it will be available on SEDAR (www.sedar.com) on or before April 30, 2007. Readers are advised to refer to that technical report when it is filed.”

12. the Filer will complete and file the Technical Report as soon as practicable but in any event not later than April 30, 2007;
13. the Filer has no reason to believe that the information in the Technical Report will be materially different from the information in the AIF.

Decision

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

- (a) the Filer issues a news release containing information regarding the Feasibility Study results not later than filing its AIF on or before April 2, 2007;
- (b) the AIF includes the Cautionary Language; and
- (c) the Filer files the Technical Report as soon as practicable but in any event not later than April 30, 2007.

Martin Eady, CA
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British Columbia Securities Commission