

2002 BCSECCOM 47

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief granted from the take over bid provisions for a take-over bid made in accordance with the laws of the United States and Australia - *De minimis* exemption unavailable either because offer will be made pursuant to exemption in the United States - offering materials exempt from National Instrument 43-101 based upon compliance with U.S. mineral project disclosure standards.

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 105-108, 110 and 114(2)(c)

National Instrument 43-101 - *Standards of Disclosure for Mineral Projects*, ss. 2.1, 4.2(1)(9) and 9.1(1)

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, NEW BRUNSWICK, NEWFOUNDLAND AND LABRADOR AND NOVA SCOTIA

AND

IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF NEWMONT MINING CORPORATION AND DELTA ACQUISITION LLC

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, Newfoundland and Labrador and New Brunswick (the "Jurisdictions") have received an application from Newmont Mining Corporation ("Newmont") and its affiliate, Delta Acquisition LLC ("Delta") for a decision pursuant to:

(a) the securities legislation of the Jurisdictions (the "Legislation") exempting the Newmont Offer (as defined below) from the requirements in the Legislation of the Jurisdictions relating to take-over bids except for the requirement to file a report of a take-over bid and pay the applicable fee (the "Take-over Bid Requirements"); and

(b) section 9.1(1) of National Instrument 43-101 – *Standards of Disclosure for Mineral Projects* ("NI 43-101") for an exemption from the requirements of NI 43-101;

in connection with an offer, as it may be amended from time to time, (the "Newmont Offer") to be made by Delta and Newmont to acquire all of the outstanding ordinary shares ("Normandy Shares", (including Normandy Shares represented by American Depositary Shares ("Normandy ADSs"))) of Normandy Mining Limited, a corporation incorporated under the laws of Australia ("Normandy"), in consideration for 0.0385 shares of common stock of Newmont ("Newmont Shares") for each Normandy Share, plus A\$0.50 per Normandy Share;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission (the "Commission") is the principal regulator for this Application;

2002 BCSECCOM 47

AND WHEREAS Newmont has represented to the Decision Makers that:

1. The Newmont Offer will be made in compliance with applicable securities laws of the United States and Australia in an offer that will use two different offer documents so as to comply with those securities laws.
2. Newmont wishes to provide all holders of Normandy Shares and Normandy ADSs with the opportunity to participate in the Newmont Offer, which will be outlined in a bidder's statement and a prospectus contained in a registration statement on Form S-4 (the "U.S. Registration Statement").
3. Newmont is incorporated under the laws of the State of Delaware. Newmont is engaged in the production of gold, the exploration for gold and the acquisition and development of gold properties worldwide. Newmont has operations in Canada, United States, Mexico, Peru, Bolivia, Australia, Mexico and Uzbekistan.
4. Newmont's corporate headquarters are in Denver, Colorado.
5. As at November 14, 2001, Newmont's share capital consisted of (i) 250,000,000 Newmont Shares, of which 196,087,962 were outstanding; and (ii) 5,000,000 shares of convertible preferred stock, of which 2,299,980 were outstanding.
6. The Newmont Shares are listed and trade principally on the New York Stock Exchange under the symbol "NEM" and are also listed on the Brussels Stock Exchange and the Swiss Stock Exchange.
7. Newmont is subject to the reporting requirements of securities legislation in the United States. Newmont is currently a reporting issuer or its equivalent in British Columbia, Alberta, Saskatchewan, Manitoba and Québec.
8. As of the date hereof, Newmont does not own directly or indirectly any outstanding Normandy Shares (including Normandy Shares represented by Normandy ADSs). Newmont has the right to acquire the 111,525,000 Normandy Shares (representing an aggregate of approximately 4.99% of the Outstanding Normandy Shares) currently owned by Franco-Nevada Mining Corporation Limited ("Franco-Nevada"), an Ontario-headquartered public company listed on the TSE, and the 334,575,000 Normandy Shares (representing approximately 14.99% of the Outstanding Normandy Shares) owned by one of Franco-Nevada's U.S. subsidiaries.
9. Normandy is incorporated under the laws of Australia. Normandy is a major international mining company.
10. As at October 18, 2001, Normandy's issued and outstanding share capital consisted of 2,231,293,599 Normandy Shares (inclusive of Normandy ADSs, each Normandy ADS representing 10 Normandy Shares) and 2,943,850 unlisted employee shares under the Normandy Employee Share Investment Plan (collectively, the "Outstanding Normandy Shares"). To the best knowledge of Newmont, the employee shares are of the same class as the Normandy Shares. Normandy also had, as at October 18, 2001, 24,550,907 options over unissued Normandy Shares issued under the Normandy Executive Share Incentive Plan and the Normandy Employee Share Bonus Plan.
11. The Normandy Shares are listed on the Australian Stock Exchange and the Normandy ADSs are listed on The Toronto Stock Exchange (the "TSE").

2002 BCSECCOM 47

12. Normandy is a reporting issuer in Ontario but is not a reporting issuer in any other province or territory of Canada. Normandy is also subject to the reporting requirements of the securities laws of the United States and Australia.

13. Based on information provided by Normandy, as at September 25, 2001, there were:

(a) 21 holders of Normandy Shares in the Province of Ontario holding an aggregate of 13,493,657 Normandy Shares (representing an aggregate of approximately 0.06% of the Outstanding Normandy Shares), exclusive of the Normandy Shares held by Franco-Nevada;

(b) five holders of Normandy Shares in the Province of Québec holding an aggregate of 27,995,570 Normandy Shares (representing an aggregate of approximately 1.25% of the Outstanding Normandy Shares);

(c) ten holders of Normandy Shares in the Province of British Columbia holding an aggregate of 51,300 Normandy Shares (representing an aggregate of approximately 0.0023% of the Outstanding Normandy Shares); and

(d) three holders of Normandy Shares in the Province of Alberta holding an aggregate of 25,000 Normandy Shares (representing an aggregate of approximately 0.0011% of the Outstanding Normandy Shares).

14. Based on information provided by Normandy, as at September 25, 2001, there were:

(a) 29 holders of Normandy ADSs in the Province of Ontario holding an aggregate of 5,501 Normandy ADSs (representing a negligible percentage of the Outstanding Normandy Shares); and

(b) one holder of Normandy ADSs in the Province of Québec holding an aggregate of 465 Normandy ADSs (representing a negligible percentage of the Outstanding Normandy Shares).

15. Accordingly, based upon the information in paragraph 8 and the preceding two paragraphs, in the Province of Ontario there were 22 holders of Normandy Shares holding an aggregate of 112,018,657 Normandy Shares (representing an aggregate of 5.0203459% of the Outstanding Normandy Shares). One of those shareholders, Franco-Nevada, holds 111,525,000 Normandy Shares in Ontario (representing an aggregate of approximately 4.99% of the Outstanding Normandy Shares) and the other 21 holders hold in the aggregate 13,493,657 Normandy Shares in Ontario (representing an aggregate of approximately 0.06% of the Outstanding Normandy Shares). Similarly, there were 30 holders of Normandy ADSs (29 in Ontario and one in Québec) who hold an aggregate of 5,966 Normandy ADSs (representing a negligible percentage of the Outstanding Normandy Shares). Based on the information in the preceding two paragraphs, in the Jurisdictions other than Ontario, there are in aggregate 18 holders of Normandy Shares holding an aggregate of 28,071,870 Normandy Shares (representing an aggregate of approximately 1.258% of the Outstanding Normandy Shares) and one holder of Normandy ADSs holding an aggregate of 465 Normandy ADSs (representing a negligible percentage of the Outstanding Normandy Shares). In each of these other Jurisdictions, there are fewer than 50 holders of Normandy Shares and/or Normandy ADSs representing, in aggregate, significantly less than 2% of the Outstanding Normandy Shares.

16. The Newmont Offer will be made in Australia in accordance with the corporate and federal securities laws of Australia and in the United States in accordance with the federal securities laws of the United States, subject in the United States to limited tender offer exemptive relief available to Newmont (the "Tier II Exemption"). The Tier II Exemption for tender offers is codified in Rule 14d-1(c) and Rule 14d-1(d) under the *Securities Exchange Act of 1934*, as amended. Newmont

2002 BCSECCOM 47

intends to rely on the Tier II Exemption since, to Newmont's best knowledge, U.S. holders of Normandy Shares and Normandy ADSs hold more than 10% and less than 40% of those securities (counted together as a single class and excluding those Normandy Shares and Normandy ADSs held by all other 10% holders of Normandy).

17. The Newmont Offer will be made to U.S. holders of Normandy Shares and Normandy ADSs by way of the U.S. Registration Statement. Newmont may complete the Newmont Offer in the United States only if the Securities and Exchange Commission of the United States of America (the "SEC") declares the U.S. Registration Statement effective. It is expected that the U.S. Registration Statement will be declared effective during the week of January 14, 2002.

18. Newmont complies with the guidelines published by the Society for Mining, Metallurgy and Exploration, Inc. in its "Guide for Reporting Exploration Information, Mineral Resources and Mineral Reserves" dated March 1, 1999 (the "SME Guidelines"). Compliance with the SME Guidelines necessarily results in compliance with the general guidelines promulgated by the SEC in its Guide 7. The disclosure regime promulgated by the SME Guidelines, including the methods of calculating reserves and resources, are in all material respects similar to those of both NI 43-101 and the Australasian Code for Reporting of Mineral Resources and Ore Reserves.

19. The Newmont Offer will be made to Canadian holders of Normandy Shares and Normandy ADSs on the same basis, including extending to those holders identical rights and identical consideration, as to the holders of Normandy Shares and Normandy ADSs resident in the United States.

20. If the Newmont Offer is completed and Newmont acquires 90% or more of the Normandy Shares (including Normandy Shares represented by Normandy ADSs), Newmont intends to compulsorily acquire the remaining outstanding Normandy Shares (including Normandy Shares represented by Normandy ADSs) pursuant to Australian corporate law and intends to cause Normandy to make application to the Commission for Normandy to cease to be a reporting issuer in the Province of Ontario and to the TSE to delist the Normandy ADSs from that exchange. If Newmont gains control of Normandy but is not entitled to compulsorily acquire the outstanding Normandy Shares (including Normandy Shares represented by Normandy ADSs), Newmont currently intends to review whether the Normandy ADSs should continue to be listed on the TSE.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

AND WHEREAS 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 pursuant to the Legislation is that the Newmont Offer shall be exempt from the Take-over Bid Requirements, provided that:

(a) all materials (the "Newmont Offer Materials") relating to the Newmont Offer that are sent by Newmont and Delta to holders of Normandy Shares (including Normandy Shares represented by Normandy ADSs) in the United States are concurrently sent to all holders of Normandy Shares (including Normandy Shares represented by Normandy ADSs) who, to Newmont's best knowledge, have their last address shown on the books of Normandy in Canada; and

(b) Newmont files copies of the Newmont Offer Materials with the Decision Makers.

Dated this 10th day of January, 2002.

Howard I. Wetston

R. Stephen Paddon

2002 BCSECCOM 47

AND THE FURTHER DECISION of the Decision Makers pursuant to section 9.1(1) of NI 43-101 is that Newmont and Delta shall be exempt from the requirements of NI 43-101 in connection with the Newmont Offer Materials, provided that all disclosure of a scientific or technical nature contained in the Newmont Offer Materials comply with requirements of applicable United States federal securities laws.

Dated this 10th day of January, 2002.

Ralph Shay