

# 2002 BCSECCOM 220

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief from registration and prospectus requirements in connection to trades made with or subsequent to a proposed plan of arrangement under the *Company Act* (British Columbia) and the *Companies Creditors Arrangement Act* - in certain Jurisdictions a spun off company deemed to be reporting issuer as of the effective time of the arrangement – relief from the requirement to file a technical report on first becoming a reporting issuer for the spun off company

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 1(1), 34(1)(a), 48, 61 and 76  
National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, ss. 4.1(1) and 9.1

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA,  
SASKATCHEWAN, MANITOBA, ONTARIO, QUÉBEC AND NOVA SCOTIA

AND

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

AND

IN THE MATTER OF IMPERIAL METALS CORPORATION AND IMI IMPERIAL METALS INC.

MRRS DECISION DOCUMENT

[para 1]

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec and Nova Scotia (the “Decision Makers”) received an application from Imperial Metals Corporation (“Imperial”) and IMI Imperial Metals Inc. (“New Imperial”) for a decision under the securities legislation of the

(a) the requirements contained in the Legislation to be registered to trade in a security (the “Registration Requirement”) and to file and obtain a receipt for a preliminary prospectus and a prospectus (the “Prospectus Requirement”) and, together, the “Registration and Prospectus Requirements”) apply to certain trades made in connection with a proposed plan of arrangement (the “Arrangement”) under the *Company Act* (British Columbia) (the “BCCA”) and the *Companies’ Creditors Arrangement Act* (the “CCAA”) involving Imperial and New Imperial;

(b) in British Columbia and Ontario, New Imperial be deemed to be a reporting issuer as of the effective date of the Arrangement; and

(c) in British Columbia, Ontario and Saskatchewan, the requirements of the Legislation to file a current technical report for each material property upon first becoming a reporting issuer (the “Technical Report Requirement”) will not apply to New Imperial;

[para 2]

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”) the British Columbia Securities Commission is the principal regulator for this application;

[para 3]

AND WHEREAS Imperial and New Imperial have represented to the Decision Makers that:

## 2002 BCSECCOM 220

1. Imperial is a company incorporated under the BCCA with its registered office, head office and principal place of business in Vancouver, British Columbia;
2. Imperial is a mining company which explores for, develops and produces base and precious metals, and has some oil and natural gas properties and operations;
3. Imperial is currently authorized to issue 500,000,000 common shares without par value ("Imperial Shares") and 1,000,000 Class A non-voting 6% cumulative preferred shares with a par value of \$5.00 each and 1,000,000 Class B non-voting cumulative preferred shares with a par value of \$10.00 each, convertible and redeemable at par (together, the "Preferred Shares"); there are currently 80,793,609 Imperial Shares outstanding and 6,516,352 Imperial Shares reserved for issuance on exercise of outstanding stock options;
4. HML Mining Inc., Sterling Gold Mining Corporation, Mount Polley Mining Corporation ("Mount Polley Mining"), Mount Polley Holding Company Limited ("Mount Polley Holding"), Silvertip Mining Corporation and Bethlehem Resources (1996) Corporation (the "Subsidiaries") are all wholly-owned subsidiaries of Imperial;
5. Imperial is, and has been for longer than 12 months, a reporting issuer or the equivalent under the Legislation of British Columbia, Saskatchewan, Ontario, Québec and Nova Scotia and, to the best of its knowledge, is not in default of the requirements under the Legislation;
6. the Imperial Shares are listed and posted for trading on The Toronto Stock Exchange (the "TSE") under the symbol "IPM";
7. on April 11, 2001, Imperial issued subordinated secured convertible debentures (the "Convertible Notes") in the principal amount of \$4,670,000 maturing on January 31, 2006; the proceeds from the Convertible Notes were used to repay part of the short-term debt incurred on the acquisition of Imperial's Mount Polley Mine; the Convertible Notes were issued under a note indenture dated March 30, 2001 between Imperial and Montreal Trust Company of Canada, as trustee, and bear interest at 8% per annum payable quarterly and are secured by a floating charge on all the property of Imperial, subordinate to all senior securityholders; the Convertible Notes are convertible into Imperial Shares at the option of the holder at a conversion price of \$0.25 per Imperial Share;
8. in 1998 and 1999, a private company controlled by the Chairman of Imperial made short-term advances to Imperial for various purposes, of which \$4,400,000 remain outstanding; the loans were evidenced by demand promissory notes (the "Secured Notes") that were repayable on January 2, 2002 and bear interest at 10%; the Secured Notes are secured against various assets of Imperial and its subsidiaries;
9. Imperial owes Sumitomo Corporation a secured non-interest bearing debt of \$6,300,000 (the "Sumitomo Debt"), the repayment of which is contingent on the Mount Polley Mine being in operation and the sole recourse for which is limited to the assets comprising the Mount Polley Mine;
10. New Imperial was incorporated on December 6, 2001 under the BCCA and has its registered office, head office and principal place of business in Vancouver, British Columbia;
11. New Imperial has not conducted any business to date; after giving effect to the Arrangement, the mining properties currently owned by Imperial and the Subsidiaries will be transferred to New Imperial;
12. New Imperial is authorized to issue 100,000,000 common shares without par value ("New Imperial Shares"), 50,000,000 first preferred shares without par value, issuable in series, and

## 2002 BCSECCOM 220

50,000,000 second preferred shares without par value, issuable in series; there is currently only one New Imperial Share outstanding, held by Imperial;

13. New Imperial is not a reporting issuer in any jurisdiction but will become a reporting issuer in Saskatchewan as a result of the Arrangement;

14. New Imperial will apply to list the New Imperial Shares on the Canadian Venture Exchange Inc.;

15. on November 23, 2001, Imperial announced the intention, by way of the Arrangement, to divide its operations into two distinct businesses, one focusing on oil and natural gas and the other focused on mining;

16. on January 18, 2002, an interim order was granted by the Supreme Court of British Columbia (the "Court"), whereby Imperial's creditors could be divided into two classes, the secured creditors ("Secured Creditors") and the unsecured creditors ("Unsecured Creditors"); as well, the Court ordered that Imperial was permitted to convene special meetings of the Secured Creditors, the Unsecured Creditors and its shareholders ("Imperial Shareholders"), for the purposes of, among other things, approving the Arrangement under the CCAA and the BCCA;

17. the separate special meetings of the Secured Creditors, the Unsecured Creditors and the Imperial Shareholders is scheduled for Thursday, March 7, 2002;

18. in connection with the special meetings, Imperial has provided an information circular (the "Information Circular") to all Imperial Shareholders, Secured Creditors and Unsecured Creditors which contains prospectus level disclosure of Imperial and New Imperial;

19. the Arrangement consists of a number of steps and trades as set out in the Plan of Arrangement, which was appended to the Information Circular, none of which will be effective unless all are effective;

20. structurally, the Arrangement will occur in two main steps: (i) a creditor's arrangement (the "Creditor's Arrangement"); and (ii) an equity arrangement (the "Equity Arrangement")

21. under the Creditor's Arrangement, the obligations owed by Imperial, Mount Polley Holding and Mount Polley Mining to certain creditors, including the Secured Creditors whose claims are not secured by the Mining Assets, and all of the Unsecured Creditors, will be released and discharged and such creditors will receive cash or a combination of cash and Imperial Shares; the obligations of certain other creditors will be assumed by New Imperial while a portion of Imperial's current debt will remain as an obligation of Imperial;

22. under the Equity Arrangement, Imperial's share capital will be arranged in a number of steps which will result in former Imperial Shareholders (including creditors who receive share consideration under the Creditor's Arrangement) holding Imperial Shares in a renamed Imperial, which will hold Imperial's current oil and gas interests, and New Imperial Shares and various marketable securities of New Imperial, which will hold the current mining assets of Imperial;

23. the Arrangement provides for the following transactions to occur in the following order (the "Trades"):

(a) the Secured Creditors' claims which are secured by the Mining Assets (as defined below) will be assumed by New Imperial (the "Assumed Secured Creditors"); all agreements of any of Imperial, Mount Polley Holding or Mount Polly Mining related to the Assumed Secured Creditor claims will be assigned to New Imperial and Imperial will be deemed to be discharged and released from the Assumed Secured Creditor claims in partial consideration of the transfer of the Mining Assets to New Imperial;

## 2002 BCSECCOM 220

(b) the Statutory Lien Creditors' claims (as defined in the Information Circular) will be assumed by New Imperial, and Imperial will be deemed to be discharged and released from the liabilities of the Statutory Lien Creditors in partial consideration of the transfer of the Mining Assets;

(c) the Sumitomo Debt will be assumed by New Imperial, and Imperial will be deemed to be discharged and released from the Sumitomo Debt in partial consideration of the transfer of the Mining Assets;

(d) the Unsecured Creditors' claims will be released and discharged in consideration for:

(i) 100% of the claim paid in cash, if the claim of an Unsecured Creditor is equal to or less than \$5,000;

(ii) \$5,000 cash and, subject to adjustment, Imperial Shares equal to the amount of such claim which exceeds the cash amount to be paid, divided by \$0.225, if the claim of an Unsecured Creditor is greater than \$5,000 but less than or equal to \$20,000; and

(iii) a payment in cash equal to the Unsecured Creditor's pro rata share (based on the value of its claim in relation to the aggregate of the claim values greater than \$20,000) of a cash fund that is comprised of \$1,000,000 less any other amounts paid to Unsecured Creditors under subparagraphs (d)(i) and (ii), and, subject to adjustment, Imperial Shares equal to the amount of such claim which exceeds the cash amount to be paid divided by \$0.225, if the claim of an Unsecured Creditor is greater than \$20,000;

(e) the Convertible Notes will be released and discharged in consideration for Imperial Shares equal to the amount of their claim as of November 23, 2001 divided by \$0.10, resulting in the issuance of an aggregate number of 47,242,488 Imperial Shares;

(f) \$1,400,000 of the Secured Notes will be released and discharged in consideration for 14,000,000 Imperial Shares; the remainder of the Secured Notes will remain outstanding on the same terms and conditions as prior to the effective date of the Arrangement;

(g) the authorized capital of Imperial will be amended to include: (i) 500,000,000 common shares with a par value of \$0.0001 ( "Imperial Energy Common Shares"); (ii) 500,000,000 without par value class B shares ( "Imperial Class B Shares"); (iii) 50,000,000 first preferred shares without par value, issuable in one or more series; and (iv) 50,000,000 second preferred shares without par value, issuable in one or more series; and

(h) the Imperial Shares will be consolidated on the basis of one Imperial Share for each 10 Imperial Shares outstanding, including the Imperial Shares issued to holders of Convertible Notes, holders of Secured Notes, and the Unsecured Creditors;

(i) Imperial will transfer the mining assets of Imperial, Mount Polley Holding and Mount Polley Mining, and the shares of each Subsidiary, (the "Mining Assets") to New Imperial in consideration of the issuance by New Imperial to Imperial of New Imperial Shares equal to the number of outstanding Imperial Shares (after giving effect to paragraph (h) above) and the transfers of claims contemplated by paragraphs (a), (b) and (c) above;

(j) concurrently:

(i) each of the issued Imperial Shares (except Imperial Shares held by holders not resident in Canada) will be exchanged for one Imperial Energy Common Share and one Imperial Class B Share, and each Imperial Class B Share so issued will be redeemed by Imperial in exchange for one New Imperial Share for each Imperial Class B Share; and

## 2002 BCSECCOM 220

(ii) each Imperial Share held by a holder not resident in Canada will be exchanged for one Imperial Energy Common Share and one New Imperial Share;

(k) the authorized capital of Imperial will be altered to delete the Imperial Shares, the Imperial Class B Shares, and the Preferred Shares, and the Imperial Energy Common Shares will be designated as common shares without par value;

(l) the name of Imperial will be changed to Imperial Energy Inc.; and

(m) Imperial will apply to continue Imperial under the name "Imperial Energy Inc." under the *Business Corporations Act* (Alberta);

24. the Board of Directors of Imperial has determined that the Arrangement is fair to the Imperial Shareholders, that the Arrangement is in the best interests of Imperial and the Imperial Shareholders, and has resolved to unanimously recommend that the Imperial Shareholders vote in favour of the Arrangement;

25. the Imperial Shareholders will have the right to dissent from the Arrangement under BCCA and the Information Circular fully discloses this right in accordance with applicable law;

26. the Arrangement is subject to both shareholder approval and the approval of the Court;

27. exemptions from the Registration and Prospectus Requirements in respect of the Trades, and exemptions from the Prospectus Requirements in respect of the first trades in Imperial Shares and New Imperial Shares following the Arrangement, are not available in all Jurisdictions;

28. New Imperial will not be a reporting issuer in the Jurisdictions at the time of the Arrangement becoming effective;

29. the Mining Assets have been the subject of continuous disclosure on an ongoing basis for more than 12 months pursuant to Imperial's responsibilities as a reporting issuer;

30. in addition, Imperial has an existing record of public disclosure in the following forms:

(a) Imperial's continuous disclosure of material facts relating to its operations since at least 1997; and

(b) the presentation in Imperial's most recent annual information form of the estimates of its reserves and resources in accordance with the Legislation; and

31. New Imperial will file and distribute its initial annual information form featuring disclosure of its reserves and resources in accordance with the Legislation;

[para 4]

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

[para 5]

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;

[para 6]

The Decision of the Decision Makers under the Legislation is that the Registration and Prospectus Requirements shall not apply to the Trades in connection with the Arrangement provided that the first trade in Imperial Energy Common Shares and New Imperial Shares acquired under this Decision in a Jurisdiction shall be deemed to be a distribution or primary

## 2002 BCSECCOM 220

distribution to the public under the Legislation of such Jurisdiction (the "Applicable Legislation") unless:

(a) except in Québec, the conditions in subsections (3) or (4) of section 2.6 or subsections (2) or (3) of section 2.8 of Multilateral Instrument 45-102 *Resale of Securities* are satisfied, and, for the purposes of determining the period of time that New Imperial has been a reporting issuer under sections 2.6 and 2.8, the period of time that Imperial was a reporting issuer may be included; and

(b) in Québec,

(i) no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade,

(ii) no extraordinary commission or consideration is paid to a person or company in respect of the trade, and

(iii) if the selling shareholder is an insider or officer of the issuer, the selling shareholder has no reasonable grounds to believe that the issuer is in default of securities legislation.

[para 7]

The further Decision of the Decision Makers in British Columbia and Ontario under the Legislation is that New Imperial shall be deemed to be a reporting issuer as of the effective date of the Arrangement.

[para 8]

The further Decision of the Decision Makers in British Columbia, Ontario and Saskatchewan under the Legislation is that New Imperial is exempt from the Technical Report Requirement.

[para 9]

DATED March 13, 2002.

Brenda Leong  
Director