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November 10, 2009

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203
Process for Exemptive Relief Applications in Multiple Jurisdictions

National Instrument 52-107, s. 9.1 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* - An issuer wants relief from the requirement to audit acquisition statements in accordance with Canadian or U.S. GAAS - the issuer acquired or will acquire a business whose historical financial statements have not been audited in accordance with Canadian or U.S. GAAS; the acquired business' financial statements have been audited in accordance with International Standards on Auditing; for various reasons, it would be impractical to re-audit the business' financial statements in accordance with Canadian or U.S. GAAS; the audit report will be accompanied by a statement by the auditor that describes any material differences in the form of report as compared to a Canadian GAAS audit report, and indicates that its report would not contain a reservation if it were prepared in accordance with Canadian GAAS

National Instrument 44-101, s. 8.1 *Short Form Prospectus Distributions* – Financial Statements - An issuer wants relief from the requirement to review interim acquisition statements in accordance with Canadian or U.S. GAAS - The issuer acquired or will acquire a business whose historical financial statements have not been audited in accordance with Canadian or U.S. GAAS; the acquired business' annual financial statements have been audited in accordance with International Standards on Auditing; the review of the interim acquisition statements will be done in accordance with the International Standards for Review Engagements

Securities Act s. 169 *Confidentiality* - An applicant wants to keep an application and order confidential for a limited amount of time after the order is granted - The record provides intimate financial, personal or other information. The disclosure of the information before a specific transaction would be detrimental to the person affected. The information will be made available after a specific date

Applicable British Columbia Provisions

National Instrument 52-107, *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* ss. 6.2, 9.1

National Instrument 44-101, *Short Form Prospectus Distributions* ss. 4.3, 8.1
Securities Act, R.S.B.C. 1996, c. 418, s. 169

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

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
Magma Energy Corp.
(the Filer)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer (the Application) for a decision under the securities legislation of the Jurisdictions (the Legislation) that:
- (a) the Filer be exempted from complying with the requirement in section 6.2 of National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (NI 52-107) that acquisition statements must be audited in accordance with Canadian GAAS or United States generally accepted auditing standards (US GAAS) with respect to certain annual financial statements of Orka (as defined below) to be included in a short form prospectus of the Filer (the Prospectus) to be filed under National Instrument 44-101 *Short Form Prospectus Distribution* (NI 44-101) and in a business acquisition report (the BAR) required to be filed under section 8.2 of National Instrument 51-102 *Continuous Disclosure Obligations*;
 - (b) the Filer be exempted from complying with the requirement in section 4.3 of NI 44-101 that any interim financial statements included in a short form prospectus be reviewed in accordance with Canadian GAAS or US GAAS with respect to certain interim financial statements of Orka (as defined below) to be included in the Prospectus (together with the relief requested

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in paragraph (a), the Requested Relief on Auditing Standards); and

- (c) that the Application and this decision be held in confidence by the Decision Makers (the Requested Confidentiality Relief).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (a) the British Columbia Securities Commission is the principal regulator for this application;
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 (MI 11-102) is intended to be relied on in Alberta, Manitoba, Saskatchewan, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Northwest Territories, Nunavut and Yukon; and
- (c) this decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:
 - 1. the Filer's head office is located at 410 – 625 Howe Street, Vancouver, British Columbia, V6C 2T6;
 - 2. the Filer is a corporation existing under the *Business Corporations Act* (British Columbia);
 - 3. the Filer is a reporting issuer in each of the provinces and territories of Canada, except Québec; the Filer is not in default of securities legislation in any jurisdiction;
 - 4. the common shares of the Filer are listed and posted for trading on the Toronto Stock Exchange under the symbol "MXY";
 - 5. the Filer's annual financial statements are prepared in accordance with Canadian GAAP and are audited in accordance with Canadian GAAS;

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6. on July 23, 2009, the Filer entered into an agreement (the Initial Agreement) to acquire 10.78% of the issued and outstanding shares of HS Orka hf (Orka); on August 31, 2009, the Filer entered into three additional agreements (together with the Initial Agreement, the Agreements) to acquire 32.32% of the issuance and outstanding shares of Orka; if the transactions contemplated by the Agreements (the Transactions) are completed, the Filer would hold 43.1% of the issued and outstanding shares of Orka;
7. the Transactions, if completed, would constitute a “significant acquisition” for the Filer within the meaning of section 8.3 of NI 51-102, for which the Filer would be required to file a business acquisition report in accordance with section 8.2 of NI 51-102;
8. Orka is a limited liability company incorporated and domiciled in Iceland, and is not a public company;
9. Orka’s auditors are KPMG hf, the Iceland affiliate of KPMG International, a global network of professional firms providing audit, tax and advisory services;
10. Orka’s auditor has represented to the Filer that it has expertise and experience in International Standards on Auditing (ISA) as issued by the International Auditing and Assurance Standards Board (IAASB);
11. the Filer intends to file the Prospectus for an offering of securities in order to raise sufficient capital to complete the Transactions (the Proposed Offering);
12. under section 10.2 of Form 44-101F1 certain historical audited annual financial statements and unaudited interim financial statements of Orka will be required to be included in the Prospectus;
13. under section 8.4 of NI 51-102, certain historical audited annual financial statements and unaudited interim financial statements of Orka will be required to be included in the BAR;
14. the Filer intends to include the following financial statements of Orka in the Prospectus and BAR:
 - (a) audited annual consolidated financial statements of Orka and the notes thereto as at and for the years ended December 31, 2008 and 2007, together with the auditor’s report thereon (Orka Annual Financial Statements); and
 - (b) unaudited interim condensed financial statements of Orka and the notes

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thereto as at and for the three and nine month periods ended September 30, 2009 (Orka Interim Financial Statements);

15. the Orka Annual Financial Statements have been prepared in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board (IFRS) and audited in accordance with ISA as issued by the IAASB and will include a reconciliation to Canadian GAAP for the most recently completed financial year prior to the acquisition, in accordance with the requirements of subsection 6.1(4) of NI 52-107;
16. the Orka Interim Financial Statements have been prepared in accordance with IFRS and are to be reviewed by Orka's auditors in accordance with the International Standards for Review Engagements issued by the IAASB for inclusion in the Prospectus and will include a reconciliation to Canadian GAAP for the most recently completed financial period prior to the acquisition, in accordance with the requirements of subsection 6.1(4) of NI 52-107;
17. section 6.2 of NI 52-107 and section 4.3 of NI 44-101 do not permit the Filer to file the Orka Annual Financial Statements and the Orka Interim Financial Statements audited in accordance with ISA or reviewed in accordance with the International Standards for Review Engagements issued by the IAASB because the Filer is not a "foreign issuer" within the meaning of NI 52-107; and
18. having the Orka Annual Financial Statements audited a second time in accordance with Canadian GAAS and having the Orka Interim Financial Statements reviewed a second time in accordance with Canadian GAAS would cause the Filer substantial additional costs and management time and delay in filing the Prospectus.

Decision

- ¶ 4 Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers is that

1. the Requested Relief on Auditing Standards is granted, provided that:
 - (a) the Orka Annual Financial Statements are audited in accordance with ISA as issued by the IAASB;

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- (b) the Orka Interim Financial Statements are reviewed in accordance with International Standards on Review Engagements issued by the IAASB; and
 - (c) the auditor's report accompanying the Orka Annual Financial Statements contains or is accompanied by a statement by the auditor that:
 - (i) describes any material differences in the form and content of the auditor's report as compared to an auditor's report prepared in accordance with Canadian GAAS; and
 - (ii) indicates that an auditor's report prepared in accordance with Canadian GAAS would not contain a reservation; and
2. the Requested Confidentiality Relief is granted until the earlier of
- (a) the date the Filer publicly announces the Proposed Offering;
 - (b) the date that a preliminary short form prospectus is filed in respect of the Proposed Offering, and
 - (c) the date that is 90 days from the date of this decision.

Noreen Bent,
Acting Director, Corporate Finance
British Columbia Securities Commission