

# 2004 BCSECCOM 557

COR# 2004/118

## Headnote

Securities Act s. 3.1(1)(b) – Order that an issuer is not a mutual fund for the purposes of the Act and the regulations – An issuer wants an order that it is not a mutual fund – The issuer is a mutual fund for technical reasons only and will not operate as a conventional mutual fund – The issuer will be subject to all continuous disclosure and other requirements that apply to a reporting issuer, which is not a mutual fund, in British Columbia – One holder beneficially owns all shares that entitle the holder to receive on demand an amount computed by reference to the value of a proportionate interest in the net assets of the issuer

## Exemption Order

### Brascade Corporation

#### Section 3.1(1)(b) of the *Securities Act*, R.S.B.C. 1996, c. 418

## Background

- ¶ 1 Brascade Corporation (Amalco) applied for an order under section 3.1(1)(b) of the Act that Amalco is not a mutual fund for the purposes of the Act and the regulations.

## Representations

- ¶ 2 Amalco represents that:
1. Amalco was formed on the amalgamation (the amalgamation) between Brascade Resources Inc. (the Corporation) and 4250231 Canada Limited, a subsidiary of Brascan Corporation (Brascan);
  2. the Corporation was, and Amalco (as successor to the Corporation) now is, a reporting issuer in Ontario, British Columbia and Quebec and is governed by the *Canada Business Corporations Act*;
  3. Amalco is an investment holding company;
  4. As a result of the Amalgamation:
    - (a) Brascan is the sole owner of the common shares of Amalco (the Amalco Common Shares);

## 2004 BCSECCOM 557

- (b) there are approximately 13.6 million Amalco Class 1 Senior Preferred Shares outstanding, of which approximately 67% are held directly or indirectly by Brascan and the balance are held by the public; and
  - (c) Brascan is the holder of all Amalco Class 2 Junior Preferred Shares;
5. all outstanding shares of Amalco have “retraction rights”, but only the Amalco Common Shares have a retraction price based on the net asset value of Amalco;
  6. subject to market conditions, Amalco will, in the future, offer additional securities, including preferred shares and debt securities, to the public in accordance with applicable securities laws; it is expected that all shares offered will be redeemable at the option of the holder; however, none of these securities will include a redemption price calculated with reference to the net asset value of Amalco;
  7. Amalco does not and will not operate as a conventional mutual fund; and
  8. Amalco will be subject to all continuous disclosure and other requirements applicable to a reporting issuer, which is not a mutual fund, in British Columbia.

### **Order**

¶ 3 Because it is not prejudicial to the public interest, the Commission orders that under section 3.1(1)(b) of the Act, Amalco is not a mutual fund for the purposes of the Act and the regulations, for so long as:

- (a) only Amalco Common Shares (and no other Amalco securities) are redeemable at the option of the holder or Amalco for a price determined by reference to the net asset value of Amalco; and
- (b) Brascan is the beneficial owner of all outstanding Amalco Common Shares.

September 24, 2004

Brent W. Aitken  
Vice Chair