

Citation: 2012 BCSECCOM 476

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions – Securities Act*, R.S.B.C. 1996, c. 418, section 76 – An issuer wants to distribute securities using an offering document other than a prospectus – The issuer is a venture issuer; the issuer intends to distribute securities under an offering document in accordance with exchange policy; the issuer has prepared an information circular that has been reviewed by the exchange and contains prospectus-level disclosure; the issuer will incorporate the information circular by reference into the offering document

Applicable Legislative Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 61 and 76

December 14, 2012

In the Matter of
the Securities Legislation of
British Columbia
(the Jurisdiction)

and

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

and

In the Matter of
Electric Metals Inc.
(the Filer)

Decision

Background

- ¶ 1 The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) that the prospectus requirement will not apply to a proposed distribution of securities under a short form offering document under Exchange Policy 4.6 *Public Offering by Short Form Offering Document* (the Exemption Sought).

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

- (a) the British Columbia Securities Commission is the principal regulator for this application, and
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta.

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 is a corporation continued under the laws of British Columbia; the Filer's head office is located at Suite 302-750 West Pender Street, Vancouver, BC V6C 2T7, and its registered office is located at Royal Centre, 1055 West Georgia Street, Suite 1500, Vancouver, British Columbia, V6E 4N7;
 - 2. the Filer is a reporting issuer in British Columbia and Alberta and is not in default of securities legislation in any jurisdiction;
 - 3. the authorized capital of the Filer consists of an unlimited number of class A common shares without par value (common shares), an unlimited number of class B voting common shares without par value, an unlimited number of class C non-voting common shares without par value, and an unlimited number of preferred shares without par value; as at December 4, 2012, there were 49,025,334 common shares and no preferred shares outstanding;
 - 4. the Filer's common shares are listed and posted for trading on the TSX Venture Exchange (the Exchange) under the symbol "EMI";
 - 5. under an arrangement agreement entered into between the Filer and Moimstone Corporation (Moimstone), dated September 27, 2012, the Filer and Moimstone agreed to, among other things, amalgamate to form an amalgamated corporation (Amalco) under the *Business Corporations Act* (British Columbia) by way of plan of arrangement (the Transaction);

6. the Transaction constitutes a reverse takeover of the Filer under Exchange Policy 5.2 *Changes of Business and Reverse Takeovers* (Exchange Policy 5.2);
7. in conjunction with the Transaction, the Filer and Moimstone agreed to complete a financing in Amalco of up to 3,076,923 units (the Units) at a price of \$0.65 per Unit (the Amalco Distribution) by way of short form offering document under Exchange Policy 4.6 *Public Offering by Short Form Offering Document* (Exchange Offering Document);
8. the Units will consist of one common share in the capital of Amalco (Amalco Share) and one-half of one warrant, with each whole warrant entitling the holder to purchase one Amalco Share at an exercise price of \$1.00 within 18 months of the closing of the Amalco Distribution;
9. completion of the Transaction (including the Amalco Distribution) is subject to a number of conditions, including shareholder approval and final acceptance of the Transaction by the Exchange;
10. the Filer is unable to rely on the exemption from the prospectus requirement in section 5.2 of National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) to distribute the Units under the Exchange Offering Document as it has not filed an annual information form as defined in NI 45-106 (AIF);
11. the definition of AIF includes an information circular (QT circular) in respect of a qualifying transaction for a capital pool company filed under a rule, regulation, or policy of the Exchange that applies only to capital pool companies;
12. the Filer prepared an information circular in the form required by Exchange Policy 5.2 (the RTO Information Circular) that was filed on SEDAR on November 14, 2012 and mailed to the shareholders of the Filer on or around November 13, 2012;
13. the disclosure requirements for information circulars in Exchange Policy 5.2 are substantially the same as the requirements for QT circulars set out in Exchange Policy 2.4 *Capital Pool Companies*;
14. the Units of Amalco will be offered under the Amalco Distribution; the RTO Information Circular contains prospectus-level disclosure on the Filer, Moimstone, and Amalco, and has been reviewed by the Exchange; and

15. the Exchange Offering Document will incorporate the RTO Information Circular by reference.

Decision

- ¶ 4 The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that:

- (a) the Amalco Distribution complies with the requirements of section 5.2 of NI 45-106 other than
 - (i) the requirement to have filed an AIF in a jurisdiction of Canada; and
 - (ii) the requirement to incorporate the AIF into the Exchange Offering Document; and
- (b) the Exchange Offering Document incorporates the RTO Information Circular by reference.

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