

# 2008 BCSECCOM 276

May 2, 2008

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Securities Act, s. 48, 76 Exemption from registration and prospectus requirements for situations other than a corporate acquisition or reorganization; trades to business associates; debt settlements; or trades involving employee investment plans and consultants - An issuer is seeking first trade relief for securities that it has previously issued under exemptions from the registration and prospectus requirements of securities legislation - Trading on the TSX Venture Exchange will not commence until four months and one day after the issuer became a reporting issuer; every shareholder of the issuer will hold their shares for at least the equivalent of the hold period prescribed by NI 45-102; the issuer is required to file on SEDAR the public disclosure documents required to be filed by a reporting issuer under Canadian securities laws during the hold period

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61 and 76

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

and

In the Matter of  
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of  
Argentex Mining Corporation  
(the Filer)

MRRS Decision Document

## Background

- ¶ 1 The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities laws of the Jurisdictions (the Legislation) granting an exemption

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from the prospectus requirements (the Prospectus Requirements) of the Legislation for the first trade of any of the common shares of the Filer that were distributed:

- (a) pursuant to an exemption contained in National Instrument 45-106 *Prospectus and Registration Exemptions*;
  - (b) without the legend (the Canadian Legend) specified in subparagraph 2.5(2)3.(b) of National Instrument 45-102 *Resale of Securities* (NI 45-102); and
  - (c) prior to March 26, 2008 (Restricted Shares),
- (collectively, the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the British Columbia Securities Commission is the Principal Regulator for this application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

- ¶ 2 Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

### **Representations**

- ¶ 3 This decision is based on the following facts represented by the Filer:
1. the Filer was incorporated in the State of Nevada on December 21, 2001 under the name Delbrook Corporation;
  2. the Filer is currently domiciled in Delaware and has an authorized capital of 100,000,000 shares of common stock (Common Shares) and 100,000,000 shares of preferred stock;
  3. the Filer's head office and management are located in British Columbia and its principal properties are located in Argentina;
  4. on March 31, 2008, the Filer had 31,465,552 Common Shares issued and outstanding;

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5. the Filer's Common Shares are registered under section 12(g) of the United States *Securities Exchange Act of 1934* and the Filer has been filing periodic reports with the Securities and Exchange Commission since September, 2002;
6. on March 26, 2008, the Filer (i) became a reporting issuer in the Jurisdictions, and (ii) listed its Common Shares on the TSX Venture Exchange (TSX-V);
7. to the best of its knowledge, the Filer is not in default of any of the requirements of the Legislation, the regulations made under the Legislation, or any other securities or corporate legislation to which it is subject;
8. at the request of the Filer, trading on the TSX-V will not commence until July 28, 2008, which is at least four months and one day after the date on which the Filer became a reporting issuer in the Jurisdictions;
9. prior to March 26, 2008, the Filer issued Restricted Shares to both residents and non-residents of Canada;
10. prior to March 26, 2008, holders of Restricted Shares who were also residents of British Columbia could rely on an exemption from the Prospectus Requirements provided by BCI 72-502 *Trades in Securities of U.S. Registered Issuers* (BCI 72-502) to trade the Restricted Shares, notwithstanding that the Restricted Shares did not contain the Canadian Legend; because BCI 72-502 is not available to persons trading securities of a reporting issuer, BCI 72-502 ceased to be available to holders of the Restricted Shares on and after March 26, 2008;
11. Section 2.14 of NI 45-102 provides an exemption from the Prospectus Requirements only for a trade made through an exchange or market outside of Canada; as such, all holders of Restricted Shares cannot trade such shares on the TSX-V under this exemption;
12. holders of Restricted Shares cannot trade such shares on the TSX-V in reliance on Part 2.5 of NI 45-102 because the Restricted Shares do not contain the Canadian Legend; and
13. the holders of Restricted Shares are indefinitely limited to trading the Restricted Shares through exemptions to the Prospectus Requirements or through an exchange or marketplace outside of Canada notwithstanding that, as a reporting issuer in the Jurisdictions, the Filer will develop a significant public disclosure record.

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### **Decision**

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 under the Legislation is that the Requested Relief is granted provided that:

- (a) the Filer is and has been a reporting issuer in a jurisdiction of Canada for the four months immediately preceding the trade;
- (b) at least four months have elapsed since the distribution of the Restricted Shares;
- (c) the trade is not a control distribution;
- (d) no unusual effort is made to prepare the market or to create a demand for the security that is the subject of the trade;
- (e) no extraordinary commission or consideration is paid to a person or company in respect of the trade; and
- (f) if the selling securityholder is an insider or officer of the Filer, the selling securityholder has no reasonable grounds to believe that the Filer is in default of securities legislation.

Martin Eady, CA  
Director, Corporate Finance  
British Columbia Securities Commission