2006 BCSECCOM 224

Headnote

Securities Act s. 76 - Prospectus Requirements - An issuer wants relief from the requirement to include a certificate signed by each underwriter in the prospectus - The issuer filed a prospectus qualifying an offering in Canada and the United States; the issuer is a BC issuer; the US underwriters are not signing the underwriter's certificate in the prospectus; the US underwriters are not registered in Canada and cannot sell to Canadian investors; the Canadian underwriters are signing the certificate

Exemption Order

NovaGold Resources Inc.

Section 76 of the *Securities Act*, R.S.B.C. 1996, c. 418

Background

¶ 1   NovaGold Resources Inc. (NovaGold) applied under section 76 of the Act for an exemption from the requirement in section 69(1) of the Act that an underwriter that is in a contractual relationship with the issuer must sign a certificate to the prospectus.

Representations

¶ 2   NovaGold represents that:

1. it is incorporated under the laws of Nova Scotia with its head office in British Columbia;

2. its mind and management is primarily located in British Columbia and its business is administered from, and a portion of its operations are conducted in, British Columbia;

3. it is a reporting issuer in British Columbia and is not in default of its requirements under securities legislation in British Columbia;

4. it filed a preliminary short form base PREP prospectus dated January 24, 2006, a final short form base PREP prospectus dated February 2, 2006 and a supplemented short form PREP prospectus dated February 2, 2006 (together,

the Canadian Prospectuses) with the securities regulatory authorities in each of the provinces;

5. it filed a registration statement on Form F-10 with the United States Securities and Exchange Commission at the same time it filed the Canadian Prospectuses in Canada;

6. the Canadian Prospectuses relate to an offering of 14,950,000 of its common shares under the terms of an underwriting agreement among NovaGold and Citigroup Global Markets Inc. (Citigroup US), Bear, Stearns & Co. Inc. (Bear Stearns), RBC Dominion Securities Inc. (RBC, and together with Citigroup US and Bear Stearns, the Underwriters) and Citigroup Global Markets Canada Inc. (Citigroup Canada);

7. section 69(1) of the Act provides that if an underwriter is in a contractual relationship with an issuer of securities offered by a prospectus, the prospectus must contain a certificate signed by that underwriter;

8. RBC and Citigroup Canada acted as underwriter in respect of the offering in Canada, and the Underwriters (or their United States affiliates) acted as underwriters of the offering in the United States;

9. Citigroup US, Bear Sterns, and the United States affiliates of RBC are not registered in Canada and cannot sell to Canadian investors

10. without this relief, the certificate in the Canadian Prospectuses would have to be signed by each of Citigroup Canada, RBC, Citigroup US and Bear Stearns because:

    (a) they are all underwriters as defined in section 1(1) of the Act;

    (b) the sale of the common shares would generally be a distribution in British Columbia; and

    (c) because of the Underwriting Agreement, they are all in a contractual relationship with NovaGold as an issuer of the securities offered by a prospectus;

11. Citigroup Canada and RBC signed the underwriters' certificate in each of the Canadian Prospectuses; and

12. Citigroup US and Bear Stearns did not sign the Underwriters' Certificate in any of the Canadian Prospectuses.

Order

¶ 3   Because it would not be prejudicial to the public interest, effective February 2, 2006 the Commission orders that, under section 76(1) of the Act, NovaGold is exempt from the requirements of section 69(1) of the Act that requires Citigroup US and Bear Stearns to sign the underwriters' certificate of the Canadian Prospectuses.

¶ 4   April 3, 2006

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