

2005 BCSECCOM 283

April 20, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 44-101 *Short Form Prospectus Distributions*, s. 15.1 – requirements concerning issuer eligibility- An issuer that has not been a reporting issuer for 12 months wishes to use the short form prospectus system in NI 44-101- The issuer meets all the eligibility criteria to use the system except that it will not have been a reporting issuer for the 12 months preceding the date of filing its most recent AIF; this arises because the issuer filed its AIF under NI 51-102 less than 12 months after it became a reporting issuer; the issuer will have been a reporting issuer for the 12 months preceding the date of filing its preliminary short form prospectus

Applicable British Columbia Provisions

National Instrument 44-101 *Short Form Prospectus Distributions*, ss. 2.2 and 15.1

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New
Brunswick, Nova Scotia, Prince Edward Island, Newfoundland And Labrador,
Nunavut, The Yukon Territory, and the Northwest Territories (the Jurisdictions)

and

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

and

In the Matter of Guinor Gold Corporation (the Filer)

MRRS Decision Document

Background

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 legislation of the Jurisdictions (the “Legislation”) that the Filer be exempted from the requirement of section 2.1 of National Instrument 44-101 *Short Form Prospectus Distributions* (the “Requested Relief”).

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Under the Mutual Reliance Review System for Exemptive Relief Applications;

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

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

Representations

The decision is based on the following facts by the Filer:

1. The Filer was incorporated on February 12, 2004 pursuant to the *Business Corporations Act* (Yukon) for the sole purpose of making a take-over bid under Norwegian law for all of the shares of Kenor ASA (Kenor), then an Oslo Stock Exchange (OSE) listed Norwegian public company. The Filer's financial year - end is December 31.
2. By April 7, 2004, more than 93% of the shares of Kenor had been tendered to the offer of the Filer, and the Filer began compulsory acquisition procedures under Norwegian law to acquire the shares of Kenor that it did not then own. By May 25, 2004, the Filer had acquired 100% of the shares of Kenor which ceased to be a public company in Norway.
3. On April 7, 2004, common shares of the Filer began trading on the Toronto Stock Exchange under the symbol "GNR" and as a result the Filer became a reporting issuer in Ontario on April 7, 2004.
4. Concurrent with the redomiciliation transaction, the Filer completed an offering of special warrants, the underlying common shares of which were cleared by a final long form prospectus receipted in all of the provinces and territories of Canada on June 10, 2004. Accordingly, since June 10, 2004, the Filer has been a reporting issuer in each of the provinces and territories of Canada where such status exists.
5. The Filer currently has 171,616,089 common shares outstanding, which are listed on both the TSX and OSE. The Filer's current market capitalization as at March 17, 2005 is approximately Cdn.\$188.7 million given the closing price of the shares on the TSX of Cdn.\$1.10.

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6. The Filer's main asset is its 85% indirect ownership interest in the Lefa Corridor Gold Project (LEFA) within the Dinguiraye Concession in the Republic of Guinea, West Africa. Production from open pit mining at LEFA commenced in April 1995, and open pit mines have produced in excess of 600,000 ounces of gold since that time.
7. For approximately the last 18 months, the Filer (and Kenor prior to it) have engaged the services of team of independent consultants to prepare a bankable feasibility study (BFS) regarding LEFA. The BFS was commissioned to determine the economic viability of expanding gold production in LEFA by mining sulphide ores and commissioning expanded plant and other infrastructure at the project.
8. On March 14, 2005, the Filer announced that it had received a positive BFS supporting an expansion of LEFA. The press release was issued in Canada and through the OSE and supports an increase in annual gold production to approximately 300,000 ounces per year over the estimated 7 year life of the project. In 2004, LEFA produced approximately 70,000 ounces of gold.
9. The BFS estimates that the capital required to expand the project will be approximately US\$144 million (or approximately Cdn.\$172 million).
10. On March 15, 2005, BMO Nesbitt Burns Inc., and two other underwriters proposed an underwritten private placement of special warrants in the amount of Cdn.\$73.5 million. The Filer entered into an agreement with such underwriters, and agreed to issue 70,000,000 special warrants at Cdn.\$1.05 per warrant, with an underwriters' option to purchase an additional 17,500,000 special warrants. The closing of the private placement, subject to approval of the TSX, is expected on or about April 5, 2005.
11. The Filer has committed to qualify the distribution of common shares on exercise of the special warrants by prospectus within 60 days of the closing of the private placement of special warrants.
12. Section 2.1 of National Instrument 44-101 *Short Form Prospectus Distributions* ("NI 44-101") prohibits an issuer from filing a short form prospectus unless the issuer is qualified under section 2.2, 2.3, 2.4, 2.5, 2.6, 2.7 or 2.8 of NI 44-101.
13. Paragraphs 2.2 1.(a)(i) and (ii) of NI 44-101 require that the Filer have been a reporting issuer in a local jurisdiction for the 12 months "preceding the date of the filing of its most recent AIF" as one condition to being able to file a prospectus in the form of a short form prospectus.

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14. The Filer is required to file an AIF under National Instrument 51-102 *Continuous Disclosure Obligations* by March 31, 2005 and filed its AIF on that date.
15. Absent relief, on April 8, 2005, the Filer will not have been a reporting issuer in any local jurisdiction for 12 months from the date of the filing of its most recent AIF. The Filer will have been a reporting issuer for 8 days short of the requirement given that its AIF was filed on March 31, 2005.
16. Absent relief, the Filer would be required, on April 8, 2005, to re-file its 2004 AIF in order to qualify to file a prospectus in the form of short form prospectus under section 2.2 of NI 44-101.
17. The Filer is not currently in default under the Legislation.

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 Guinor:

- (a) satisfies the requirements of section 2.2 of NI 44-101, other than paragraph 1;
- (b) is, and throughout the 12 calendar months immediately preceding the date of the filing of a preliminary short form prospectus, a reporting issuer in at least one Jurisdiction; and
- (c) has filed in the local Jurisdiction all continuous disclosure documents that it was required to file during the 12 calendar months preceding the date of the filing of its most recent AIF under Canadian securities legislation of any Jurisdiction in which it has been a reporting issuer.

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