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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from the registration and prospectus requirements in connection with a distribution of securities to creditors under a *Companies' Creditors Arrangement Act* plan of compromise and arrangement and reorganization – first trade relief granted, subject to certain conditions

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c.418, ss. 34(1)(a), 48, 61, 76
Multilateral Instrument 45-102 – *Resale of Securities*

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUÉBEC, NOVA SCOTIA, NEW BRUNSWICK, PRINCE EDWARD ISLAND, NEWFOUNDLAND, YUKON TERRITORY, NORTHWEST TERRITORIES AND NUNAVUT

AND

IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF MCWATTERS MINING INC.

MRRS DECISION DOCUMENT

WHEREAS the Canadian securities regulatory authority or regulator (the "Decision Maker" or collectively, the "Decision Makers") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland, Yukon Territory, Northwest Territories and Nunavut (the "Jurisdictions") has received an application from McWatters Mining Inc. ("McWatters") for a decision pursuant to securities legislation of the Jurisdictions (the "Legislation") that the distribution of securities to certain creditors of McWatters and to the shareholders of McWatters pursuant to a plan of compromise and arrangement and reorganization of indebtedness and liabilities and of share capital (the "Plan") made under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") and the *Companies Act* (Québec), R.S.Q., c. C-38, as amended (the "QCA") filed with the Superior Court of Québec (the "Court") is not subject to the requirements contained in the Legislation to be registered to trade in a security, to file a preliminary prospectus and a prospectus and receive receipts therefor;

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System") the *Commission des valeurs mobilières du Québec* is the principal regulator for this application;

AND WHEREAS McWatters has represented to the Decision Makers that:

1. McWatters is a company incorporated under the QCA.
2. McWatters is a reporting issuer or the equivalent in each of the Jurisdictions and is not in default of any of the requirements of the Legislation.

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3. McWatters sought and, by order of the Court dated February 14, 2001 was granted, protection from its creditors pursuant to the CCAA. The Plan was filed with the Court on December 11, 2001. The Plan provides for a comprehensive arrangement and compromise of the outstanding claims of certain creditors of McWatters and the shareholders of McWatters.

4. In connection with the Plan, McWatters proposes the following reorganization:

(a) the Banks (as defined in the Plan) shall, in full and final satisfaction of the Banks' Claims (as defined in the Plan), be paid an amount equal to \$2.4 million on the date the Plan is implemented (the "Implementation Date"), with the balance owing to the Banks (approximately \$4.4 million) to be paid in instalments commencing in March 2004 and ending in December 2005;

(b) the Secured Debenture Holders (as defined in the Plan) shall, in full and final satisfaction of their claims, receive, on the Implementation Date, a payment of \$1.44 million in cash and gold-linked senior (unsecured) convertible debentures due 2012 of McWatters (the "Gold-Linked Convertible Debentures") to be created and issued by McWatters pursuant to the Plan in an aggregate amount of \$960,000;

(c) the Legal Hypothec Holders (as defined in the Plan) shall, in full and final satisfaction of their claims, receive, on the Implementation Date, an aggregate cash payment of \$2.775 million;

(d) the Senior Unsecured Note Holders (as defined in the Plan) shall, in full and final satisfaction of their claims, receive, on the Implementation Date, a number of New Common Shares (as defined in the Plan) at a price of \$0.10 per New Common Share, up to a maximum of 50% of the value of their claims and, for each New Common Share received, one right to acquire a Gold-Linked Convertible Debenture (a "Right");

the trade creditors of McWatters (the "Trade Creditors") shall, in full and final satisfaction of their claims, receive, on the Implementation Date, a number of New Common Shares at a price of \$0.10 per New Common Share, up to a maximum of 50% of the value of their claims and, for each New Common Share received, one Right;

the Senior Unsecured Note Holders and the Trade Creditors are hereinafter collectively referred to as the "Unsecured Creditors";

the Unsecured Creditors will not receive more, as a class, than an aggregate amount of 148,000,000 New Common Shares and will receive same, on a *pro rata* basis, should their claims exceed \$29.6 million;

(e) each Preferred Share (as defined in the Plan) outstanding as of December 11, 2001 (the "Record Date") will be exchanged for 1.29388 New Common Shares and for each New Common Share received, one Right;

(f) each Common Share (as defined in the Plan) outstanding as of the Record Date will be exchanged for 0.28122 New Common Shares and for each New Common Share received, one Right; and

(g) the 3,880,952 warrants issued and outstanding to purchase Common Shares will become warrants to purchase New Common Shares on the Implementation Date and will be adjusted on the basis of the conversion ratio set out in (f) above (the "Warrants").

5. Moreover, the Plan provides that each Unsecured Creditor with a claim not exceeding \$2,000 and each Unsecured Creditor with a claim, which in the aggregate is greater than \$2,000 and

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who elects to value such claim at \$2,000, shall receive cash in an amount equal to its *pro rata* share of a \$200,000 cash pool, in full and final satisfaction of its claim.

6. The Plan also provides for a \$12,000,000 offering of Rights. One Right will be issued by McWatters for each New Common Share issued under the Plan. Each of Caisse de dépôt et placement du Québec, Fonds de solidarité des travailleurs du Québec (FTQ) and Soquem Inc. (the "Strategic Investors") have expressed an intention to purchase an aggregate of \$12,000,000 (in the event that no Right is exercised) on the Rights Expiry Time (as defined in the Plan) of Gold-Linked Convertible Debentures (\$4,000,000 each) at a price of \$1,000 per debenture (the "Advance Standby Commitment"). This investment will take place on the Implementation Date in the form of a loan and will provide McWatters with the cash necessary to settle the Secured Claims (as defined in the Plan) and implement the Plan. A standby commitment fee of 4% will be paid to the Strategic Investors in consideration for their providing the Advance Standby Commitment which will be satisfied by the issuance of \$480,000 worth of Gold-Linked Convertible Debentures to be issued on the Rights Expiry Time at a price of \$1,000 per debenture. The Rights will be exercisable from the Implementation Date to the Rights Expiry Time. Sixteen Thousand Four Hundred and Sixteen (16,416) Rights and \$1,000 will entitle a holder to acquire \$1,000 principal amount of Gold-Linked Convertible Debentures. At the Rights Expiry Time, and after giving effect to the Basic Subscription Privilege and the Additional Subscription Privilege (as those two terms are defined in the Plan), McWatters will have the obligation to repay in cash the Strategic Investors in an amount equal to the gross proceeds to McWatters from the issuance of Gold-Linked Convertible Debentures under the offering of the Rights. The balance of the loan will be repaid to the Strategic Investors by the issuance of Gold-Linked Convertible Debentures on the Rights Expiry Time.

7. The Gold-Linked Convertible Debentures will be due January 1, 2012, will be unsecured and will rank *pari passu* among themselves and with other senior unsecured indebtedness of McWatters and senior in right and priority to all subordinated unsecured indebtedness of McWatters. The Gold-Linked Convertible Debentures will be convertible at the holders' option at any time into New Common Shares at a price of \$0.13 per New Common Share.

8. Interest will accrue on the Gold-Linked Convertible Debentures over the periods of January 1 to June 30 and of July 1 to December 31 (each an "Accrual Period") for each year of the term of the Gold-Linked Convertible Debentures and will be paid semi-annually in arrears on July 1 and January 1 (each a "Payment Date"). The rate of interest payable for any Accrual Period will be based on the average price of gold (as determined by a set formula, as disclosed in the Plan) over the previous Accrual Period on the following basis:

(a) where the average price of gold is less than \$450 per ounce for the previous Accrual Period, at the election of McWatters either at a rate of 10% if paid in New Common Shares or 8% if paid in cash;

(b) where the average price of gold is \$450 per ounce or greater but less than \$500 per ounce for the previous Accrual Period, at a rate of 13% in New Common Shares or, if the holder so elects, in cash at a rate of 10%; and

(c) where the average price of gold is \$500 per ounce or greater for the previous Accrual Period, at a rate of 15% in New Common Shares or, if the holder so elects, at a rate of 12% in cash.

Up to January 1, 2004, interest will be payable in New Common Shares only. Interest for the period from January 1, 2002 to July 1, 2002 will be paid at a rate of 10% payable in New Common Shares.

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New Common Shares paid *in lieu* of interest on the Gold-Linked Convertible Debentures (the "Interest Shares") will be issued at a price equal to the weighted average trading price of the New Common Shares on The Toronto Stock Exchange for the period of 20 trading days ending five trading days before the Payment Date.

9. McWatters will have an annual repurchase obligation under certain circumstances and the Gold-Linked Convertible Debentures will be redeemable after January 1, 2005.

10. As a result of the Plan:

(a) up to 196,938,818 New Common Shares of McWatters may be issued in exchange for the existing Common Shares, Preferred Shares, and in satisfaction of the claims of the Unsecured Creditors;

(b) up to 196,938,818 Rights may be issued with the New Common Shares (one Right will be issued with every New Common Share issued);

(c) \$13,440,000 aggregate principal amount of Gold-Linked Convertible Debentures will be issued as a result of the exercise of the Rights, the partial satisfaction of the claims of the Secured Debenture Holders, the subscription for the Advance Standby Commitment and in satisfaction of the fee payable for the Advance Standby Commitment; and

(d) up to 103,384,615 New Common Shares may be issued upon the conversion of the Gold-Linked Convertible Debentures.

It is currently not possible to determine the aggregate number of New Common Shares which may be issued in satisfaction of interest from time to time payable on the Gold-Linked Convertible Debentures.

11. All creditors known to McWatters to be affected by the Plan have been provided with an information circular which has been filed with, and approved by, the Court (the "Circular"). The Circular described extensively the securities that are to be issued by McWatters, the CCAA restructuring and the QCA compromise and arrangement. The Circular also contains management's discussion and analysis of financial information. The Circular discloses that the implementation of the Plan is conditional upon McWatters obtaining satisfactory discretionary relief from the securities regulatory authorities of the relevant jurisdictions to exempt McWatters from the prospectus requirements.

12. Implementation of the Plan is subject to:

(a) the approval by each class of creditors by a majority in numbers of the creditors having claims in such class and representing not less than two-thirds in value of the claims of such class of creditors present and voting at a meeting called for that purpose either in person, proxy or by votation letter;

(b) the approval by each class of shareholders by a majority of such class of shareholders representing three-fourths of the shares of each class of shareholders present and voting at a meeting called for that purpose either in person or by proxy;

(c) the approval by the Court; and

(d) the satisfaction or waiver of conditions precedent to the implementation of the Plan.

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13. McWatters is of the view and has been advised that implementation of the Plan is necessary for it to continue as a going concern and to provide a more favourable result for creditors and shareholders than a liquidation under bankruptcy legislation.

AND WHEREAS pursuant to the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

AND WHEREAS each of the Decision Makers are of the opinion that it would not be prejudicial to the public interest to make the Decision;

THE DECISION of the Decision Makers pursuant to the Legislation is that:

1. Decision from all of the Jurisdictions' Decision Makers:

A. the issuance of New Common Shares and Rights (and of Gold-Linked Convertible Debentures on the exercise of Rights) to the Trade Creditors in the relevant Jurisdictions (Québec, Ontario, British Columbia and Saskatchewan) (the New Common Shares, Rights and Gold-Linked Convertible Debentures are hereinafter collectively referred to as the "McWatters Securities") and the issuance of Interest Shares to the holders of Gold-Linked Convertible Debentures from time to time, in certain circumstances, in all the Jurisdictions as payment of interest thereon will not be subject to the registration and prospectus requirements of the Legislation, provided that:

(a) all approvals required by orders of the Court, the CCAA and the QCA to implement the Plan have been obtained, and all conditions of the Plan have been satisfied or waived in accordance with the Plan;

(b) prior to or coincident with the distribution of the New Common Shares and Rights to the Trade Creditors, McWatters will provide the Trade Creditors with a copy of this order together with a statement that, as a result of such securities being acquired pursuant to this order, certain protections, rights and remedies which would have been afforded under the Legislation, including statutory rights of rescission and damages, will not be available to the Trade Creditors in respect of such securities;

B. except in Québec, the first trades in the McWatters Securities acquired by each Trade Creditor pursuant to this Decision and in any Interest Shares received by a holder of Gold-Linked Convertible Debentures pursuant to this Decision, will be a distribution or primary distribution to the public unless the conditions in subsections (3) or (4) of section 2.6 of Multilateral Instrument 45-102 ("MI 45-102") are satisfied; and

C. in Québec, the alienation of the McWatters Securities acquired by each Trade Creditor pursuant to this Decision and of any Interest Shares received by a holder of Gold-Linked Convertible Debentures pursuant to this Decision cannot take place without a prospectus or a prospectus exemption unless:

(i) McWatters is a reporting issuer in Québec and has complied with the applicable requirements for 12 months immediately preceding the trade;

(ii) no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade;

(iii) no extraordinary commission or consideration is paid to a person or company in respect of the trade; and

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(iv) if the selling security holder is an insider or officer of McWatters, the selling security holder has no reasonable grounds to believe that McWatters is in default of any requirement of securities legislation.

2. Decision from the Québec and Yukon Decision Makers:

A. the issuance of (i) McWatters Securities (including the Gold-Linked Convertible Debentures on the exercise of Rights) to the Senior Unsecured Note Holders, the Secured Debenture Holders and the Shareholders (as defined in the Plan) (collectively, the "Affected Creditors"), (ii) Gold-Linked Convertible Debentures to the Strategic Investors and (iii) Warrants are not subject to the registration and prospectus requirements of the Legislation, provided that:

(a) all approvals required by orders of the Court, the CCAA and the QCA to implement the Plan have been obtained, and all conditions of the Plan have been satisfied or waived in accordance with the Plan;

(b) prior to or coincident with the distribution of the McWatters Securities to Affected Creditors and Strategic Investors, McWatters will provide the Affected Creditors and Strategic Investors with a copy of this order together with a statement that, as a result of such securities being acquired pursuant to this order, certain protections, rights and remedies which would have been afforded under the Legislation, including statutory rights of rescission and damages, will not be available to the Affected Creditors and to the Strategic Investors in respect of such securities;

B. in Yukon, the first trades in the McWatters Securities (including the Gold-Linked Convertible Debentures issued on the exercise of Rights) acquired by each Affected Creditor pursuant to this Decision and in any Gold-Linked Convertible Debentures acquired by a Strategic Investor pursuant to this Decision will be a distribution or primary distribution to the public unless the conditions in subsections (3) or (4) of section 4.6 of MI 45-102 are satisfied; and

C. in Québec, the alienation of the McWatters Securities (including the Gold-Linked Convertible Debentures issued on the exercise of Rights) acquired by each Affected Creditor pursuant to this Decision and of any Gold-Linked Convertible Debentures acquired by a Strategic Investor pursuant to this Decision cannot take place without a prospectus or a prospectus exemption unless:

(i) McWatters is a reporting issuer in Québec and has complied with the applicable requirements for 12 months immediately preceding the trade;

(ii) no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade;

(iii) no extraordinary commission or consideration is paid to a person or company in respect of the trade; and

(iv) if the selling security holder is an insider or officer of McWatters, the selling security holder has no reasonable grounds to believe that McWatters is in default of any requirement of securities legislation.

Dated this 1st day of March, 2002

Jean-François Bernier
Director, Capital Market