

# 2006 BCSECCOM 499

August 18, 2006

## Headnote

Multilateral Instrument 11-101 Principal Regulator System – National Instrument 51-102, s. 13.1 Continuous Disclosure Obligations – Information circular – an issuer wants relief from the requirement to include prospectus-level disclosure in an information circular to be circulated in connection with an arrangement, reorganization, acquisition or amalgamation – alternate disclosure will be provided about the issuer that is consistent with the information required in the continuous disclosure context for significant acquisitions; information will be provided about the parties to the transaction sufficient for shareholders to assess the transaction as a whole; the alternate disclosure will comply with the applicable prospectus requirements except that the time frame for reporting is shortened from 3 years to 2 years

National Instrument 51-102, s. 13.1 Continuous Disclosure Obligations – BAR – an issuer requires relief from the requirement to file a business acquisition report – the issuer will be filing an information circular in connection with the proposed acquisition; the issuer would be able to rely on section 8.1(2) of NI 51-102, except that it has obtained relief to include different financial statements in the information circular than those required by section 14.2 of Form 51-102F5

National Instrument 52-107, s. 9.1 Acceptable Accounting Principles, Auditing Standards and Reporting Currency – an issuer wants relief from the requirement to audit acquisition statements in accordance with Canadian or U.S. GAAS – The issuer acquired or will acquire a business whose historical financial statements have not been audited in accordance with Canadian or U.S. GAAS; the acquired business' financial statements have been audited in accordance with International Standards on Auditing; for various reasons, it would be impractical to re-audit the business' financial statements in accordance with Canadian or U.S. GAAS; the audit report will be accompanied by a statement by the auditor that describes any material differences in the form of report as compared to a Canadian GAAS audit report, and indicates that its report would not contain a reservation if it were prepared in accordance with Canadian GAAS

## Applicable British Columbia Provisions

National Instrument 51-102, s. 13.1

National Instrument 52-107, s. 9.1

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

and

National Instrument 51-102  
*Continuous Disclosure Obligations* (NI 51-102)

and

National Instrument 52-107  
*Acceptable Accounting Principles, Auditing Standards  
and Reporting Currency* (NI 52-107)

and

In the Matter of  
Multilateral Instrument 11-101 *Principal Regulator System* (MI 11-101)

and

In the Matter of  
La Mancha Resources Inc.  
(the Filer)

## Decision

### **Background**

¶ 1 The British Columbia Securities Commission (the Decision Maker) has received an application from the Filer for a decision under NI 51-102 and NI 52-107 that the Filer is exempt from:

1. the requirement under NI 51-102 to include in an information circular prepared in connection with the Proposed Acquisition (as defined below):
  - (i) the 2003 Cominor/MRA Financial Statements (as defined below); and
  - (ii) the Six Month La Mancha Interim Pro Forma Financial Statements (as defined below);
2. the requirement under NI 52-107 to audit acquisition statements in accordance with Canadian generally accepted auditing standards (Canadian GAAS) or US generally accepted auditing standards (US GAAS)

(the Information Circular Relief); and

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3. the requirements under NI 51-102 to file a business acquisition reporting in respect of the Proposed Acquisition

(the BAR Relief).

### **Application of Principal Regulator System**

¶ 2 Under MI 11-101:

- (a) the Decision Maker is the principal regulator for the Filer, and
- (b) the Filer is relying on the exemption in Part 3 of MI 11-101 in Alberta.

### **Representations**

¶ 3 The decision is based on the following facts represented by the Filer:

1. the Filer is a corporation incorporated under the *Business Corporations Act* (British Columbia) with its head office in British Columbia;
2. the Filer is a reporting issuer in the Jurisdiction and in Alberta and to the best of its knowledge, is currently not in default of its obligations as reporting issuer under the legislation of any jurisdiction in which it is a reporting issuer (the Legislation);
3. the common shares (Common Shares) in the share capital of the Filer are listed and posted on the TSX Venture Exchange and, as at August 3, 2006, the Filer has 19,723,562 Common Shares issued and outstanding;
4. Areva NC (Areva) is a corporation incorporated under the laws of France and is indirectly owned by the French state; Areva has investment certificates listed on the Euronext;
5. Compagnie Française de Mines et Métaux SA (CFMM) is a corporation incorporated under the laws of France, which is wholly owned, indirectly, by Areva and does not have any securities listed on a stock exchange;
6. Compagnie Minière Or SA (Cominor) is a corporation incorporated under the laws of France, which is a direct wholly owned subsidiary of CFMM and does not have any securities listed on a stock exchange;
7. Cominor holds a 40% equity interest in Ariab Mining Corporation (AMC), a corporation incorporated under the laws of Sudan, and a 51% equity interest in Société des Mines d'Ity (SMI), a corporation incorporated under the laws of Côte D'Ivoire;

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8. Mines & Resources Australia Pty Ltd. (MRA) is a corporation incorporated under the laws of Australia, which is a direct wholly owned subsidiary of CFMM and does not have any securities listed on a stock exchange;
9. the financial year end of Cominor, AMC, SMI and MRA is December 31 and the financial year end of La Mancha is September 30;
10. under a definitive conveyancing agreement dated May 19, 2006 among the Filer and CFMM
  - (a) the Filer is to acquire from CFMM all issued and outstanding shares of Cominor and MRA in consideration for the issuance by the Filer to CFMM of (i) 90,000,000 Common Shares in the share capital of the Filer representing at least 60% of all issued and outstanding shares on a fully diluted basis (including the Common Shares issued in the Private Placement (as defined below), but excluding the Warrants (as defined below)) of the Filer on closing of the transaction, plus (ii) 7 million warrants (the Warrants) to purchase Common Shares at an exercise price of CDN\$2.00 per share, expiring on the second anniversary of the closing of the transaction (collectively, the Proposed Acquisition); and
  - (b) following the execution of the conveyancing agreement, the Filer issued, by private placement (the Private Placement), subscription receipts (the Subscription Receipts) at CDN\$1.50 per Subscription Receipt, for aggregate gross proceeds of approximately CDN\$40 million; each Subscription Receipt will be automatically exchanged for one Common Share, without payment of additional consideration, concurrently with and conditional on closing of the Proposed Acquisition no later than September 30, 2006; closing of the Proposed Acquisition is conditional on issuance of the Common Shares in exchange for the Subscription Receipts;
11. on closing of the Proposed Acquisition, the Filer intends to list its Common Shares on the Toronto Stock Exchange;
12. under the policies of the Toronto Stock Exchange, the Proposed Acquisition must be approved by shareholders of the Filer; the Filer intends to prepare and mail an information circular (the Information Circular) containing disclosure about the Filer and MRA and Cominor, the two companies to be acquired;
13. under section 14.2 of Form 51-102F5, the Information Circular must contain, among other things, financial statement disclosure for the Filer, Cominor and MRA prescribed by the form of prospectus that each entity would be eligible

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to use for a distribution of securities in the Jurisdiction which, in this case, is prescribed by Ontario Securities Commission Rule 41-501 – General Prospectus Requirements (OSC Rule 41-501);

14. under OSC Rule 41-501, the Filer is required to include three years of audited financial statements for each of Cominor and MRA, as well as certain unaudited financial statements for each of Cominor and MRA and pro forma financial information of the Filer that gives effect to the Proposed Acquisition; this would include:
  - (a) audited statements of income, retained earnings and cash flow for each of Cominor and MRA for the financial year ended December 31, 2003 (the 2003 Cominor/MRA Financial Statements), and
  - (b) interim pro forma financial statements giving effect to the Proposed Acquisition for the six month period ending March 31, 2006 (the Six Month La Mancha Interim Pro Forma Financial Statements);
15. the 2003 financial statements of Cominor were prepared under French generally accepted accounting principles (on a non-consolidated basis) and the 2003 financial statements of MRA were prepared under Australian generally accepted accounting principles;
16. in accordance with Regulation No. 1606/2002 – *On the application of international accounting standards* of the European Parliament and Council of July 19, 2002, Areva S.A. (the ultimate parent corporation of Areva, Cominor and MRA) is presenting its consolidated financial statements in accordance with International Financial Reporting Standards (IFRS) from January 1, 2005 onwards with a one year comparative; therefore, as part of Areva S.A.'s transition to IFRS, Cominor and MRA have been subject to the IFRS transition process starting January 1, 2004 and do not have financial statements prepared under IFRS prior to that date, and no 2003 data under IFRS is currently available;
17. the 2005 financial statements for Cominor and MRA have been prepared in full compliance with IFRS, including one year of comparative figures for the financial year ended December 31, 2004 prepared in line with IFRS 1, which provides first time adopters of IFRS with exemptions from full retrospective application of IFRS;
18. because Areva S.A. adopted January 1, 2005 as the effective date for its transition to IFRS as the basis of preparation of its financial statements, it cannot now adopt an earlier transition date; therefore Cominor and MRA

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cannot prepare financial statements for the period ended December 31, 2003 under IFRS;

19. the most recently completed interim financial period for which Cominor and MRA will have prepared financial information is the three month period ending March 31, 2006;
20. on completion of the Proposed Acquisition, the Filer's year end will change to December 31;
21. the Filer will include in the Information Circular, financial statement disclosure as follows:
  - (i) for the Filer:
    - (A) audited balance sheets as at September 30, 2005 and 2004 and an unaudited balance sheet as at March 31, 2006;
    - (B) audited statements of operations and retained earnings and cash flows for the years ended September 30, 2005, 2004 and 2003 and unaudited statements of operations and retained earnings and cash flows for each of the six-month periods ended March 31, 2006 and 2005;
    - (C) an unaudited pro forma consolidated balance sheet as at March 31, 2006;
    - (D) unaudited pro forma consolidated statements of operations for the year ended September 30, 2005 and for the three months ended March 31, 2006; and
    - (E) a compilation report on the unaudited pro forma balance sheet at March 31, 2006 and the unaudited pro forma consolidated statements of operations for the year ended September 30, 2005 and for the three months ended March 31, 2006, and
  - (ii) for each of Cominor and MRA:
    - (A) audited balance sheets as at December 31, 2005 and 2004 and an unaudited balance sheet as at March 31, 2006;
    - (B) audited statements of operations and retained earnings and cash flows for the years ended December 31, 2005 and 2004 and

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unaudited statements of operations and retained earnings and cash flows for each of the three-month periods ended March 31, 2006 and 2005;

(collectively the Alternative Financial Disclosure);

22. the Information Circular will contain sufficient information for shareholders to make a reasoned decision about whether to approve the Proposed Acquisition;
23. under NI 51-102, the Filer will be required to prepare and file a business report in respect of the Proposed Acquisition;
24. the Filer would be able to rely on the exemption in section 8.1(2) of NI 51-102 from the requirement to file a business acquisition report in respect of the Proposed Acquisition if the Filer did not obtain relief from the requirement to include the 2003 Cominor/MRA Financial Statements in the Information Circular;
25. under NI 52-107, acquisition statements that are required by securities legislation to be audited must be audited in accordance with Canadian GAAS or US GAAS unless the reporting issuer that is making the acquisition is a foreign issuer;
26. the financial statements of Cominor and MRA have been audited in accordance with International Standards on Auditing (ISA); and
27. NI 52-107 does not permit the Filer to file acquisition statements for each of Cominor and MRA audited in accordance with ISA as the Filer is not a foreign issuer.

### **Decision**

¶ 4 The Decision Maker, being satisfied that it has jurisdiction to make this decision and considering that to do so would not be prejudicial to the public interest,

1. the Information Circular Relief is granted, provided that:
  - (a) the Information Circular includes the Alternative Financial Disclosure; and
  - (b) the acquisition statements are audited in accordance with ISA and the auditor's report thereon is accompanied by a statement by the auditor that:

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- (i) describes any material differences in the form and content of the auditor's report as compared to an auditor's report prepared in accordance with Canadian GAAS; and
  - (ii) indicates that an auditor's report prepared in accordance with Canadian GAAS would not contain a reservation; and
- 2. the BAR Relief is granted, provided that:
  - (a) the Information Circular includes the Alternative Financial Disclosure;
  - (b) the Proposed Acquisition is completed within nine months of the date of the Information Circular; and
  - (c) between the date of the Information Circular and the date of the Proposed Acquisition, there has been no material change in the terms of the Proposed Acquisition from those disclosed in the Information Circular.

Noreen Bent  
Acting Director, Corporate Finance  
British Columbia Securities Commission