

2010 BCSECCOM 204

April 1, 2010

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* - An issuer wants relief from the requirement in Part 5 of NI 52-109 to file interim certificates - The issuer is an SEC foreign issuer under NI 71-102 and files its US continuous disclosure documents to satisfy Canadian requirements; the issuer furnishes to the SEC interim financial information on Form 6-K, which differs in several material respects from interim financial statements and interim MD&A filed on Form 10-Q and required to be certified under SOX 404

Applicable British Columbia Provisions

National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*, Part 5, s. 8.6

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

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
Randgold Resources Limited
(the Filer)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (collectively, the Decision Makers) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for

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an exemption (the Exemption Sought) from the requirements of Part 5 of National Instrument 52-109 *Certification of Disclosure in Issuer's Annual and Interim Filings* (NI 52-109), relating to certification of interim filings.

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual review application):

- (a) the British Columbia Securities Commission is the principal regulator for this application;
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, and Prince Edward Island; and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:
- 1. the Filer is a limited liability company incorporated under the laws of Jersey, Channel Islands and is organized pursuant to the *Companies (Jersey) Law 1991*;
 - 2. the registered office of the Filer is located at La Motte Chambers, La Motte Street, St. Helier, Jersey, JE1 1BJ, Channel Islands;
 - 3. the financial year end of the Filer is December 31;
 - 4. the ordinary shares of the Filer (the Ordinary Shares) have been registered under section 12(b) of the U.S. Securities Exchange Act of 1934, as amended (the 1934 Act), and the Filer is subject to continuing reporting requirements with the U.S. Securities and Exchange Commission (the SEC) under sections 13 and 15(d) of the 1934 Act;
 - 5. the Ordinary Shares are listed on the London Stock Exchange (LSE). The American Depositary Shares of the Filer (ADSs) trade in the United States on the NASDAQ Global Select Market in the form of American Depositary

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Receipts (ADRs); each ADR represents one ADS, and each ADS represents one Ordinary Share;

6. the Filer is included in the FTSE100 Index, a market capitalization-weighted index representing the top 100 blue chip companies on the LSE, with a market capitalization of approximately \$7 billion;
7. as a December 31, 2009, approximately 90,102,919 Ordinary Shares (including ADRs) are issued and outstanding, of which approximately 7.08% are held by Canadian residents; the Filer estimates that approximately 5.65% of its beneficial shareholders are Canadian residents;
8. the Filer became a “reporting issuer” in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Newfoundland and Labrador, Nova Scotia, and Prince Edward Island (collectively, the Provinces) on October 15, 2009 solely because it issued its securities as partial consideration in connection with its acquisition of Moto Goldmines Limited (which had been a reporting issuer) by way of plan of arrangement; the Filer is currently a reporting issuer in such jurisdictions; the Filer’s securities are not listed on any stock exchange in Canada and the Filer has no intention to publicly offer any of its securities in Canada;
9. the Filer is not in default of securities legislation in any of the Provinces;
10. the Filer is a foreign issuer but is not a designated foreign issuer under National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (NI 71-102) because neither Jersey nor the Channel Islands is listed as a “designated foreign jurisdiction” under NI 71-102; under NI 71-102, the Filer is instead classified as an “SEC foreign issuer”;
11. since the Filer is classified as an SEC foreign issuer under NI 71-102 and not a designated foreign issuer, the certification exemption for designated foreign issuers in section 8.3 of NI 52-109 is not available to the Filer;
12. under subsection 8.2(2) of NI 52-109, an issuer is exempt from the requirement to file interim certificates in the Canadian form if:
 - (a) the issuer files with or furnishes to the SEC a report on Form 6-K containing the issuer’s quarterly financial statements and management’s discussion and analysis in respect thereof;
 - (b) the Form 6-K is accompanied by signed certificates that are filed with or furnished to the SEC in the same form required by the U.S. federal

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securities laws implementing the annual report certification requirement in section 302(a) of the U.S. Sarbanes-Oxley Act of 2002, as amended (SOX); and

(c) the issuer files signed certificates relating to the quarterly report filed or furnished under cover of the Form 6-K as soon as practicable after they are filed with or furnished to the SEC;

13. as a “foreign private issuer” under the 1934 Act, the Filer furnishes its quarterly financial information to the SEC on Form 6-K;
14. no form of certification under SOX is required from, or provided by, the Filer for interim financial information furnished under Form 6-K;
15. the quarterly financial information that the Filer furnishes to the SEC on Form 6-K differs in several material respects from the quarterly financial statements that are ordinarily filed on Form 10-Q, the material difference being that the information furnished on Form 6-K, with the exception of certain technical differences, complies with the requirements applicable to interim financial statements to be incorporated by reference into a Form F-3 prepared by a foreign private issuer, rather than the SEC requirements applicable to financial statements included in Form 10-Q;
16. Management’s Discussion and Analysis (MD&A) is not a required item of Form 6-K; accordingly, for foreign private issuers furnishing interim reports on Form 6-K, the discussion of results does not necessarily technically adhere to all of the requirements applicable to MD&A in a quarterly report on Form 10-Q;
17. the Filer intends to satisfy its ongoing disclosure obligations in the Provinces by filing the documents that it prepares and files or furnishes in the United States with the SEC as contemplated by NI 71-102;
18. accordingly, the Filer intends to satisfy its requirement to file interim financial statements and related MD&A in the Provinces by filing quarterly financial information on Form 6-K.

Decision

- ¶ 4 Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted provided that:

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- (a) the Filer relies on section 4.3 of NI 71-102 in relation to interim financial statements required by *securities* legislation;
- (b) the Filer is in compliance with U.S. federal securities laws implementing the certification requirements in section 302(a) of SOX applicable to the Filer;
- (c) the Filer is in compliance with its disclosure obligations under the 1934 Act;
- (d) the signed certificates of the Filer's certifying officers filed with the SEC relating to its annual reports for each financial year are filed with the securities regulatory authorities in the Provinces as soon as reasonably practicable after they are filed with the SEC; and
- (e) to the extent that any signed certificates of the Filer's certifying officers are filed with the SEC relating to its interim financial statements, such certificates are filed with the securities regulatory authorities in the Provinces as soon as reasonably practicable after they are filed with the SEC.

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