

## 2009 BCSECCOM 3

### Headnote

Sales during bid - Issuer wants relief from the prohibition on entering into an agreement to sell target securities during a bid in s. 104(1) of the Act - The bidder inadvertently triggered its target's shareholder rights plan; the bidder intends to sell a sufficient number of target's shares to a private party so that the bidder reduces its beneficial ownership of the target to below the triggering threshold for the rights plan; directors of the target will waive the application of the share rights plan in this instance

### Exemption Order

#### Invecture Group S.A. de C.V.

#### Section 6.1 of Multilateral Instrument 62-104

### Background

- ¶ 1 Invecture Group S.A. de C.V. (the Filer) has filed an application with the Executive Director under section 6.1 of Multilateral Instrument 62-104 *Take Over Bids and Issuer Bids* (the Instrument) to permit it to make a single sale of common shares (Shares) of Frontera Copper Corporation (Frontera) which Shares, along with out-of-the-money options are the subject of a formal take-over bid (Bid) made by the Filer.

### Representations

- ¶ 2 The Filer has made the following representations:
1. the Filer is a private investment and advisory company incorporated under the laws of Mexico;
  2. the Shares and notes (payable) of Frontera are listed on the Toronto Stock Exchange; on April 20, 2006, Frontera adopted a Shareholder Rights Plan (the Rights Plan);
  3. on December 3, 2008 the Filer, through its wholly owned subsidiary, 0839073 B.C. Ltd., commenced the Bid and filed it at [www.SEDAR.com](http://www.SEDAR.com);

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4. the Rights Plan provides that, except in limited circumstances including pursuant to a “Permitted Bid” as defined under the Rights Plan, where a person acquires 20% or more of the outstanding Shares, the person will become an “Acquiring Person” as defined under the Rights Plan, and will, with the lapse time, trigger the separation of the rights from the Shares;
5. the Bid was structured to be a Permitted Bid;
6. as of December 3, 2008, the Filer held 10,615,300 Shares (16.45% of the 64,517,890 outstanding Shares);
7. on December 8, 2008, the Filer purchased an additional 3,225,000 Shares bringing its total holdings to 13,840,300 Shares (21.45%) or 1.45% in excess of the Rights Plan threshold; the excess purchase occurred by inadvertence and without any intention to become, an Acquiring Person;
8. the Rights Plan provides that the Board of Directors of Frontera may waive an inadvertent triggering of the separation of the rights from the Shares, provided that the Acquiring Person reduces its beneficial ownership of Shares below the 20% threshold in the Rights Plan;
9. the Filer has reached an agreement to privately sell 937,300 Shares subject only to this order being issued (the Proposed Trade);
10. the Proposed Trade will occur in British Columbia as the Filer’s British Columbia subsidiary will sell the excess Shares by delivery from its holdings in its British Columbia brokerage account;
11. section 2.7(1) of the Instrument prevents an offeror under a bid from selling shares during the term of the bid;
12. the Proposed Trade is for the purpose of bringing the Filer into compliance with the Rights Plan;
13. the value of the Shares involved in the Proposed Trade is *de minimus* (approximately \$553,000) in the context of Frontera’s equity capitalization (as valued by the Bid) of approximately \$38 million; and
14. in completing the Proposed Trade, the Filer will comply with all applicable securities laws including any applicable registration and prospectus exemptions and will timely file disclosure of the Proposed Trade upon its completion in accordance with insider reporting rules.

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### **Order**

- ¶ 3 Because it is not prejudicial to the public interest, the Commission orders that Section 2.7(1) of the Instrument does not apply to the Proposed Trade.

December 18, 2008

Martin Eady, CA  
Director, Corporate Finance