

# 2010 BCSECCOM 561

September 17, 2010

## Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – 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 52-107, s. 9.1 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*

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

and

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

and

In the Matter of  
Anooraq Resources Corporation  
(the Filer)

## Decision

## Background

- ¶ 1 The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the

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principal regulator (the Legislation) that the Filer be exempted from complying with the requirement in section 6.2 of National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (NI 52-107) that acquisition statements that are included in a business acquisition report filed under section 8.2 of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) must be audited in accordance with Canadian generally accepted auditing standards (Canadian GAAS) or U.S. generally accepted auditing standards (U.S. GAAS) with respect to the acquisition statements incorporated by reference into the business acquisition report of the Filer dated September 15, 2009 (the Exemption Sought).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions for a passport application:

- (a) the British Columbia Securities Commission is the principal regulator for this application, and
- (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 and Québec (the Passport Jurisdictions).

### **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's Canadian head office is located at 1020 - 800 West Pender Street, Vancouver, BC V6C 2V6;
  - 2. the Filer is a corporation existing under the *Business Corporations Act* (British Columbia);
  - 3. the Filer is a reporting issuer in each of British Columbia, Alberta and Québec;
  - 4. the common shares of the Filer are listed and posted for trading on the TSX Venture Exchange and the Johannesburg Stock Exchange under the symbol "ARQ" and on the NYSE AMEX under the symbol "ANO";
  - 5. the Filer's annual financial statements for the year ended December 31, 2009 are prepared in accordance with International Financial Reporting Standards (IFRS), pursuant to exemptive relief granted by the British Columbia

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Securities Commission on February 18, 2009 under 52-321 *Early Adoption of International Financial Reporting Standards, Use of US GAAP and Reference to IFRS-IASB* (52-321) and are audited in accordance with Canadian GAAS;

6. the Filer is engaged, through its subsidiaries and joint ventures, in the mining, exploration and development of platinum group metals in South Africa; the Filer currently maintains a controlling interest in the Bokoni Mine, the Ga-Phasha Project, and the Boikgantsho and Kwanda Projects, each as described in the annual information form of the Filer dated March 30, 2010;
7. on July 1, 2009, the Filer acquired 51% of the outstanding shares in Richtrau No. 179 (Proprietary) Limited (Richtrau No. 179), which holds 100% of Richtrau No. 177 (Proprietary) Limited being the operating company of the Bokoni Platinum Mine (formerly Lebowa Platinum Mine) (the Acquisition);
8. the Acquisition constituted a “significant acquisition” within the meaning of section 8.3 of NI 51-102, and in accordance with section 8.2 of NI 51-102, the Filer filed the business acquisition report (BAR) on September 15, 2009;
9. the audited financial statements of Richtrau No. 179 for the year ended December 31, 2008 (the Audited Acquisition Statements), incorporated by reference in the BAR, have been prepared in accordance with IFRS and audited in accordance with International Standards on Auditing (ISA) issued by the International Auditing and Assurance Standards Board;
10. the auditor of Richtrau No. 179 has represented to the Filer that it has expertise and experience with ISA;
11. section 6.2 of NI 52-107 does not permit the Filer to include annual audited acquisition statements that are audited in accordance with ISA with the BAR as the Filer is not a foreign issuer;
12. the Filer is currently in default of securities legislation as the Audited Acquisition Statements in the BAR have not been audited in accordance with Canadian GAAS or U.S. GAAS as required by section 6.2(1) of NI 52-107;
13. the Filer would have to incur substantial costs and possibly material delay in order to have the Audited Acquisitions Statements audited again in accordance with Canadian GAAS or U.S. GAAS;
14. the Filer has obtained a statement from the auditor of the Audited Acquisition Statements that:

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- (a) 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
  - (b) indicates that an auditor's report prepared in accordance with Canadian GAAS would not contain a reservation; and
15. the Filer acknowledges that any right of action, remedy, penalty or sanction available to any person or to a securities regulatory authority against the Filer from September 15, 2009 until the date of this decision document is not terminated or altered as a result of this decision.

### **Decision**

- ¶ 4 The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted effective from the date of this decision provided that:

- (a) the Audited Acquisition Statements are audited in accordance with ISA issued by the International Auditing and Assurance Standards Board; and
- (b) the auditor's report to the Audited Acquisition Statements filed with an amended BAR is accompanied by a statement by the auditor that:
  - (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.

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