

2006 BCSECCOM 567

September 29, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications and
Multilateral Instrument 11-101 Principal Regulator System

National Instrument 51-102, s. 13.1 - Continuous Disclosure Obligations –
BAR – An issuer requires relief from the requirement to include certain financial
statements in a business acquisition report – under the current version of NI 51-
102, the issuer is required to include a compilation report with pro forma financial
statements in the BAR; this requirement will be removed when proposed
amendments to NI 51-102 come into force

BAR – An issuer requires relief from the requirement to file a business acquisition
report within 75 days after the date of an acquisition - the financial year of the
acquired business ended 45 days or less before the acquisition; the issuer will file
the business acquisition report within 90 days after the date of acquisition

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, part 8 and s. 13.1

National Instrument 52-107, part 6 and s. 9.1

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

and

In the Matter of

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the Mutual Reliance Review System for Exemptive Relief Applications (MRRS)

and

In the Matter of
Gemcom Software International Inc.
(the Filer)

MRRS Decision Document

Background

¶ 1 The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from:

(a) the requirement in section 8.4(3)(d) of National Instrument 51-102 – *Continuous Disclosure Obligations* (NI 51-102) to include a compilation report accompanying the pro forma financial statements of Surpac Minex Group Pty Ltd. (Surpac) in the Business Acquisition Report (BAR) required to be filed by the Filer in respect of its acquisition of Surpac;

(b) the requirement in section 6.2 of NI 52-107 to audit the financial statements of Surpac that are required to be included in the BAR in accordance with Canadian or U.S. generally accepted auditing standards (GAAS);

(collectively, the Disclosure Relief) and

(c) the requirement in section 8.2 of NI 51-102 which requires the Filer to file a BAR within 75 days after the date of its acquisition of Surpac (the Timing Relief).

Application of Principal Regulator System

¶ 2 Under Multilateral Instrument 11-101 – *Principal Regulator System* (MI 11-101) and the MRRS:

(a) the British Columbia Securities Commission is the principal regulator for this application;

(b) the Filer is relying on the exemption in Part 3 of MI 11-101 in Alberta; and

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(c) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

- ¶ 3 Defined terms contained in National Instrument 14-101 – *Definitions* have the same meaning in this decision unless they are otherwise defined in this decision.

Representations

- ¶ 4 This decision is based on the following facts represented by the Filer:
1. the Filer delivers comprehensive software and service solutions to the mining industry enabling mining companies to evaluate, manage, and monitor their mining operations from early exploration through to final production;
 2. the Filer is governed by the *Business Corporations Act* (British Columbia) and its head office is located in Vancouver, British Columbia;
 3. the Filer is a reporting issuer in British Columbia, Alberta and Ontario and, to its knowledge, is not in default of its obligations as a reporting issuer under the legislation of any jurisdiction in which it is a reporting issuer;
 4. the Filer is authorized to issue an unlimited number of common shares (the Common Shares), of which, 50,376,212 Common Shares are issued and outstanding as of September 13, 2006, and an unlimited number of preferred shares, none of which have been issued;
 5. the Common Shares are listed and posted for trading on The Toronto Stock Exchange;
 6. the Filer's fiscal year end is March 31;
 7. on July 19, 2006, the Filer completed its acquisition (the Acquisition) of Surpac;
 8. Surpac is a company organized under the laws of Australia; prior to the Acquisition, less than 50% of the shares entitled to vote for the election of directors of Surpac were owned, directly or indirectly, by residents of Canada, the majority of executive officers and directors of Surpac were not resident in Canada, less than 50% of the consolidated assets of Surpac were located in Canada and the business of Surpac was not administered principally in Canada and is not seasonal; the fiscal year end for Surpac is June 30;

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9. as the Acquisition constitutes a “significant acquisition” for the purposes of NI 51-102, under section 8.2 of NI 51-102, the Filer is required to file a BAR within 75 days after the date of the Acquisition, being by October 2, 2006;
10. under sections 8.4 and 8.5 of NI 51-102, the BAR must be accompanied by certain financial statements of Surpac, including audited financial statements for the two most recently completed financial years ended more than 45 days before the date of the Acquisition and by certain pro forma statements and information of the Filer; however, section 8.7(1) of NI 51-102 allows the Filer to omit the financial statements for the oldest financial year if audited financial statements of Surpac are included for a financial year ended 45 days or less before the date of the Acquisition;
11. with its BAR in relation to its Acquisition of Surpac, the Filer intends to include the following financial statement disclosure:
 - (a) audited balance sheets as at June 30, 2006 and June 30, 2005 and the statements of income, retained earnings and cash flows for Surpac for the years then ended together with the notes thereon and auditor’s report prepared in accordance with Australian Equivalents to International Financial Reporting Standards (AIFRS) and audited in accordance with International Standards on Auditing (the Annual Financial Statements); and
 - (b) audited balance sheets as at March 31, 2006 and March 31, 2005 and the statements of income, retained earnings and cash flows for the Filer for the years then ended together with the notes thereon and auditor’s report prepared in accordance with Canadian GAAS;and the following additional financial statements and information in respect of the Filer under section 8.4 of NI 51-102:
 - (c) a pro forma balance sheet as at March 31, 2006 that gives effect to the Acquisition as if it had taken place as at that date; and
 - (d) a pro forma income statement to give effect to the Acquisition for the most recently completed financial year of the Filer being the year ended March 31, 2006 as if the Acquisition had taken place at the beginning of that financial period;
12. the Australian GAAS used in, or that will be used in, auditing Surpac’s Annual Financial Statements do not, or will not, comply with the requirements set out in section 6.2(1) of NI 52-107;

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13. 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; as the Filer is not a foreign issuer, NI 52-107 does not permit the Filer to file acquisition statements audited in accordance with International Standards on Auditing;
14. the Filer understands there are no material differences in the form and content of an auditor's report prepared in accordance with Australian GAAS as compared to Canadian GAAS; and
15. due to a variety of factors outside of the Filer's control, it is not reasonably possible to complete the Annual Financial Statements by October 2, 2006.

Decision

¶ 5 The Decision Makers being satisfied that each has jurisdiction to make this decision and that the relevant test contained in the Legislation has been met,

1. the Disclosure Relief is granted provided that:
 - (a) the Annual Financial Statements are audited in accordance with International Standards on Auditing and the auditor's report 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; and
2. the Timing Relief is granted provided that the Filer files the BAR, including the Audited Financial Statements not later than October 17, 2006 (90 days after the date of the Acquisition of Surpac).

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