

2012 BCSECCOM 12

January 13, 2012

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. 5.1 *Acceptable Accounting Principles and Auditing Standards* – A reporting issuer wants to early adopt IFRS for purposes of preparing its financial statements – The reporting issuer is completing a reverse takeover of a target; the reporting issuer has already adopted IFRS; the target's financial statements were prepared in accordance with IFRS; the target will be the resulting issuer and will file all subsequent filings in accordance with IFRS.

Applicable Legislative Provisions

National Instrument 52-107, s. 5.1 *Acceptable Accounting Principles and Auditing Standards*

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
Lions Bay Capital Inc.
(the Filer)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) exempting the Filer from the requirement in section 4.2 of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (NI 52-107) that financial statements be prepared in accordance with Canadian GAAP – Part V (the Exemption Sought), in order that the financial statements of a reverse takeover acquirer that the Filer is required to file pursuant to paragraph 4.10(2)(a)(ii) of

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National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) may be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises, which is IFRS incorporated into the Handbook.

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual 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 and Saskatchewan (Passport Jurisdictions); 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*, MI 11-102 and NI 52-107 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 corporation incorporated under the laws of British Columbia;
 - 2. the head office of the Filer is located at Unit 101 - 4705 Wayburne Drive, Burnaby, British Columbia, V5G 3L1, Canada and its registered office is located at Suite 1810 – 1111 West Georgia Street, Vancouver, British Columbia, V6E 4M3, Canada;
 - 3. the Filer is a reporting issuer in the Jurisdictions and the Passport Jurisdictions;
 - 4. the Filer is not in default of securities legislation in any jurisdiction;
 - 5. the Filer is a capital pool company and its common shares are listed on the TSX Venture Exchange (TSXV) under the symbol LBI.P;
 - 6. the Filer is in the process of completing its Qualifying Transaction (as such term is defined in TSXV Policy 2.4 *Capital Pool Companies*) with the target Finsbury Exploration Ltd. (the Target);

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7. the Target is a private mineral exploration company incorporated under the laws of British Columbia with certain copper-gold mineral interests in northern British Columbia known as the Gnat Pass Project;
8. upon completion of the Qualifying Transaction, the Target will become a subsidiary of the Filer and the Filer will continue to carry on its business through the Target (the Filer referred to as the Resulting Issuer upon completion of the Qualifying Transaction);
9. the Qualifying Transaction is a reverse acquisition; although for legal purposes the Filer is the acquirer, for accounting purposes the Target is the acquirer; accordingly, the consolidated financial statements of the Resulting Issuer will be those of the accounting acquirer, namely the Target;
10. the fiscal year end of the Filer is May 31 and the fiscal year end of the Target is December 31; the fiscal year end of the Resulting Issuer will change to December 31 upon completion of the Qualifying Transaction;
11. in accordance with the policies of the TSXV, the Filer must file a CPC Filing Statement (as such term is defined in TSXV Policy 2.4) with the TSXV and on SEDAR which describes the Qualifying Transaction and includes certain financial information of the Target;
12. the CPC Filing Statement will contain audited financial statements for the Target for the financial years ended December 31, 2010 and 2009 (the Filing Statement Financial Statements) and a reviewed interim financial report of the Target as at and for the three and nine months ended September 30, 2011; the Filer is seeking a waiver from the TSXV from the requirement to include in the CPC Filing Statement the Target's audited financial statements for the financial year ended December 31, 2008 (the 2008 Financial Statements);
13. the Target has been preparing its financial statements in accordance with Canadian GAAP applicable to publicly accountable enterprises, which is IFRS incorporated into the Handbook, since its incorporation; the CPC Filing Statement Financial Statements and the 2008 Financial Statements (together, the Target Financial Statements) were prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises, which is IFRS incorporated into the Handbook, and were audited in such form in accordance with Canadian GAAS; all interim financial reports prepared by the Target have been prepared in accordance with the International Accounting Standard 34 *Interim Financial Reporting*;

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14. the Canadian Accounting Standards Board adopted IFRS as Canadian GAAP for most publicly accountable enterprises for fiscal years beginning on or after January 1, 2011;
15. NI 52-107 sets out acceptable accounting principles for financial reporting under the Legislation by domestic issuers, foreign issuers, registrants and other market participants; under NI 52-107, for financial years beginning before January 1, 2011, a domestic issuer must use Canadian GAAP – Part V, with the exception that an SEC registrant may use U.S. GAAP; under Part 4 of NI 52-107, for financial years beginning before January 1, 2011, only foreign issuers may use IFRS;
16. the current financial year of the Filer began on June 1, 2011; as required by NI 52-107, the Filer adopted Canadian GAAP applicable to publicly accountable enterprises, which is IFRS incorporated into the Handbook, for the financial year beginning June 1, 2011;
17. the Target analyzed the Target Financial Statements and advised the Filer that there would be no material differences, in recognition and measurement, if the Target Financial Statements were prepared in accordance with Canadian GAAP – Part V; and
18. in accordance with paragraph 4.10(2)(a)(ii) of NI 51-102, upon completion of the Qualifying Transaction the Resulting Issuer is required to file the Target Financial Statements.

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 the Target Financial Statements are prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises, which is IFRS incorporated into the Handbook.

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