

2011 BCSECCOM 283

June 8, 2011

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* - An issuer that is not yet an ‘SEC issuer’ wants to file financial statements prepared in accordance with U.S. GAAP - The issuer intends to become an SEC registrant; the issuer has filed a registration statement with the SEC; the issuer will meet all the elements of the definition of ‘SEC issuer’ once the SEC accepts its registration statement; the issuer will file financial statements that comply with the requirements for SEC issuers in NI 52-107 and NI 51-102; if the issuer does not become an SEC issuer by a set date, it will re-file its financial statements in accordance with IFRS

Applicable British Columbia Provisions

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

National Instrument 52-107, s. 3.2 *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
EMC Metals Corp.
(the Filer)

Decision

Background

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

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from the requirement in section 3.2 of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (NI 52-107) that financial statements, other than acquisition statements, be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises (the Exemption Sought), in order that the Filer may prepare financial statements for periods beginning on or after January 1, 2011 in accordance with U.S. GAAP.

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
- (b) 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*, NI 52-107 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 was incorporated on July 17, 2006 under the name Golden Predator Mines Inc. pursuant to the *Business Corporations Act* (British Columbia); effective March 12, 2009, the Filer changed its name to EMC Metals Corp.;
 - 2. the Filer's head office, and registered and records office is located at 11th Floor - 888 Dunsmuir Street, Vancouver, British Columbia, V6K 3K4;
 - 3. the primary business of the Filer is the exploration and development of mineral properties located outside of Canada;
 - 4. the Filer is a reporting issuer in the Jurisdictions and Alberta and is not in default of securities legislation in any jurisdiction; the Filer's financial year end is December 31;
 - 5. the majority of the executive officers and directors of the Filer are resident in the United States;

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6. the majority of the consolidated assets of the Filer are located in the United States;
7. the business of the Filer is administered principally in the United States;
8. the majority of the Filer's outstanding voting securities are directly or beneficially held by residents of the United States;
9. as at June 30, 2010, the Filer no longer met the definition of "foreign private issuer" as defined in Rule 3b-4 under the 1934 Act; as a result, effective January 1, 2011, the Filer became subject to U.S. securities laws as applicable to a U.S. domestic company;
10. the Filer has filed a Form 10 (General Form for Registration of Securities) on May 24, 2011 with the SEC in order to register its common shares under the 1934 Act and become subject to the requirement to file reports with the SEC under the 1934 Act; the Filer anticipates that it will become an SEC Issuer as defined in NI 52-107 in 60 days from the date of filing the Form 10, subject to the Filer not withdrawing and resubmitting the Form 10 in order to address comments of the SEC;
11. upon becoming an SEC Issuer, under Part 3.7 of NI 52-107, the Filer may prepare its financial statements, other than acquisitions statements, in accordance with U.S. GAAP;
12. the Exemption Sought will eliminate the need to plan and perform a conversion from Canadian GAAP – Part V to Canadian GAAP applicable to publicly accountable enterprises, then plan and perform a conversion from Canadian GAAP applicable to publicly accountable enterprises to U.S. GAAP;
13. if the Filer does not become an SEC Issuer by December 31, 2011, the Filer will immediately re-file on SEDAR all previously filed financial statements prepared in accordance with U.S. GAAP and related management's discussion and analysis; the re-filed financial statements will be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises; the management's discussion and analysis will be amended to reflect the re-filed financial statements; and the Filer will issue a news release upon re-filing the financial statements that explains the nature and purpose of the re-filings; and
14. based on the foregoing, the Filer submits that it would not be prejudicial to the public interest to allow the Filer to adopt U.S. GAAP.

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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:

1. the Filer files financial statements that are prepared in accordance with U.S. GAAP for periods beginning on or after January 1, 2011; and
2. if the Filer does not become an SEC Issuer by December 31, 2011, the Filer will immediately re-file on SEDAR all previously filed financial statements prepared in accordance with U.S. GAAP and related management's discussion and analysis in the manner described in representation 13.

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