

2010 BCSECCOM 679

December 3, 2010

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Securities Act s. 76 - *Prospectus Requirements* - Trades by an issuer to its shareholders in securities of another company that it owns (e.g. spin-off transactions) - The issuer will distribute the shares of the other company as a dividend to the issuer's shareholders; the other company is not a reporting issuer; the issuer has a de minimis connection to Canada; as a result of the transfer, the shareholders of the issuer will hold their interests in the subsidiary directly as opposed to indirectly through their shareholdings of the issuer

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 76

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
Terra Nova Royalty Corporation
(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) for an exemption

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from the prospectus requirement for its proposed distribution of shares (the KID Shares) of KHD Humboldt Wedag International AG (KID) to holders of common shares of the Filer (the Shareholders) resident in Canada by way of pro rata return of capital (the Relief Sought).

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, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut; 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* 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 is incorporated under the laws of British Columbia and has a head office located in Vancouver, British Columbia;
 - 2. the Filer is a reporting issuer in British Columbia, Alberta and Québec, and is not in default of securities legislation in any jurisdiction;
 - 3. the Filer's common shares are listed only on the New York Stock Exchange;
 - 4. KID is organized under the laws of Germany, headquartered in Cologne, Germany; the KID Shares are traded only on the Frankfurt Stock Exchange and KID is subject to the rules of the Frankfurt Stock Exchange and German securities laws;
 - 5. on January 6, 2010, the Filer, then called KHD Humboldt Wedag International Ltd., announced its intention to restructure into two distinct companies, being: (i) a mineral royalty and natural resources company; and (ii) an industrial plant

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technology, equipment and service company (the Industrial Business), pursuant to a plan of arrangement under the *Business Corporations Act* (British Columbia) (the Arrangement);

6. the Arrangement was approved by Shareholders on March 29, 2010, and by the British Columbia Supreme Court on March 30, 2010; the Arrangement became effective on March 30, 2010;
7. prior to the Arrangement, the Filer took certain reorganizational steps in order to consolidate its ownership in KID and indirectly transfer to KID substantially all of its subsidiaries engaged in the Industrial Business; immediately prior to the Arrangement, the Filer held approximately 98% of the issued KID Shares;
8. under the Arrangement, the Filer, among other things, distributed 8,645,688 KID Shares, representing approximately 26% of the outstanding KID Shares, to Shareholders on the basis of three and one-half KID Shares for each common share of the Filer held (calculated after a two for one forward split of KID);
9. the initial distribution of KID Shares under the Arrangement was exempt under section 2.11 of National Instrument 45-106 – *Prospectus Exemptions* (NI 45-106);
10. subsequent to the Arrangement, the Filer distributed the majority of its remaining interest in KID to Shareholders through two distributions as follows (the Prior Distributions):
 - (a) a distribution to Shareholders of record on July 1, 2010 of one KID Share for each common share of the Filer held; and
 - (b) a distribution to Shareholders of record on September 23, 2010 of one KID Share for each common share of the Filer held.
11. the Prior Distributions were exempt from the prospectus requirements pursuant to a decision of the Decision Makers dated June 23, 2010;
12. the Filer intends to distribute the substantial balance of its interest in KID, being up to 6,669,528 KID Shares, to Shareholders on a pro rata basis by way of a return of capital to shareholders of record on or about December 31, 2010 (the Proposed Distribution);

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13. the KID Shares are not listed on any Canadian stock exchange and are not intended to be listed on any such exchange;
14. KID is not a reporting issuer in Canada and does not intend to become a reporting issuer in Canada;
15. as of September 29, 2010, there were 50 registered holders of the Filer's common shares resident in Canada, holding less than 0.01% of the Filer's outstanding common shares as at such date; additionally, such shareholders represent less than 10% of the Filer's registered Shareholders; as such, the proportion of common shares of the Filer held by residents of Canada and the proportion of KID Shares to be distributed to such Shareholders is *de minimis*;
16. the Filer will send all materials relating to the Proposed Distribution that it sends in the United States to Shareholders resident in Canada;
17. Shareholders will not be required to pay for the KID Shares received in the Proposed Distribution, or to surrender or exchange securities or take any other action to be entitled to receive their KID Shares; the Proposed Distributions will occur automatically and without any investment decision on the part of Shareholders; and
18. the Proposed Distribution of KID Shares to Canadian Shareholders would be exempt from the prospectus requirements under subsection 2.31(2) of NI 45-106 but for the fact that KID is not a reporting issuer.

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 Relief Sought is granted provided that the first trade in KID Shares acquired under the Proposed Distribution will be deemed to be a distribution unless the conditions in section 2.6 or subsection 2.14(1) of National Instrument 45-102 – *Resale of Securities* are satisfied.

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