

2002 BCSECCOM 770

Headnote

Relief from prospectus requirement for first trades of shares issued by an issuer which is not a private issuer to a British Columbia resident, subject to certain restrictions

Exemption Order

Endeavour Mining Capital Corporation

Section 76 of the *Securities Act*, R.S.B.C. 1996, c. 418

¶ 1 Background

Endeavour Mining Capital Corporation (ECC) has applied for an exemption from the requirement to file and obtain receipts for a preliminary prospectus and prospectus in section 61 of the Act for the first trade of shares of ECC held by a British Columbia resident.

¶ 2 Representations

ECC represents that:

1. ECC is governed by the *Companies Law* (Cayman Islands), is not a reporting issuer under the Act and is not a reporting issuer or the equivalent under the securities legislation of any other province or territory in Canada or any other jurisdiction;
2. the authorized capital of ECC is US \$2,000,000, divided into 100,000,000 ordinary voting shares of US \$0.01 par value each (ECC Shares), of which 11,076,120 shares are issued and outstanding as at September 4, 2002, and 100,000,000 undesignated shares of US \$0.01 par value each, none of which have been issued;
3. ECC was incorporated on July 25, 2002, for the purpose of acquiring the issued and outstanding shares of Endeavour Capital Corporation (ECC Sub) and Welcome Opportunities Ltd. (Welcome);

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4. ECC Sub is governed by the *Companies Law* (Cayman Islands), is not a reporting issuer under the Act and is not a reporting issuer or the equivalent under the securities legislation of any other province or territory in Canada or any other jurisdiction;
5. ECC made an offer (the ECC Offer) to acquire from the shareholders of ECC Sub at least 90% of the outstanding ordinary voting shares without par value in the capital of ECC Sub (ECC Sub Shares) and to issue in consideration therefor ECC Shares on the basis of one ECC Share for every three ECC Sub Shares;
6. effective August 28 and 29, 2002, under the ECC Offer, ECC acquired 38,934,386 ECC Sub Shares, being 99.6% of the ECC Sub Shares issued and outstanding;
7. Welcome is governed by the *Company Act* (British Columbia), is a reporting issuer under the Act and under the securities legislation of the provinces of Alberta and Ontario, and the common shares in the capital of Welcome (the Welcome Shares) are listed for trading on the TSX Venture Exchange;
8. Welcome, ECC and ECC Sub have entered into an arrangement agreement dated as of July 30, 2002, in respect of a proposed statutory plan of arrangement under the *Company Act* (the Arrangement);
9. After certain other conditions precedent are fulfilled, under the Arrangement ECC will acquire the outstanding Welcome Shares by issuing one ECC Share for each Welcome Share (and paying other consideration);
10. both ECC Sub and Welcome are investment companies owning predominantly mining stocks, with ECC Sub having equity and merchant banking investments in mining companies in Canada and abroad and Welcome having investments in resource and technology companies, primarily in Canadian junior exploration companies;
11. in order for the exchange ratio for the Arrangement to be 1 : 1 as agreed, the currently outstanding ECC Sub Shares needed to be consolidated on a 1 : 3 basis, but ECC Sub is prohibited under the *Companies Law* (Cayman Islands) from effecting a share consolidation because the ECC Sub Shares have no par value;
12. ECC has effected the 1 : 3 consolidation indirectly by issuing one ECC Share for every three ECC Sub Shares tendered under the ECC Offer and ECC intends to purchase the remaining 0.4% of the outstanding ECC Sub Shares on

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the same terms in accordance with its right to do so under the *Companies Law* (Cayman Islands);

13. as ECC will become a reporting issuer following the Arrangement, its constating documents do not contain restrictions on share transfers and, accordingly, at the time the ECC Shares were issued in exchange for the outstanding ECC Sub Shares under the ECC Offer, ECC was neither a reporting issuer nor a private issuer under the Act;
14. when the Arrangement closes, ECC will become a reporting issuer under the Act and will be deemed by the Act to have been a reporting issuer for the time that Welcome has been a reporting issuer under the Act at the date of the Arrangement, which exceeds 12 months;
15. ECC Sub had one shareholder in British Columbia (the BC Resident) which held approximately 357,142 ECC Sub Shares (or 0.91% of the 39,084,386.6 ECC Sub Shares issued and outstanding), all of which shares were tendered by the BC Resident under the ECC Offer in exchange for 119,047 ECC Shares;
16. in issuing ECC Shares to the BC Resident, ECC could not rely on the “private issuer” exemption from prospectus and registration requirements because there are no restrictions on the transfer of the ECC Shares;
17. in issuing ECC Shares to the BC Resident, ECC relied on the exemption from prospectus requirements in section 74(2)(25) of the Act and the exemption from registration requirements in section 45(2)(28) of the Act (collectively, the Exemption), with the ECC Offer being a take-over bid exempted under section 98(1)(d) of the Act from sections 105 to 110 of the Act;
18. as a result of the Exemption relied upon, when ECC becomes a reporting issuer under the Act on closing of the Arrangement, the BC Resident will be the only former shareholder of ECC Sub or Welcome whose ECC Shares are subject to a 12-month hold period under section 2.3 of Multilateral Instrument 45-102 *Resale of Securities* (MI 45-102);
19. if ECC had been a private issuer under the Act when ECC Shares were issued to the BC Resident in exchange for its ECC Sub Shares or if ECC Sub, not ECC, had effected the Arrangement with Welcome, the BC Resident could have relied on section 2.6(2) of MI 45-102 in connection with the first trade of its ECC Shares.

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¶ 3 Order

Because it is not prejudicial to the public interest the Executive Director orders, under section 76 of the Act, that the first trade of ECC Shares acquired by the BC Resident in reliance on the Exemption is a distribution, unless at the time of the trade the conditions in subsection 2.6(4) of MI 45-102 are satisfied.

¶ 4 September 9, 2002

Derek E. Patterson
Acting Director