

2004 BCSECCOM 626

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 48, 76 Corp Acquisitions & Reorgs - Exemption from s. 34(1)(a) requirement to be registered as a dealer for a trade and s. 61 requirement to file a prospectus for a distribution in connection with a corporate acquisition or reorganization - Trades in securities of an issuer for the acquisition of an asset by the issuer's subsidiary - The asset is an interest in a resource property (the interest); in consideration for the issuer's securities, the owner of the interest will transfer the interest to the issuer's wholly-owned subsidiary; the laws of the jurisdiction where the interest is located require that only citizens of the jurisdiction, or corporations which are substantially owned by citizens of the jurisdiction, may hold an interest in mineral properties; the issuer formed a subsidiary to hold the interest and comply with the laws of the jurisdiction where the asset is held

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 48 and 76

Exemption Order

MBA Gold Corp.

Sections 48 and 76 of the *Securities Act*, R.S.B.C. 1996, c. 418

Background

- ¶ 1 MBA Gold Corp. (MBA) has applied for an exemption from the requirements to be registered to trade and to file and obtain receipts for a preliminary prospectus and prospectus in sections 34(1)(a) and 61 of the Act (the registration and prospectus requirements) for certain intended trades.

Representations

- ¶ 2 MBA represents that:
1. it was incorporated in British Columbia on May 17, 1983;
 2. it is a reporting issuer under the Act and is not in default of any requirement of the Act or the *Securities Rules*, R.B.C. Reg. 194/97;
 3. its authorized capital consists of unlimited common shares of which 13,646,498 common shares were issued and outstanding as of October September 28, 2004;

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4. its shares are listed for trading on the TSX Venture Exchange (the TSXVE);
5. Manele Bay Goldfields Inc. (MBG), a wholly owned subsidiary of MBA, is a corporation incorporated under the laws of Nevada and is not a reporting issuer under the Act;
6. Caracol (Caracol) is a corporation incorporated under the laws of Nevada and is not a reporting issuer under the Act;
7. MBG is party to an agreement (the Agreement) with Caracol dated September 20, 2004 under which MBG has the option (the Option) to earn an interest in the S310 Property (the Property) which is located in Humboldt County, Nevada;
8. under the terms of the Agreement, MBG must deliver, among other things, 325,000 common shares of MBA (the MBA Shares) to Caracol to exercise the Option;
9. under Nevada mining law, only U.S. individuals and companies may hold mining claims in the U.S. (the Ownership Restrictions);
10. as a result of the Ownership Restrictions, MBA is limited under the laws of Nevada to holding an interest in the Property through MBG;
11. the TSXVE has approved the issuance of the MBA Shares to Caracol under the Agreement;
12. MBG and MBA are dealing at arm's length to Caracol;
13. the terms of the Agreement, including the number of shares to be issued by MBA to Caracol, were determined through arm's length negotiations;
14. the Property is one of the primary assets of MBG and the exploration and, if warranted, development of the Property, together with other natural resource properties, is the principal business of MBA; and
15. the distribution of the common MBA Shares would be exempt from the registration and prospectus requirements under sections 45(2)(21) and 74(2)(18) of the Act if MBA, instead of MBG, was acquiring the Property;

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Order

- ¶ 3 Because it is not prejudicial to the public interest, the Executive Director orders,
1. under sections 48 and 76 of the Act, MBA is exempt from the registration and prospectus requirements for trades of MBA Shares to Caracol under the Agreement provided that MBA files a Form 45-103F4 within 10 days of distributing the MBA Shares or any portion thereof; and
 2. under section 76 of the Act, any trade in the MBA Shares issued under this order is deemed to be a distribution unless the conditions in subsection (2) of section 2.5 of Multilateral Instrument 45-102 *Resale of Securities* are satisfied.

¶ 4 November 3, 2004

Martin Eady,
Director