

2006 BCSECCOM 664

November 20, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, s. 9.1 – An issuer wants to file a technical report that discloses results of a study containing an economic analysis using inferred mineral resources; the issuer also wants relief from the timing requirements for filing a technical report - The economic analysis using inferred resources is based on reasonable assumptions; the issuer will include appropriate cautionary language in all disclosure supported by the technical report; any disclosure of the economic analysis using inferred resources will be accompanied by disclosure of an economic analysis that does not include inferred resources; the issuer has issued a news release that triggers the requirement to file the technical report within 45 days of the news release; the issuer will file the technical report by a stipulated date; the issuer will file a new technical report that complies with NI 43-201 within two years

Applicable British Columbia Provisions

National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, ss. 2.3(1)(b), 4.2(5)(a) and 9.1; Form 43-101F1 Technical Report

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New
Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island,
Yukon, Northwest Territories And Nunavut
(the Jurisdictions)

and

In the Matter of the Mutual Reliance Review System for Exemptive Relief
Applications

and

In the Matter of
Skye Resources Inc.
(the Filer)

MRRS Decision Document

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Background

¶ 1 The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer, for a decision under the securities legislation of the Jurisdictions (the Legislation) that in accordance with section 9.1 of National Instrument 43-101 Standards of Disclosure for Mineral Projects (NI 43-101):

- (a) the requirement in Item 19 of Form 43-101F1 Technical Report that only indicated mineral resources, measured mineral resources, probable mineral reserves and proven mineral reserves be used when referring to mineral resources or mineral reserves in an economic analysis of a mineral project;
- (b) the prohibition in section 2.3(1)(b) of NI 43-101 against making any disclosure of results of an economic analysis that uses inferred mineral resources;

do not apply to the Filer's disclosure of an economic analysis concerning the Fenix Project that is based on the Assumption (all as defined below), and the requirement in section 4.2(5)(a) of NI 43-101 to file the Technical Report (as defined below) within 45 days of the news release it supports does not apply to the Filer:

(the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications

- (a) the British Columbia Securities Commission is the principal regulator for this application, and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

¶ 2 Defined terms contained in National Instrument 14-101 Definitions have the same meaning in this decision unless they are defined in this decision.

Representations

¶ 3 This decision is based on the following facts represented by the Filer:

1. the Filer is a company incorporated under the *Business Corporations Act* (British Columbia) which has its head office in Vancouver, British Columbia;

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2. the Filer is engaged principally in the business of developing mineral properties;
3. the Filer is a reporting issuer in the provinces of British Columbia, Alberta and Ontario, and its securities trade on the Toronto Stock Exchange;
4. the Filer will be revising its annual information form for the financial year ended December 31, 2005 (the Revised AIF) and may consider filing a preliminary prospectus and to obtain a receipt for a (final) prospectus (the Prospectus) in each of the Jurisdictions;
5. before filing its Revised AIF, the Filer will be filing a technical report under NI 43-101 (the Technical Report) supporting the disclosure concerning its Feasibility Study (as described below) and in connection with the proposed development of its Fenix nickel project located in Guatemala (the Fenix Project);
6. Hatch Ltd., (Hatch), the Filer's independent technical consultant, has prepared a report concerning using a ferro-nickel smelting process for the development of the Fenix Project (the Feasibility Study); and, as an alternative scenario in the Feasibility Study, a separate report which has examined an additional development strategy using a hydro-metallurgical process for an expansion of the Fenix Project (the Scoping Study);
7. the Filer proposes to include in the Technical Report an alternative metallurgical process relating to the Scoping Study;
8. the Fenix Project involves the development of a nickel laterite deposit, with the top layer of limonite that can be treated by the hydro-metallurgical process in the Scoping Study but is waste in the ferro-nickel process in the Feasibility Study, and a bottom layer of saprolite that is ore in the ferro-nickel process but not practicably treatable by the hydro-metallurgical process. The hydro-metallurgical expansion would allow the Filer to turn the stockpiled waste accumulated in the ferro-nickel process into feed for the hydro-metallurgical expansion, thus using all of the resource. There is also a thin transition zone between the limonite and the saprolite (the Transition Zone);
9. the Feasibility Study considers the saprolite and transition zones which, together, make a suitable smelter feed;
10. the Scoping Study assumes (the Assumption) that

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- (a) the mine feed for each process is optimized by re-assigning the Transition Zone to the hydro-metallurgical process and smelting just the saprolite with the ferro-nickel process;
 - (b) the loss in tonnes of ore to the ferro-nickel process by using the Transition Zone in the hydro-metallurgical process would be made up by mining other indicated and inferred saprolite resources from within the Fenix exploitation license area; and
 - (c) the hydro-metallurgical expansion project described in the Scoping Study would not proceed until and unless exploration of such indicated and inferred resources confirmed that these areas can be classified in the measured or indicated resource categories;
11. the Filer submits that it is reasonable to provide to investors an analysis that includes the Assumption, for the following reasons
- (a) other resource areas presently contain indicated and inferred saprolite resources, but due to lack of access, these resources could not be included in the Feasibility Study as the Filer has not yet secured the necessary surface rights to upgrade historical information on these resources to the measured or indicated categories;
 - (b) based on discussions with surface owners, and the fact that the Filer has the legal right, under Guatemalan law (Mining Law, arts. 72-80), to obtain the surface rights through judicial process, the Filer believes that surface rights to these other resource areas will be granted in the next six to twelve months, and in any event, the Filer believe that these rights will be acquired long before such resources are needed in the mine plan;
 - (c) the indicated and inferred resources identified in other resource areas (which will replace the reserves from the Transition Zone) are not required for the mine plan in the Feasibility Study until the last ten years of the 30 year mine plan.
 - (d) the inferred resources will be used in the last five years of the mine plan and represent 16% of the total tonnes required for the Feasibility Study and the inferred resources represent 12% of the total inferred resources available in other resource areas;
 - (e) to the Filer's knowledge, there is no geological, metallurgical, or other technical reason why the other resources cannot be upgraded, once the necessary surface rights have been obtained;

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- (f) the submission in this Section 11 is supported by the independent qualified persons responsible for the relevant sections of the Scoping Study; and
12. the Scoping Study, which includes the Assumption, is a material fact in the affairs of the Filer.

Decision

- ¶ 4 Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that:

- (a) the Filer files the Technical Report by November 17, 2006.
- (b) the Scoping Study, the Technical Report, the Revised AIF and any other disclosure (including a Prospectus, if applicable) supported by the Technical Report include cautionary statements that:
 - (i) the Scoping Study includes an assumption concerning the upgrading of inferred resources, but such inferred mineral resources are considered too speculative geologically to have the economic considerations applied to them that would enable them to be categorized as mineral reserves, and there is no certainty that the projections for these inferred mineral resources will be realized;
 - (ii) the Scoping Study is preliminary in nature and assumes that some inferred mineral resources can be used in the ferro-nickel process to replace the measured and indicated resources re-assigned to the hydro-metallurgical process;
 - (iii) the Filer estimates that it will take a minimum of two to three years to construct and evaluate a pilot plant and complete a pre-feasibility study and a feasibility study, within the meaning of those terms in NI-43-101, before the Filer can make any decision to implement the hydro-metallurgical process outlined in the Scoping Study, and the Scoping Study assumes that the hydro-metallurgical process will not commence until year four of the operations of the ferro-nickel process; and

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- (iv) the hydro-metallurgical process outlined in the Scoping Study and the ferro-nickel process outlined in the Feasibility Study are at this stage separate, stand-alone mineral processing scenarios, and the mine plan and schedule in the Feasibility Study would have to be revised if a decision were made to combine the two processes; therefore the results of the economic analyses on the two processes are not additive;
- (c) the Filer files a new technical report for the Fenix Project that complies with NI 43-101, within two years of the date of this Decision;
- (d) any disclosure of an economic analysis concerning the Fenix Project that includes inferred resources is accompanied by disclosure of an economic analysis that does not include inferred resources; and
- (e) this Decision shall terminate upon the filing of a new technical report for the Fenix Project that complies with NI 43-101

Martin Eady, CA
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British Columbia Securities Commission