

2004 BCSECCOM 156

Headnote

Mutual Reliance Review System for Exemptive Relief Application – relief granted from the requirements of NI 43-101 for a private placement in Canada by South African issuer – after the offering, issuer will have a *de minimis* presence in Canada and information will be prepared using the South African mining code

Applicable British Columbia Provisions

National Instrument 43-101 *Standards for Disclosure of Mineral Projects*, s. 9.1

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, MANITOBA, ONTARIO AND QUÉBEC

AND

IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF MVELAPHANDA RESOURCES LIMITED

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Manitoba, Ontario and Québec (the “Jurisdictions”) has received an application from Mvelaphanda Resources Limited (the “Applicant”) for a decision pursuant to subsection 9.1(1) of National Instrument 43-101 (“NI 43-101”) that the Applicant be exempt from the requirements of NI 43-101 with respect to the disclosure made (i) in connection with the Canadian Offering (as defined below); and (ii) in the International Preliminary Offering Memorandum (as defined below) and the International Offering Memorandum prepared by the Applicant for International Offering (as defined below);

AND WHEREAS unless otherwise defined, the terms herein have the meaning set out in the National Instrument 14-101 definitions or in Autorité des marchés financiers notice 14-101;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal regulator for this application;

2004 BCSECCOM 156

AND WHEREAS, the Applicant has represented to the Decision Makers that:

1. The Applicant is a company incorporated pursuant to the laws of the Republic of South Africa (“South Africa”) with its head office in Johannesburg, South Africa.
2. The Applicant is a company involved in the mining of and exploration for precious metals and minerals in Africa.
3. The Applicant is not a reporting issuer or its equivalent in any of the Jurisdictions, nor are any of its securities listed or posted for trading on any stock exchange in Canada. The Applicant has no present intention of becoming a reporting issuer or its equivalent in any of the Jurisdictions or of becoming listed in Canada.
4. The authorized capital of the Applicant, prior to the International Offering (as defined below), is expected to consist of 129,200,000 ordinary shares (the “Ordinary Shares”) having a par value of R0.02 each, of which it is expected that 71,520,613 Ordinary Shares will be issued and outstanding. The Ordinary Shares are currently listed on the JSE Securities Exchange South Africa (the “JSE”).
5. The Applicant has minority positions in two listed South African companies (Northam Platinum Limited (“Northam”) and Trans-Hex Group Limited (“Trans Hex”)) and, using the proceeds from the Offering, will acquire a 15% interest in GFI Mining South Africa (Proprietary) Limited (“GFI-SA”), a wholly owned subsidiary of Gold Fields Limited (“Gold Fields”), which will hold the South African operations of Gold Fields (the “Gold Fields Transaction”). This 15% holding in GFI-SA will be the most significant asset held by the Applicant. The value of the one mine currently held by Northam will, if one took the Applicant’s attributable portion of such mine, exceed 10% of the next asset value of the Applicant after the Gold Fields Transaction. However, no attributable portion of any Trans Hex mine would exceed such threshold.
6. The Applicant has several joint ventures, the most significant of which is with SouthernEra (Proprietary) Limited, a wholly owned subsidiary of SouthernEra Resources Limited, in respect of the exploitation of platinum group metals on certain properties in South Africa. The Application’s interest in this joint venture will not exceed 10% of the net asset value of the Applicant after the Gold Fields Transaction.

2004 BCSECCOM 156

7. The Applicant has, subject to certain conditions, recently acquired all of the shares of and claims against Khumama Platinum (Proprietary) Limited (“Khumama”), a private company incorporated in South Africa. The Applicant has also entered into an agreement to sell the interest of Khumama in a joint venture with Anglo American Platinum Corporation Limited to Northam in return for a larger interest in Northam. The joint venture interest with Anglo American Platinum Corporation Limited is in relation to the development of a platinum mine in South Africa. The Applicant’s attributable interest in this joint venture will not exceed 10% of the net asset value of the Applicant after the Gold Fields Transaction.
8. The Applicant intends to offer, on a private placement basis, newly issued Ordinary Shares (the “Offered Shares”) in a private placement in South Africa (the “South African Offering”) and outside South Africa (the “International Offering”) and, in connection with the South African Offering, it has prepared a preliminary offering memorandum (the “South African Preliminary Offering Memorandum”) which was filed, as a courtesy, with and received the preliminary approval of the JSE. It is expected that a final offering memorandum (the “South African Offering Memorandum”) will be filed, as a courtesy, with and approved by the JSE.
9. It is the current intention of the Applicant to offer approximately 30% of the Offered Shares to purchasers resident in South Africa (the “South African Offering”) and approximately 70% of the Offered Shares to purchasers resident outside of South Africa (the “International Offering”), including an offering to purchasers resident in the Jurisdictions (the “Canadian Offering”), the United States, Asia, Australia and Europe.
10. In connection with its review of the South African Preliminary Offering Memorandum, the JSE did not require the preparation of a Competent Persons’ Report. However, the South African Preliminary Offering Memorandum (and the South African Offering Memorandum, when finalized) will contain reserve and resource numbers in respect of certain properties material to the Applicant.
11. In connection with the International Offering, the Applicant intends to distribute a preliminary offering memorandum (the “International Preliminary Offering Memorandum”) containing the South African Preliminary Offering Memorandum and any additional disclosure required pursuant to the laws of the jurisdictions in which marketing will occur. In particular, the International Offering Memorandum will contain disclosure required under the Canadian securities laws applicable in the Jurisdictions relating to, among other things, prospectus and registration exemptions, statutory rights of action and

2004 BCSECCOM 156

exchange rate information. A final offering memorandum (the “International Offering Memorandum”) will contain the South African Offering Memorandum.

12. The International Preliminary Offering Memorandum contains the following cautionary statement:

The scientific and technical information on properties material to Mvela Resources, which is contained in the attached Offering Memorandum, was taken from publicly available information, which indicated that it was prepared in compliance with the South African Code for Reporting Mineral Resources and Mineral Reserves (the “SAMREC Code”). In the opinion of Steffen, Robertson and Kirsten (South Africa) (Pty) Ltd (“SRK”) which, except where indicated in the Offering Memorandum, has not reviewed such information for compliance with SAMREC, (i) the definitions and standards of the SAMREC Code are substantively similar to the definitions and standards of the Canadian Institute of Mining, Metallurgy and Petroleum (the “CIM Standards”) which are recognised by the Canadian regulatory authorities and contained in National Instrument 43-101 - *Standards for Disclosure of Mineral Projects* (“NI 43-101”); and (ii) a reconciliation of Mineral Resources and Mineral Reserves prepared in compliance with the SAMREC Code would not result in a materially different Ore Reserves as prepared in compliance with the CIM Standards.

The Company has applied to the Canadian regulatory authorities for a decision exempting the offering from the requirements of NI 43-101. The offer being made in Canada is conditional upon receipt of a decision from the Canadian regulatory authorities exempting the offering from the provisions of NI 43-101. While the Company does not anticipate any difficulty in obtaining such a decision, if this decision is not received from the applicable regulator in an investor's province of residence prior to the closing of the private placement, investors in that province will be advised and subscriptions will not be accepted from such investors.

13. Upon completion of the International Offering, residents of Canada will beneficially hold less than 10% of the issued and outstanding Ordinary Shares.

AND WHEREAS under the System this Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);

AND WHEREAS each of the Decision Makers is satisfied that the test contained in NI 43-101 that provides the Decision Maker with the jurisdiction to make the decision has been met;

2004 BCSECCOM 156

THE DECISION of the Decision Makers pursuant to subsection 9.1(1) of NI 43-101 is that the requirements of NI 43-101 will not apply to the Applicant in relation to the disclosure made in connection with the Canadian Offering or in the International Preliminary Offering Memorandum and the International Offering Memorandum provided that the International Offering Memorandum includes the statement:

“The Canadian regulatory authorities have exempted the Company from the requirements of NI 43-101.

The scientific and technical information on properties material to Mvela Resources, which is contained in the attached Offering Memorandum, was taken from publicly available information, which indicated that it was prepared in compliance with the South African Code for Reporting Mineral Resources and Mineral Reserves (the “SAMREC Code”). In the opinion of Steffen, Robertson and Kirsten (South Africa) (Pty) Ltd (“SRK”) which, except where indicated in the Offering Memorandum, has not reviewed such information for compliance with SAMREC, (i) the definitions and standards of the SAMREC Code are substantively similar to the definitions and standards of the Canadian Institute of Mining, Metallurgy and Petroleum (the “CIM Standards”) which are recognised by the Canadian regulatory authorities and contained in National Instrument 43-101 - *Standards for Disclosure of Mineral Projects* (“NI 43-101”); and (ii) a reconciliation of Mineral Resources and Mineral Reserves prepared in compliance with the SAMREC Code would not result in a materially different Ore Reserves as prepared in compliance with the CIM Standards.”

DATED March 8, 2004.

Iva Vranic