

# 2008 BCSECCOM 61

January 11, 2008

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications

National Instrument 43-101, ss. 4.2(5) and 9.1 - An issuer wants relief from the timing requirements for filing a technical report - The issuer has issued a news release that triggers the requirement to file a technical report under NI 43-101; the qualified person cannot complete the technical report within 45 days of the news release; the issuer will file the technical report within 75 days of the news release

National Instrument 43-101, ss. 5.3(1)(c) and 9.1 - An issuer wants to file a technical report prepared by a qualified person who is not independent of the issuer - A qualified person that is an employee and resource manager of the issuer will prepare the issuer's technical report

## **Applicable British Columbia Provisions**

National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, ss. 4.2(5) 5.3(1)(c) and 9.1

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

and

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

and

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

MRRS Decision Document

## **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) for an exemption

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from the requirements in National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (NI 43-101) that a technical report to support scientific or technical information in a news release that contains a change in the capital cost expenses from the most recently filed technical report which constitutes a material change in respect of the affairs of the Filer must be filed not less than 45 days after the news release, and that the qualified person preparing the technical report relating to the material change be independent of the Filer.

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 in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined differently in this decision.

### **Representations**

- ¶ 3 This decision is based on the following facts represented by the Filer:
1. the Filer is a corporation existing under the *Companies Act* (Nova Scotia); the registered and Canadian head office of the Filer is located in Vancouver, British Columbia;
  2. the Filer is a reporting issuer in the Jurisdictions and is not, to the best of its knowledge in default of any requirements of the applicable securities legislation of any of the Jurisdictions (the Legislation);
  3. the common shares of the Filer are listed and posted for trading on the Toronto Stock Exchange and the American Stock Exchange;
  4. the Filer is engaged in the exploration and development of mineral properties in Alaska and Western Canada;
  5. on September 12, 2006, the Filer issued and filed an NI 43-101 technical report prepared by Michael Lechner (the Lechner Report) detailing the mineral resources at the Filer's Galore Creek project, an advanced stage copper-gold project located in Northwestern British Columbia (the Galore Project);

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6. on November 2, 2006, the Filer issued and filed another NI 43-101 technical report based on a feasibility study for the Galore Project prepared by Hatch Ltd. (the Hatch Report);
7. the Hatch Report estimated the capital cost for the Galore Project at \$2 billion dollars (the Previous Estimate) and otherwise had the identical resource estimate as the Lechner Report;
8. effective August 1, 2007, the Filer and Teck Cominco Limited (Teck) established the Galore Creek Partnership to develop the Galore Project; for its 50% interest in the Galore Project, Teck agreed to fund the next approximately \$537 million of development costs, with each company responsible for its pro rata share of development and operating costs thereafter;
9. on November 26, 2007, the Filer issued and filed a news release and corresponding material change report (collectively, the November Report) announcing that it had suspended construction at the Galore Project;
10. in the November Report, the Filer disclosed that after the completion of the Hatch Report the Filer engaged AMEC Americas Limited (AMEC), an independent engineering firm, to review the Hatch Report and commence project engineering;
11. the November Report further disclosed that the higher capital costs and a longer production schedule for the project suggested by AMEC, combined with the reduced operating margins as a result of the stronger Canadian dollar, would make the Galore Project, as currently conceived and permitted, uneconomic at current consensus long-term metal prices;
12. as a result of the change in the estimated capital cost disclosed in the November Report, the reserves on the Galore Project were eliminated; under section 4.2(5) and 5.3 (1)(c) of NI 43-101, the Filer is required to file a technical report prepared by a qualified and independent person to support information relating to the Galore Project contained in the November Report;
13. the Filer is currently in the process of issuing a press release which will explicitly state that the reserves for the Galore Project are zero and that the Hatch Report should not be relied upon;
14. the Filer is of the view that the Lechner Report is current and that together with the Filer's continuous disclosure provides disclosure to the public required by applicable securities laws;

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15. Mr. Kevin Francis, an employee and Resource Manager of the Filer and a qualified person as defined by NI 43-101, has considerable experience on the Galore Project;
16. Mr. Francis is preparing a technical report for the Galore Project;
17. it is uncertain that anybody would be able to produce the required NI 43-101 technical report within the time required by Section 4.2(5) of NI 43-101;
18. it is anticipated that the technical report being prepared by Mr. Francis will not be completed within the required time;
19. it is not practical or necessary to have an independent qualified person complete the updated report on the Galore Project and, given the Lechner Report is substantially current, there is adequate disclosure in the market; and
20. it would not be prejudicial to public interest if the updated technical report for the Galore Project is (i) prepared by a qualified person that is not independent of the Filer and (ii) filed at a date which extends past the required time for filing.

### **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 requirement in NI 43-101 that a technical report be prepared by or under the supervision of a qualified person and filed to support information relating to the Galore Project in the November Report not later than 45 days after the November Report shall not apply to the Filer, provided that the required technical report is prepared by a qualified person who is an employee of the Filer and is filed no later than January 31, 2008.

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