

Citation: 2021 BCSECCOM 357

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications – Securities Act* s. 88 – Cease to be a reporting issuer in BC – The issuer’s securities are traded only on a market or exchange outside of Canada – The issuer is a foreign reporting issuer, the issuer has a *de minimis* number of Canadian security holders; the issuer has no present intention of conducting a public offering of its securities to Canadian residents; the issuer is subject to the reporting requirements of the securities laws of an acceptable foreign jurisdiction and all shareholders receive the same disclosure

Applicable Legislative Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 88

August 30, 2021

In the Matter of
the Securities Legislation of
British Columbia and Ontario
(the Jurisdictions)

and

In the Matter of
the Process for Cease to be a Reporting Issuer Applications

and

In the Matter of Elementos Ltd.
(the Filer)

Order

Background

¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for an order under the securities legislation of the Jurisdictions (the Legislation) that the Filer has ceased to be a reporting issuer in all jurisdictions of Canada in which it is a reporting issuer (the Order Sought).

Under the Process for Cease to be a Reporting Issuer Applications (for a dual application):

- (a) the British Columbia Securities Commission is the principal regulator for this application,
- (b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador, and

(c) this order is the order of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this order, unless otherwise defined.

Representations

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

1. the Filer is a corporation incorporated under the *Corporations Act* (Australia) with a head office in Brisbane and mineral exploration operations in Australia and Spain;
2. the board and management of the Filer are all residents of Australia, and the Filer has no operations, employees or offices in Canada;
3. on January 3, 2019, the Filer completed a plan of arrangement (the Arrangement) with Eurotin Inc (Eurotin), a corporation incorporated under the laws of Ontario that is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador and whose shares were listed on the NEX;
4. under the Arrangement, the Filer issued to all of the holders of Eurotin Shares convertible redeemable preference shares (CRPS) of the Filer in consideration of the acquisition of a subsidiary of Eurotin, and the Filer became a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador;
5. the CRPS were converted into Ordinary Shares (defined below) of the Filer on January 14, 2020;
6. the Filer's authorized share capital consists of an unlimited number of ordinary shares without par value (Ordinary Shares); as of June 24, 2021, there are a total of 3,857,761,594 Ordinary Shares issued and outstanding;
7. the Filer also has unlisted options issued and outstanding (Options); as of June 24, 2021, there are a total of 464,867,930 Options issued and outstanding;
8. the Filer has no other securities issued and outstanding;
9. the Ordinary Shares are listed on the Australian Securities Exchange (ASX) and no other stock exchange;
10. the Filer files continuous disclosure reports under Australian securities laws which are available to securityholders on the Filer's website, and on the websites of the Australian

Securities and Investment Commission and the ASX; the Filer is not in default of any requirements of the Australian securities or corporate legislation, or the rules and policies of the ASX;

11. the Filer is a “designated foreign issuer” under National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (NI 71-102), and has relied on and complied with the exemptions from Canadian continuous disclosure requirements afforded to designated foreign issuers with respect to financial statements, management’s discussion and analysis and annual information forms;
12. as at June 24, 2021, according to searches conducted by the Filer through its transfer agent of its beneficial and registered shareholders:
 - (a) residents of Canada, directly or indirectly, beneficially own a total of 71,502,348 Ordinary Shares, representing approximately 1.85% of the outstanding Ordinary Shares worldwide; and
 - (b) the Filer has a total of 1,914 holders of Ordinary Shares worldwide, of which 22 are residents of Canada who represent approximately 1.15% of the total number of the Filer’s holders of Ordinary Shares worldwide;
13. as at June 24, 2021, according to the Filer’s records of the holders of Options:
 - (a) residents of Canada, directly or indirectly, beneficially own a total of 37,272,732 Options, representing approximately 7.89% of the outstanding Options worldwide; and
 - (b) the Filer has a total of 169 holders of Options worldwide, of which 6 are residents of Canada who represent 3.55% of the total number of the Filer’s holders of Options worldwide; all of the holders of Options who are residents of Canada are accredited investors;
14. if all of the holders of Options who were residents of Canada exercised their Options and no other persons exercised Options, residents of Canada:
 - (a) would not, directly or indirectly, beneficially own more than 2.79% of the Ordinary Shares of the Filer worldwide; and
 - (b) would not, directly or indirectly, comprise more than 1.46% of the total number of securityholders of the Filer worldwide;
15. the Filer is unable to rely on the modified procedure under National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications* because residents of Canada directly or indirectly beneficially own more than 2% of the outstanding Options;
16. the Filer has never taken any steps that indicate that there is a market for its securities in Canada and has never conducted a prospectus offering in Canada, established or maintained a

listing on an exchange in Canada or had any of its securities traded on a marketplace or any other facility in Canada for bringing together buyers and sellers where trading data is publicly reported; the Filer has no current intention to have any of its securities listed, traded or quoted on such a marketplace or facility in Canada or to seek public financing by way of offering its securities in Canada;

17. the Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter-Markets*;
18. no securities of the Filer, including debt securities, are traded in Canada on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;
19. the Filer is applying for an order that the Filer has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer;
20. on July 30, 2021, the Filer issued and filed a press release announcing that it has applied for an order to cease to be a reporting issuer in the jurisdictions in which it is a reporting issuer and, if that order is granted, the Filer will no longer be a reporting issuer in any jurisdiction of Canada; the Filer did not receive any response regarding the impact on Canadian shareholders;
21. the Filer has provided an undertaking to each of the Decision Makers to concurrently deliver to its Canadian securityholders all disclosure the Filer would be required to deliver to its Australian securityholders under Australian securities law or ASX requirements in the manner and at the same time as required by applicable Australian securities laws or ASX requirements;
22. as a result, securityholders resident in Canada will continue to receive all continuous disclosure documents delivered to securityholders of the Filer who are resident in Australia;
23. the Filer is not in default of securities legislation in any jurisdiction; and
24. the Filer will not be a reporting issuer in any jurisdiction of Canada following the granting of the Order Sought.

Order

¶ 4 Each of the Decision Makers is satisfied that the order meets the test set out in the Legislation for the Decision Maker to make the order.

The decision of the Decision Makers under the Legislation is that the Order Sought is granted.

Gordon Smith
Acting Chief, Corporate Finance Legal Services
British Columbia Securities Commission