

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 52-107, *Acceptable Accounting Principles and Auditing Standards*, ss. 3.3 and 5.1 - An issuer that is not yet an 'SEC issuer' wants to file financial statements audited in accordance with U.S. GAAS - the issuer intends to become an SEC registrant - the issuer has filed a confidential draft registration statement with the SEC; the issuer will meet all the elements of the definition of 'SEC issuer' once the SEC accepts its registration statement; the issuer will file financial statements that comply with the requirements for SEC issuers in NI 52-107; if the issuer does not become an SEC issuer by a set date, it will re-file its financial statements in accordance with Canadian GAAS

Applicable Legislative Provisions

National Instrument 52-107, s. 3.3 *Acceptable Accounting Principles and Auditing Standards*

June 6, 2023

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

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
Lithium Americas Corp.
(the Filer)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) exempting the Filer from the requirement in subsection 3.3(1)(a) of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (NI 52-107) that certain financial statements be audited in accordance with Canadian GAAS and be accompanied by an auditor's report that includes certain prescribed items, provided the financial statements be audited in accordance with U.S. PCAOB GAAS and be accompanied by an auditor's report that includes certain prescribed items in accordance with section 3.8(1) of NI 52-107 (the Exemption Sought).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (a) the British Columbia Securities Commission is the principal regulator for this application;
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon and Nunavut; and
- (c) the decision is the decision 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*, NI 52-107 and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. the Filer exists under the *Business Corporations Act* (British Columbia) and is a reporting issuer in all provinces and territories of Canada, and is not in default of securities legislation in any jurisdiction;
2. the Filer's principal office is located in the City of Vancouver, British Columbia;
3. the Filer is listed on the Toronto Stock Exchange (TSX) and New York Stock Exchange (NYSE);
4. the Filer is a "SEC Issuer" as defined under NI 52-107;
5. the Filer's financial year end is December 31;
6. the Filer's financial statements are prepared in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board (IFRS) and the annual financial statements of the Filer for the years ended December 31, 2022, 2021, 2020, 2019 and 2018 are audited in accordance with "U.S. PCAOB GAAS" as defined under NI 52-107;
7. the Filer is a mineral exploration and development company and is focused on advancing lithium projects in Argentina and the United States to production;
8. 1397468 B.C. Ltd. (SpinCo) is a private company existing under the *Business Corporations Act* (British Columbia) that was incorporated by the Filer for the sole purpose of completing the Separation (as defined below);
9. SpinCo does not currently carry on any business and has no assets or liabilities;
10. SpinCo's principal office is located in the City of Vancouver, British Columbia;
11. the Filer announced on November 3, 2022 its intention to advance a reorganization of its business into two, separate reporting issuers by way of "spin-out" of its North American business and assets, including, among other things its Thacker Pass mineral project located

in Nevada (collectively, the Spin-Out Business), pursuant to which the Spin-Out Business will be transferred to SpinCo and shareholders of the Filer will receive common shares of SpinCo (the Separation);

12. the Separation will be effected by way of plan of arrangement under the laws of British Columbia and will require certain approvals, including the approval of the Separation by the directors of the Filer and by the shareholders of the Filer at a meeting of such shareholders to consider the Separation (the Meeting);
13. the Filer will provide its shareholders with a management information circular of the Filer (the Circular) in connection with the Meeting that will include certain disclosure with respect to the Separation, including audited financial statements of SpinCo and audited carve-out financial statements of the Spin-Out Business prepared in accordance with IFRS (collectively, the Spin-Out Financial Statements);
14. in connection with the Separation, SpinCo has commenced the application process for the listing of its common shares on the TSX and the NYSE and has submitted a draft registration statement on a confidential basis on Form 20-F (the Form 20-F) with the United States Securities and Exchange Commission (the SEC), which will become effective prior to or concurrently with the completion of the Separation;
15. in accordance with SEC requirements, the Form 20-F will include the Spin-Out Financial Statements prepared in accordance with IFRS, and must be audited in accordance with U.S. PCAOB GAAS;
16. under subsection 3.3(1)(a) of NI 52-107, financial statements referred to in subsection 2.1(2)(b) and (c) of NI 52-107 to be included in the Circular must be audited in accordance with Canadian GAAS and be accompanied by an auditor's report that includes certain prescribed items;
17. under section 3.8(1) of NI 52-107, despite section 3.3(1) of NI 52-107, an SEC issuer's financial statements may be audited in accordance with U.S. PCAOB GAAS and be accompanied by an auditor's report that includes certain prescribed items;
18. an "SEC issuer" is defined under NI 52-107 to mean... "an issuer that has a class of securities registered under section 12 of the 1934 Act or is required to file reports under section 15(d) of the 1934 Act...";
19. at the timing of filing the Circular, SpinCo will not yet be a reporting issuer and will not yet meet the definition of "SEC Issuer" under NI 52-107; and
20. the Filer anticipates that SpinCo will become an "SEC issuer" prior to or concurrent with the completion of the Separation.

Decision

¶ 4

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted, provided that:

- (a) if SpinCo does not become an "SEC Issuer" prior to or concurrent with the completion of the Separation, the Filer and SpinCo will immediately re-file the Spin-Out Financial Statements on their respective SEDAR profiles audited in accordance with Canadian GAAS and be accompanied by an auditor's report that includes certain prescribed items, and
- (b) the Filer and SpinCo will issue a news release upon re-filing the financial statements that explains the nature and purpose of the re-filings.

John Hinze
Director, Corporate Finance
British Columbia Securities Commission