

Citation: 2023 BCSECCOM 513

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 51-102, s.13.1 *Continuous Disclosure Obligations* – BAR – The issuer made a significant acquisition of a company; the necessary information to prepare the required financial statements is unavailable; the BAR will contain sufficient alternative information about the acquisition.

Applicable Legislative Provisions

National Instrument 51-102, s. 13.1

October 27, 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
West Red Lake Gold Mines Ltd.
(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 requirements in section 8.4 of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) to include certain financial statements in a business acquisition report (BAR) (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, 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* 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 is a company existing under the *Business Corporations Act* (British Columbia) and has its head office in Vancouver, British Columbia;
 2. the Filer is a reporting issuer in each of the provinces of British Columbia, Alberta, and Ontario, and is not in default of its obligations under the securities legislation of any of these jurisdictions;
 3. the common shares of the Filer are listed and posted for trading on the TSX Venture Exchange;
 4. the financial year end of the Filer is November 30;
 5. the Filer's auditors are De Visser Gray LLP;
 6. on June 16, 2023 the Filer acquired (the Acquisition) all of the issued and outstanding common shares of Pure Gold Mining Inc. (PGM) by way of a Reverse Vesting Order (the Order) issued by the British Columbia Supreme Court (the Court) under PGM's proceedings under the *Companies Creditors' Arrangement Act* (the CCAA);
 7. PGM's main asset is the 100% owned Madsen Mine in Ontario; on October 24, 2022, PGM suspended operations and placed the Madsen Mine on care and maintenance; on October 31, 2022 PGM received its initial order from the Court for creditor protection under the CCAA and KSV Restructuring Inc. was appointed as court appointed monitor for PGM;
 8. in March of 2023 all of the executive officers and directors of PGM resigned;
 9. pursuant to the Order, only specific assets and contracts relating to the operations at the Madsen Mine were vested in PGM and acquired by the Filer, including the mineral leases, permits and claims that comprised the Madsen Mine and certain contracts necessary for the care and maintenance of the Madsen Mine (the Assets Acquired); all other assets, liabilities, debt facilities and contracts that were not specifically acquired or assumed by the Filer were transferred from PGM to PGM ResidualCo Holdings Ltd.;
 10. the Filer required that the Acquisition be structured as a purchase of the outstanding PGM shares pursuant to the Order in order to preserve and minimize any issues that could have been associated with the transfer of essential permits and licences; in particular, the Filer wanted to maximize its ability to retain existing permits and licences with respect to the operations at the Madsen Mine along with existing environmental bonding;
 11. the Filer has filed on SEDAR a technical report on the Madsen Mine prepared in accordance with National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, prepared for the Filer and dated June 19, 2023, which contains a current estimate of the mineral resources on the Madsen Mine (the Technical Report) and contains disclosure on the reliability of the estimate of the mineral resource and the information and methodology that

was used to determine that estimate;

12. The Filer determined the value of PGM based on the value of the Madsen Mine and decided to acquire PGM because of the merits of the Madsen Mine, as described in the Technical Report, rather than an assessment of the balance sheet of PGM;
13. The majority of the information that would be contained in the Acquisition Statements (as defined below) would be irrelevant to investors as the Filer only acquired specific assets of PGM under the Order;
14. the Acquisition constitutes a significant acquisition by the Filer under section 8.3 of NI 51-102, which triggered the requirement for the Filer to file a BAR;
15. under section 8.4 of NI 51-102, the Filer's BAR must include audited financial statements of PGM for the years ended December 31, 2021 and December 31, 2022 (Audited Statements) and unaudited reviewed financial statements for the interim periods ended March 31, 2023 and 2022 (Interim Statements and together with the Audited Statements, the Acquisition Statements);
16. the Filer has represented to the Decision Makers that it would not be possible to audit any existing financial statements of PGM because:
 - (a) since the appointment of the Monitor on October 31, 2022 PGM, through the Monitor, has been focused on preservation of its assets and day to day operations were being funded through a credit agreement; as a result, limited financial records that would support an audit of the Audited Statements and preparation of the Interim Statements were kept;
 - (b) all of PGM's officers responsible for finance functions of PGM resigned on March 7, 2023; a new officer (the Officer) was appointed on March 30, 2023, who was an independent party and had no prior history with PGM with no understanding of PGM's financial processes and operating history;
 - (c) on closing of the Acquisition, the Officer resigned and two new officers were appointed; these officers have limited knowledge and no direct experience with PGM and are therefore unable to provide any substantive input with respect to accounting policies, procedures and the preparation of relevant working papers for prior financial periods;
 - (d) current officers of PGM are unable to locate certain past account records;
 - (e) the lack of continuity and lost records prevents current staff from being able to respond to queries from the auditors as required under Generally Accepted Auditing Standards;
 - (f) the Madsen Mine remains on care and maintenance; and
 - (g) the Filer approached the previous auditors for PGM, PriceWaterhouse Coopers, who have declined the request to complete an audit;
17. since the Acquisition the Filer has been reviewing staffing levels and required personnel and

is working on integrating PGM into its corporate structure;

18. apart from the requirement to include the Acquisition Statements, the Filer is otherwise able to prepare and file the BAR in accordance with NI 51-102;
19. the Filer will include in the BAR the additional disclosure described under section 8.9(4)(b) of the Companion Policy 51-102 CP relating to PGM's proceedings under the CCAA and the lack of availability of the accounting records;
20. the Filer proposes to include the following alternative information in the BAR (the Alternate Disclosure):
 - (a) an audited statement of the assets acquired and liabilities assumed by the Filer as at June 16, 2023 (Statement of Assets Acquired and Liabilities Assumed) that includes:
 - (i) all the assets and liabilities acquired;
 - (ii) a statement as to the accounting standard applied to the Acquisition in the Statement of Assets Acquired and Liabilities Assumed;
 - (iii) a description of the accounting policies used to prepare the Statement of Assets Acquired and Liabilities Assumed; and
 - (iv) an auditor's report that reflects the fact that the Statement of Assets Acquired and Liabilities Assumed was prepared in accordance with the basis of presentation disclosed in the notes to the Statement of Assets Acquired and Liabilities Assumed; and
 - (b) technical information related to the Assets Acquired in the form of the Technical Report, which will be incorporated by reference into the BAR; and
21. the Technical Report provides investors with a current estimate of the mineral resource of PGM; additionally, the Technical Report contains disclosure on the reliability of that estimate of the mineral resource and the information and methodology that was used to determine that estimate; because the Acquisition was of a mine whose value largely consisted of the value of the assets acquired, the information in the Technical Report will assist investors in evaluating the Acquisition.

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 with respect to the BAR for the Acquired Assets, provided that the Filer includes the Alternate Disclosure in the BAR and otherwise complies with applicable BAR requirements.

John Hinze
Director, Corporate Finance
British Columbia Securities Commission