

Headnote:

Valuation Requirements - Exemption from the requirement under securities legislation to include a formal valuation of the offeree issuer in a take-over bid circular in connection with an insider bid where the Filer had an available exemption under section 2.4(1)2 of OSC Rule 61-501.

Applicable Legislative Provisions:

Securities Act, R.S.A., 2000, c.S-4, section 179(2)(c)
ASC Securities Rules - sections 170 and 171

Citation: Xstrata Canada Inc., 2006 ABASC 1404 **Date:** 20060601

In the Matter of
the Securities Legislation
of Alberta, British Columbia, Saskatchewan, Manitoba, Nova Scotia and Newfoundland and
Labrador
(collectively, the Jurisdictions)

and

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

and

In the Matter of Xstrata Canada 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) that the Filer be exempt:

1.1 in all of the Jurisdictions, from the requirement under the Legislation that the offer or circular in respect of an "insider bid" contain a summary of a valuation of the offeree issuer in connection with the Filer's offer (the Offer) to purchase all of the issued and outstanding common shares of Falconbridge Limited (Falconbridge) not currently owned by the Filer or its affiliates (the Valuation Requirement); and

1.2 in the Provinces of Manitoba, Nova Scotia and Newfoundland and Labrador, from the Valuation Requirement in connection with any second step business combination or going private transaction pursued by the Filer.

2. Under the Mutual Reliance Review System for Exemptive Relief Applications:

2.1 the Alberta Securities Commission is the principal regulator for this application; and

2.2 this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

3. Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

4. This decision is based on the following facts represented by the Filer:

4.1 The Filer is an Ontario corporation created solely for the purpose of making the Offer and has not otherwise carried on any business or activity. The Filer is a wholly-owned indirect subsidiary of Xstrata plc (Xstrata), a corporation incorporated under the laws of England and Wales. The ordinary shares of Xstrata are listed on the London and Swiss stock exchanges.

4.2 1184760 Alberta Ltd. (AlbertaCo), an affiliate of the Filer, is a wholly-owned indirect subsidiary of Xstrata. AlbertaCo owns 73,665,996 common shares of Falconbridge or approximately 19.8% of the outstanding common shares.

4.3 On May 18, 2006 the Filer commenced its Offer to purchase all of the issued and outstanding common shares of Falconbridge at a price of \$52.50 per Share, by publishing an advertisement containing a brief summary of the Offer. The Offer and take-over bid circular (the Circular) were filed on SEDAR with the securities regulatory authorities in each of the provinces and territories of Canada and five copies of the Offer and Circular were delivered to Falconbridge on May 18, 2006.

4.4 Because the Filer beneficially owns more than 10% of the Shares outstanding, the Offer is technically an "insider bid" for purposes of the Legislation.

4.5 The Offer is an unsolicited offer and the Filer lacks access to relevant information that would enable the Filer to satisfy the Valuation Requirement.

4.6 Neither the Filer nor any joint actor with the Filer has, or has ever had, any board or management representation in respect of Falconbridge, or, after reasonable inquiry, has knowledge of any material information concerning Falconbridge or its securities that has not been generally disclosed.

4.7 Based on the facts represented in section 4.6, the Filer intends to rely on available exemptions in Ontario and Québec in Ontario Securities Commission Rule 61-501 *Insider Bids, Issuer Bids, Business Combinations and Related Party Transactions* (Rule 61-501) and Québec Regulation Q-27 *Respecting Protection of Minority Securityholders in the Course of Certain Transactions* (Q-27) from a requirement comparable to the Valuation Requirement.

4.8 The Filer has provided relevant disclosure in the Circular in order to enable the Filer to rely on the exemptions in Rule 61-501 and Q-27.

4.9 In making the Offer in Ontario, the Filer is relying on the exemption in subparagraph 2.4(1)2 of Ontario Securities Commission Rule 61-501 *Insider Bids, Issuer Bids, Business Combinations and Related Party Transactions* (Rule 61-501), from the requirement comparable to the Valuation Requirement.

4.10 If, within 120 days after the date of the Offer, the Offer has been accepted by holders of not less than 90% of the issued and outstanding Falconbridge common shares, other than Falconbridge common shares held at the date of the Offer by the Filer or an affiliate or associate of the Filer (as such terms are defined under the Business Corporations Act (Ontario) (OBCA), the Filer may elect to acquire the remainder of the Falconbridge common shares under the compulsory acquisitions provisions of the OBCA on the same terms as under the Offer (a Compulsory Acquisition).

4.11 If the Filer takes up and pays for the securities validly deposited under the Offer and the statutory right of Compulsory Acquisition is not available or not exercised, the Filer reserves the right (and currently intends to do so in appropriate circumstances) to use all reasonable efforts to complete an amalgamation, plan of arrangement, capital reorganization, share consolidation or other transaction involving Falconbridge and/or the Filer and/or one or more affiliates of the Filer (a Subsequent Acquisition Transaction).

4.12 In connection with any Subsequent Acquisition Transaction, the Filer intends to rely on the exemption available under subparagraph 4.4(1)5 of Rule 61-501 from the formal valuation requirement, in that:

4.12.1 the business combination of Falconbridge will be effected by the Filer or an affiliate(s) of the Filer following the formal bid constituted by the Offer and will be in respect of the Shares that will be the subject of the Offer;

4.12.2 the business combination will be completed no less than 120 days after the expiry of the Offer;

4.12.3 the consideration per Share paid by the Filer or an affiliate of the Filer in the business combination will be:

4.10.3.1 at least equal in value to the consideration per Share that is being paid by the Filer under the Offer; and

4.10.3.2 in cash, which is the same form as the consideration per Share being paid by the Filer under the Offer;

4.12.4 the intent of the Filer to effect a business combination is disclosed in the Offer and the Circular; and

4.12.5 the Offer and the Circular disclose:

4.12.5.1 that if the Filer acquires Shares under the Offer, the Filer intends to acquire the remainder of the outstanding Shares by Compulsory Acquisition or Subsequent Acquisition Transaction; and

4.12.5.2 the expected tax consequences of the Offer and the Subsequent Acquisition Transaction, to the extent currently known to the Filer.

4.13 The Filer intends to mail the Offer and Circular to all offeree security holders within two business days following receipt from Falconbridge of a list of security holders, which the Filer requested May 17, 2006. Under section 146(2) of the OBCA, Falconbridge is required to furnish the list of security holders not more than ten days following receipt of the request.

Decision

5. 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.

6. The decision of the Decision Makers pursuant to the Legislation is that the Requested Relief is granted provided that the Filer complies with the other requirements in the Legislation applicable to formal take-over bids made by insiders.

“original signed by”

Mavis Legg
Manager, Corporate Finance
Alberta Securities Commission