

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – issuer deemed to be no longer a reporting issuer under securities legislation.

Applicable Legislative Provisions

Securities Act, R.S.A., 2000, c.S-4, section 153

Citation: Re Elemental Minerals Limited, 2014 ABASC 433

Date: 20141031

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

and

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

and

In the Matter of
Elemental Minerals Limited (the **Filer**)

Decision

Background

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**) that the Filer is not a reporting issuer in the Jurisdictions (the **Exemptive Relief Sought**).

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

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. The Filer is a company that is organized and exists under the Australian Corporations Act 2001 (Commonwealth) (the **Act**).
2. The Filer's principal address and registered office is 14 Emerald Terrace, West Perth, WA, 6005, Australia. The Filer's head office is located at 9 Mulberry Hill Office Park, Broadacres Drive, Dainfern, South Africa, 2055.
3. The Filer is primarily engaged in the exploration of potash in the Republic of Congo at its Sintoukola potash project.
4. The Filer has no operations, employees or offices in Canada.
5. The Filer's ordinary shares (**Ordinary Shares**) have been listed on the Australian Securities Exchange (the **ASX**) since September 16, 2005 under the trading symbol "ELM". The Ordinary Shares are also listed on the Frankfurt Stock Exchange (the **FSE**) under the trading symbol "E6B".
6. The Filer is not a reporting issuer (or equivalent) in any jurisdictions outside of Canada, other than Australia and Germany.
7. The only securities of the Filer that are outstanding and held by the public are the Ordinary Shares.
8. The Filer is a reporting issuer in each of the Jurisdictions and is not in default of securities legislation in any jurisdiction of Canada. Except for the Jurisdictions, the Filer is not a reporting issuer in any other jurisdiction of Canada.
9. The Filer is not in default of any of the rules or policies of the ASX or FSE.
10. The Filer first became a reporting issuer in the Jurisdictions on August 10, 2011 upon receiving a receipt from the Decision Makers of its (final) long form prospectus dated August 10, 2011.
11. The Filer qualifies as 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 under Part 5 of NI 71-102.
12. The capital structure of the Filer is composed of an unlimited number of Ordinary Shares, without par value. As of June 19, 2014, 305,063,391 Ordinary Shares were issued and outstanding.

13. The Ordinary Shares were previously listed on the Toronto Stock Exchange (the **TSX**). On April 16, 2014, the Filer applied to the TSX to voluntarily de-list its Ordinary Shares. The Ordinary Shares were de-listed from the TSX on May 1, 2014.
14. The Filer is not eligible to use the simplified procedure set out in CSA Staff Notice 12-307 *Applications for a Decision that an Issuer is not a Reporting Issuer* to seek a decision that it is not a reporting issuer in the Jurisdictions (other than in British Columbia), nor is it eligible to surrender its status as a reporting issuer in British Columbia under British Columbia Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status*, as, among other things, the Filer has more than 50 securityholders worldwide.
15. None of the Filer's securities are listed, traded or quoted on a marketplace in Canada (as that term is defined in National Instrument 21-101 *Marketplace Operation*) and the Filer does not intend to have its securities listed, traded or quoted on such a marketplace in Canada.
16. The Filer only attracted a *de minimis* number of Canadian investors and the average daily volume of trading of the Filer's Ordinary Shares in the 12 months prior to delisting from the TSX on May 1, 2014 was 4,136 Ordinary Shares, which accounted for approximately 1.50% of the Filer's average worldwide daily trading volumes during this period. In contrast, the average daily volume on the ASX for the same period represented approximately 271,323 Ordinary Shares.
17. Residents of Canada do not, directly or indirectly, beneficially own more than 2% of the Ordinary Shares worldwide and do not, directly or indirectly, comprise more than 2% of the total number of securityholders of the Filer worldwide (subject to the discussion in paragraph 17(g)). To reach this conclusion, the Filer engaged the services of Orient Capital Pty Ltd (**Orient**), an independent advisory firm that is a global leader in share ownership analysis, who made the following due diligence inquiries, which the Filer believes are reasonable in the circumstances:
 - (a) Orient conducted an analysis of the share register of the Filer based on an extract of the Filer's register of members dated June 19, 2014. As of this date, there were 305,063,391 Ordinary Shares issued and outstanding. The register extract consisted of Top 100 registered shareholders which make up 88.44% of the total share capital on issue.
 - (b) Orient served tracing notices pursuant to section 672A(1)(a) of the Act as the Filer's duly appointed agent. A direction under section 672 of the Act obligates the recipient of the tracing notice to disclose underlying beneficial ownership/relevant interest information to the issuer of the tracing notice. The tracing notices were served on registered (direct) shareholders (irrespective of domicile) recognized as a custodian, nominee or broker holding, requesting disclosure of underlying beneficial ownership/relevant interest details of the total shares held under their custody.

- (c) On receipt of the disclosure information from the registered holders, subsequent tracing notices pursuant to section 672A(1)(b) of the Act were issued to disclosed (indirect) entities (irrespective of domicile) requesting underlying beneficial ownership/relevant interest details and total shares held under their custody. This process continued until the ultimate beneficial owner/relevant interest holders were identified. As a result of this process, both direct and indirect Canadian-based shareholders were identified for a Canadian holder report, which illustrates the beneficial owners or investment managers domiciled in Canada.
- (d) In cases where a Canadian domiciled custodian, nominee or broker was not in a position to disclose the name and address details of the beneficial owner/relevant interest holders under their custody due to the Canadian privacy laws, Orient obtained a generic breakdown of the number of beneficial holders under each custodian together with total Ordinary Shares held by each shareholder together with the respective Canadian province in which the shareholder resides. One Canadian custodian holding 402,953 Ordinary Shares (representing 0.14% of the issued and outstanding Ordinary Shares) (“Custodian 1”) was the exception to this who disclosed holdings on behalf of 14 Canadian holders but refused to provide details of the their clients’ respective provinces. In this case, Custodian 1’s full custody position was assumed to be in the province of the custodian (Ontario). Another Canadian custodian holding 293,000 Ordinary Shares (representing 0.10% of the issued and outstanding Ordinary Shares) (“Custodian 2”) having a Canadian address did not disclose the residence or number of shareholders behind its position. The Filer assumed that all of the Ordinary Shares held by Custodian 2 were held by Canadian residents in the province of the custodian (British Columbia).
- (e) Shareholdings outside of the Top 100 registered holders make up 11.56% of the issued and outstanding share capital. This balance of Ordinary Shares was assumed to consist of holdings of a retail nature. These shareholdings were made up either of Ordinary Shares beneficially owned by the person(s) named on the register of members or small Australian domiciled private client brokers that are typically seen to hold securities on behalf of Australian domestic retail clients. One Canadian shareholder, who held a total of 47,823 Ordinary Shares (representing 0.02% of the issued and outstanding Ordinary Shares) was identified on this balance of holders on the register. For the purpose of ascertaining where these holdings are domiciled, the address on the register was taken as the resident address of the shareholder, and on this basis was reflected in the Canadian holder report if the registered address of the shareholder was in Canada.

- (f) Based on the foregoing analysis, other than Custodian 2, Orient identified 57 Canadian beneficial shareholders (representing 1.80% of the 3,158 total shareholders worldwide) holding 718,678 Ordinary Shares (representing 0.24% of the 305,063,391 issued and outstanding Ordinary Shares). In order to estimate the number of Canadian beneficial shareholders behind Custodian 2's position, the Filer calculated a proportional share ownership ratio by dividing the total number of Ordinary Shares outstanding (305,063,391) by the beneficial number of shareholders worldwide (3,158) and calculated that, on average, each beneficial shareholder owns approximately 96,600 Ordinary Shares. On this basis, it was estimated that three beneficial shareholders were behind Custodian 2's position, all of whom were assumed to reside in Canada. After giving effect to this assumption and the foregoing analysis, the Filer believes that 1,011,678 Ordinary Shares (representing 0.33% of the 305,063,391 issued and outstanding Ordinary Shares) were held by 60 Canadian beneficial shareholders (representing 1.90% of the 3,158 total shareholders worldwide).
- (g) As an alternative measure for estimating the number of Canadian beneficial shareholders behind Custodian 2's position, the Filer used Custodian 1 for comparison and calculated a proportional share ownership ratio by dividing the total number of Ordinary shares held by Custodian 1 (412,953) by the number of underlying beneficial shareholders (14) and calculated that, on average each beneficial shareholder of the Ordinary Shares owns approximately 30,000 Ordinary Shares. On this basis, it was estimated that ten beneficial shareholders were behind Custodian 2's position. Based on this assumption and the foregoing analysis the 1,011,678 Ordinary Shares would be held by 67 Canadian beneficial shareholders (representing 2.12% of the 3,158 total shareholders worldwide).

- (h) The provincial ownership of Ordinary Shares in Canada as at June 19, 2014 was as follows:

Province	Number of shareholders	Number of Ordinary Shares	% of issued and outstanding Ordinary Shares
Ontario ⁽¹⁾	37	580,796	0.19%
British Columbia ⁽²⁾	11 or 18 ⁽³⁾	326,010	0.11%
Quebec	7	69,872	0.02%
Alberta	3	31,000	0.01%
Nova Scotia	1	2,000	0.00%
Nunavut	1	2,000	0.00%
Total	60 or 67⁽³⁾	1,011,678	0.33%

(1) Includes an assumption that 402,953 Ordinary Shares registered in the name of Custodian 1 who are domiciled in Ontario are held by shareholders in the province.

(2) Includes an assumption that 293,000 Ordinary Shares registered in the name of Custodian 2 who are domiciled in British Columbia are held by shareholders in the province.

(3) Includes an assumption that Custodian 2 who is domiciled in British Columbia is holding 293,000 Ordinary Shares representing three beneficial shareholders residing in the province. An alternative assumption is that the Ordinary Shares held by Custodian 2 represents ten beneficial shareholders residing in the province.

18. Accordingly, based solely on the foregoing, as of June 19, 2014, residents of Canada:
- do not, directly or indirectly, beneficially own more than 2% of each class or series of outstanding securities of the Filer worldwide; and
 - do not, directly or indirectly, comprise more than 2% of the total number of securityholders of the Filer worldwide (subject to the discussion in paragraph 17(g)).
19. The Filer has not taken any steps to indicate that there is a market for its securities in Canada since the Ordinary Shares were delisted from the TSX on May 1, 2014.
20. The Filer has not issued or placed any of its securities in or to residents of Canada in the prior 12 months to the date of the application, and it does not currently intend to conduct any offerings of its securities in Canada whether by prospectus or private placement.

21. The Filer issued a press release dated April 24, 2014, providing notice to its securityholders, including all Canadian resident securityholders, that it intended to apply to the Decision Makers for an order that it is not a reporting issuer in the Jurisdictions and disclosing the TSX de-listing.
22. The Filer has provided an undertaking in favour of the Decision Makers that it will deliver to its securityholders resident in Canada, in the same manner and at the same time as delivered to its securityholders resident in Australia, all disclosure material required by Australian securities laws to be so delivered by way of public filings. Such disclosure material is available on the Filer's website at www.elementalminerals.com and on the ASX website at www.asx.com.au.
23. In the event that the Filer ceases reporting in Canada, Canadian securityholders will continue receive adequate disclosure under Australian corporate/securities laws and the ASX listing rules, which will be the same documents that Canadian securityholders currently receive as a result of the Filer being a "designated foreign issuer" under NI 71-102.
24. The Filer is subject to all applicable corporate requirements of a corporation formed under Australian law and the applicable rules of the ASX, which is a major foreign exchange. The Filer is not in default of any of the requirements of Australian law applicable to it.
25. The Filer will not be a reporting issuer or the equivalent in any jurisdiction in Canada immediately following the granting of the Exemptive Relief Sought.

Decision

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 Exemptive Relief Sought is granted.

"Sarah Kavanagh"
 Commissioner
 Ontario Securities Commission

"Judith Robertson"
 Commissioner
 Ontario Securities Commission