

B.2.2 Highvista Gold Inc.

Headnote

NP 11-207 Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions – Application by an issuer for a revocation of a cease trade order issued by the Commission – Cease trade order issued because the issuer had failed to file certain continuous disclosure materials required by Ontario securities law within the prescribed timeframe – Defaults subsequently remedied by bringing continuous disclosure filings up-to-date – Cease trade order revoked.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s.144.

National Policy 11-207 Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions.

HIGHVISTA GOLD INC.
REVOCATION ORDER
UNDER THE SECURITIES LEGISLATION OF
ONTARIO
(the Legislation)

Background

1. Highvista Gold Inc. (the **Applicant**) is subject to a failure-to-file cease trade order (the **FFCTO**) issued by the Ontario Securities Commission (the **Principal Regulator**) on August 2, 2019.
2. The Applicant has applied to the Principal Regulator under National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions (NP 11-207)* for an order revoking the FFCTO.

Interpretation

3. Terms defined in National Instrument 14-101 *Definitions* or NP 11-207 have the same meaning if used in this order, unless otherwise defined.

Representations

4. This decision is based on the following facts represented by the Applicant:
 - a. The Applicant was incorporated under the *Business Corporations Act* (Ontario) on November 19, 2009 as “Triumph Ventures Corp.”. By articles of amendment dated October 6, 2011, the Applicant amended its articles of incorporation to change its name from “Triumph Ventures Corp.” to “Highvista Gold Inc.”
 - b. The Applicant’s registered and head office is located at 80 Richmond Street West, Suite 1400, Toronto, Ontario M5H 2A4.
 - c. The Applicant is a reporting issuer under the securities legislation of the provinces of Ontario, British Columbia, Alberta, and Saskatchewan. The Applicant is not a reporting issuer in any other jurisdiction in Canada.
 - d. The authorized capital of the Applicant consists of an unlimited number of common shares (the Common Shares) and an unlimited number of special shares, issuable in series. The Applicant currently has 10,210,033 Common Shares issued and outstanding and no special shares issued and outstanding.
 - e. The Common Shares were transferred from the TSX Venture Exchange (the TSXV) to the NEX board of the TSXV under the symbol “HVV” on January 19, 2021, for failure to maintain the requirements for a TSXV Tier 2 company.
 - f. The Applicant’s Common Shares are listed for trading on the NEX board of the TSXV under the symbol “HVV”. The Common Shares remain suspended on the NEX as of the date hereof. The Common Shares are not listed, quoted or traded on any other exchange, marketplace or other facility for bringing together buyers and sellers in Canada or elsewhere.
 - g. The FFCTO was issued as a result of the Applicant’s failure to file the following continuous disclosure documents (collectively, the Annual Filings) as required by Ontario securities law:
 - i. audited annual financial statements for the year ended March 31, 2019 as required under National Instrument 51-102 Continuous Disclosure Obligations (NI 51-102);

- ii. management's discussion and analysis relating to the audited annual financial statements for the year ended March 31, 2019; and
 - iii. certification of the foregoing filings as required by National Instrument 52-109 - Certification of Disclosure in Issuers' Annual and Interim Filings (NI 52-109).
- h. The Applicant is seeking a full revocation of the FFCTO now that the Annual Filings have been filed, which filing occurred on October 28, 2019.
- i. Subsequent to the issuance of the FFCTO, the Applicant also failed to file, within the timeframe stipulated by NI 51-102 the interim financial statements, management's discussion and analysis and certificates required by NI 52-109 for the interim period ended June 30, 2019 (collectively, the Interim Filings). The Interim Filings were filed on November 25, 2019.
- j. Except for the failure to file the Annual Filings and the Interim Filings, the Applicant (i) is up-to-date with all of its other continuous disclosure obligations; (ii) is not in default of any of its obligations under the FFCTO, except for the possible contraventions of the FFCTO described in paragraphs k, l and m below; and (iii) is not in default of any requirements under the Legislation or the rules and regulations made pursuant thereto.
- k. While the FFCTO was in effect, the Applicant entered into a non-binding letter of intent (LOI) with Highvista Capital Corp. (Highvista Capital), an unrelated party of the Applicant. The LOI terminated in accordance with its terms without any renewal, the parties have not commenced the preparation or negotiation of any definitive transaction documents in connection with any proposed transaction, and none of the conditions precedent described in the LOI have been satisfied. The entering into of the LOI may have contravened the terms of the FFCTO.
- l. In addition, while the FFCTO was in effect, the Applicant issued promissory notes (the Promissory Notes) of approximately \$130,000 in total (and no more than \$25,000 each issuance) to six counterparties (G. Edmund King, Prince Arthur Capital, Gerald McCarvill, Rev Royalty Income and Growth L.P., Pavilion Flow-Through Fund L.P. (Pavilion), and Highvista Capital (collectively, the Counterparties)) in order to meet its continuous disclosure obligations and fund its operational and administrative expenses. Since the Promissory Notes are evidence of indebtedness of the Applicant, each Promissory Note may, in the circumstances, be a "security" as that term is defined under applicable securities legislation. Insofar as the Promissory Notes may have been securities, entering into the Promissory Notes contravened the terms of the FFCTO. The Applicant is of the view that the issuance of the Promissory Notes constituted the distribution of securities by the Applicant in contravention of the FFCTO. At the time the Promissory Notes were issued, G. Edmund King, Prince Arthur Capital and Gerald McCarvill were related parties of the Applicant.
- m. In addition, while the FFCTO was in effect, the Applicant informed the Principal Regulator that it intended to, and subsequently that it did, enter into a loan agreement (the Loan Agreement) with Pavilion, an unrelated party of the Applicant, with respect to a loan to be advanced to it in the amount of up to \$50,000, to facilitate the timely regulatory filing of the following continuous disclosure documents, which were filed on SEDAR+ on July 31, 2023:
 - i. audited annual financial statements for the year ended March 31, 2023 as required under NI 51-102;
 - ii. management's discussion and analysis relating to the audited annual financial statements for the year ended March 31, 2023; and
 - iii. certification of the foregoing filings as required by NI 52-109.The Loan Agreement may be a "security" as that term is defined under applicable securities legislation since it represents an evidence of indebtedness of the Applicant. Insofar as the Loan Agreement may have been a security, entering into the Loan Agreement may have contravened the terms of the FFCTO. As of the date of this Order, the Applicant has received \$35,000 pursuant to the Loan Agreement.
- n. Subsequent to the FFCTO, the Applicant refiled and restated its interim financial statements for the nine months ended December 31, 2022 (the Q3 2023 FS) and management's discussion and analysis for the nine months ended December 31, 2022 (the Q3 2023 MD&A) to:

- i. reflect that discussions, negotiations and any amendments in relation to the LOI have ceased until the FFCTO is revoked;
- ii. clarify that the accounts payable and promissory notes of approximately \$2.1M as at December 31, 2022 were overdue and due on demand under the "Liquidity and Capital Resources" section of the Q3 2023 MD&A; and
- iii. clarify disclosure confirming that the Applicant currently does not have any exploration activities.

In connection with the refiling of the Q3 2023 FS and the Q3 2023 MD&A, the Applicant was placed on the Errors and Refilings List on August 1, 2023 in accordance with OSC Staff Notice 51-711 (Revised) Refilings and Corrections of Errors.

- o. Prior to the issuance of the FFCTO, the Applicant was a public mining and exploration company seeking a qualifying transaction. Subsequent to the issuance of the FFCTO, the Applicant ceased to carry on an active business. The Applicant has provided the Principal Regulator with an undertaking that it will not complete:
 - i. a restructuring transaction involving, directly or indirectly, an existing or proposed, material underlying business which is not located in Canada;
 - ii. a reverse takeover with a reverse takeover acquirer that has a direct or indirect, existing or proposed, material underlying business which is not located in Canada; or
 - iii. a significant acquisition involving, directly or indirectly, an existing or proposed, material underlying business which is not located in Canada; unless
 - a) the Applicant files a preliminary prospectus and a final prospectus with the Ontario Securities Commission and obtains receipts for the preliminary prospectus and the final prospectus from the Director under the Securities Act (Ontario);
 - b) the Applicant files or delivers with the preliminary prospectus and the final prospectus the documents required by Part 9 of National Instrument 41101 General Prospectus Requirements (NI 41-101) including a completed personal information form and authorization in the form set out in Appendix A of NI 41-101 for each current and incoming director, executive officer and promoter of the Applicant; and
 - c) the preliminary prospectus and final prospectus contain the information required by applicable securities legislation, including the information required for a probable restructuring transaction, reverse takeover or significant acquisition (as applicable).
- p. The Applicant has paid all outstanding activity, participation and late filing fees that are required to be paid and has filed all forms associated with such payments.
- q. The Applicant's profile on the System for Electronic Document Analysis and Retrieval (SEDAR+) is up-to-date and the Applicant's profile on the System for Electronic Disclosure by Insiders will be made up-to-date as soon as practicable following the revocation of the FFCTO.
- r. Effective July 13, 2020, Ms. Janet O'Donnell was appointed a director and the Chief Financial Officer of the Applicant, and Mr. Paul Crath was appointed the Interim Chief Executive Officer of the Applicant. Effective October 20, 2022, each of Mr. Cameron Wickham and Paul Manias were appointed as directors of the Applicant (collectively, the Appointments). Other than the Appointments, the Applicant has had no changes to its directors or executive officers since the issuance of the FFCTO. The Applicant filed a news release related to the Appointments of Ms. O'Donnell and Mr. Crath on July 13, 2020. The Applicant filed a material change report related to the Appointments of Messrs. Wickham and Manias on October 20, 2022.
- s. Since the issuance of the FFCTO, except for the Appointments, there have not been any material changes in the business, operations or affairs of the Applicant which have not been disclosed by news release and/or material change report and filed on SEDAR+.
- t. The Applicant has provided the Principal Regulator with a written undertaking to hold an annual meeting of shareholders pursuant to the Business Corporations Act (Ontario), within 90 days of the revocation of the FFCTO and will prepare a management information circular in accordance with Form 51-102F5 Information Circular, which will be sent to shareholders and filed on SEDAR+ in accordance with NI 51-102.

B.2: Orders

- u. Upon revocation of the FFCTO, the Applicant will issue a news release and concurrently file a material change report on SEDAR+ announcing the revocation of the FFCTO and outlining the Applicant's future plans.

Order

The Principal Regulator is satisfied that the order to revoke the FFCTO meets the test set out in the Legislation for the Principal Regulator to make the decision.

The decision of the Principal Regulator under the Legislation is that the FFCTO is revoked.

DATED this 24th day of August, 2023.

"Lina Creta"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2022/0481