

May 30, 2014

**IN THE MATTER OF  
THE SECURITIES LEGISLATION  
OF SASKATCHEWAN AND ONTARIO  
(the Jurisdictions)**

**AND**

**IN THE MATTER OF  
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS IN MULTIPLE  
JURISDICTIONS**

**AND**

**IN THE MATTER OF VITERRA INC. (Viterra)  
AND GLENCORE PLC (Glencore)  
(collectively, the Filers)**

**DECISION**

**BACKGROUND**

The securities regulatory authority or regulator in each of the Jurisdictions (collectively, the **Decision Makers**) has received an application from the Filers (the **Application**) for a decision under the securities legislation of the Jurisdictions (the **Legislation**) exempting:

- (a) Viterra from the requirements of Parts 4 through 12 of National Instrument 51-102 – *Continuous Disclosure Obligations* (NI 51-102), pursuant to section 13.1 of NI 51-102;
- (b) Viterra from the requirements of National Instrument 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings* (NI 52-109), pursuant to section 8.6 of NI 52-109 (the **Certification Requirements**);
- (c) Viterra from the requirements of National Instrument 52-110 – *Audit Committees* (NI 52-110), pursuant to section 8.1 of NI 52-110 (the **Audit Committee Requirements**);
- (d) the insiders of Viterra from the insider reporting requirements and requirements to file an insider profile under National Instrument 55-102 – *System for Electronic Disclosure by Insiders* (NI 55-102), pursuant to section 6.1 of NI 55-102; National Instrument 55-104 – *Insider Reporting Requirements and Exemptions* (NI 55-104), pursuant to section 10.1 of NI 55-104; and the *Securities Act* (Ontario) (OSA), pursuant to section 121(2)(a)(ii) of the OSA, in each case as

applicable, in respect of the securities of Viterra (the **Insider Reporting Requirements**); and

- (e) Viterra from the requirements of NI 58-101 – *Disclosure of Corporate Governance Practices (NI 58-101)*, pursuant to section 3.1 of NI 58-101,

subject to specific terms and conditions as set out below (collectively, the **Requested Relief**). The exemptions in clauses (a) and (e) are collectively referred to as the **Continuous Disclosure Requirements**.

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

- (a) the Financial and Consumer Affairs Authority of Saskatchewan is the principal regulator for the Application;
- (b) the Filers have 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, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island and Quebec; 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**

Defined terms contained in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined herein.

## **REPRESENTATIONS**

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

### ***Glencore***

1. Glencore is incorporated under the laws of Jersey with its principal executive offices in Baar, Switzerland. Glencore's shares are traded on the London Stock Exchange (the **LSE**) under the symbol "GLEN", the Hong Kong Stock Exchange under the symbol "0805" and the Johannesburg Stock Exchange under the symbol "GLN". Glencore is a member of the FTSE 100 index.
2. Glencore is one of the world's largest global diversified natural resource companies and is a leading integrated producer and marketer of commodities with a well-balanced portfolio of diverse industrial assets. Glencore's industrial and marketing activities are supported by a global network of more than 90 offices located in over 50 countries. Glencore's diversified operations comprise over 150 mining and metallurgical sites, offshore oil production assets, farms and agricultural facilities.

3. On December 17, 2012, through its indirect wholly-owned subsidiary, 8115222 Canada Inc. (the **Glencore Purchaser**), Glencore acquired all of the issued and outstanding common shares of Viterra (the **Common Shares**) at a price of C\$16.25 per Common Share. The transaction was carried out by way of a statutory plan of arrangement under the *Canada Business Corporations Act*. On January 1, 2013, Viterra and the Glencore Purchaser amalgamated and carry on business under the name Viterra Inc.
4. As a company whose ordinary shares are admitted to the premium listing segment of the Official List of the United Kingdom Financial Conduct Authority (the **FCA**) and admitted to trading on the LSE's main market for listed securities, Glencore is subject to the financial reporting requirements of the Listing Rules (the **U.K. Listing Rules**) and the Disclosure Rules and the Transparency Rules of the FCA (together with the U.K. Listing Rules, the **U.K. Disclosure Rules**) pursuant to which Glencore publishes and files its financial statements prepared in accordance with International Financial Reporting Standards. Financial statements are currently required by the U.K. Disclosure Rules to be filed on a semi-annual basis. Under the U.K. Disclosure Rules, Glencore's annual financial statements are required to be published as soon as possible after they have been approved by the board of Glencore and in any event within four months of Glencore's financial year end. The half-yearly financial statements in respect of the first six months of Glencore's financial year are required to be published as soon as possible, but in any event no later than two months after the end of the period to which the report relates. The annual and half-yearly financial statements must remain available to the public for at least five years. Glencore's financial year end is December 31.
5. In addition, Glencore is required by the U.K. Disclosure Rules to make public a statement by its management during the first six-month period of the financial year and another statement by its management during the second six-month period of the financial year (each, an **Interim Management Statement**). An Interim Management Statement must include an explanation of material events and transactions that have taken place during the relevant period and their impact on the financial position of Glencore and its controlled undertakings and a general description of the financial position and performance of Glencore and its controlled undertakings during the relevant period. All regulated information published by issuers in the U.K. pursuant to the U.K. Disclosure Rules is required to be published on an online facility called the National Storage Mechanism (the **NSM**). The NSM is a website that provides public access to documents that were previously maintained in the FCA's document viewing facility.
6. Glencore is in compliance with the requirements of the U.K. Disclosure Rules concerning the disclosure made to the public, to securityholders of Glencore and to the FCA relating to Glencore and the trading of its securities (the **U.K. Disclosure Requirements**) and has filed all documents that it is required to have filed by the U.K. Disclosure Requirements.
7. Glencore is not a "reporting issuer" or equivalent in any of the provinces or territories of Canada.

8. Glencore is not in default of securities legislation in any of the provinces or territories of Canada.
9. Glencore does not have a class of securities registered under section 12 of the *Securities Exchange Act of 1934* of the United States (the **1934 Act**) and is not required to file reports under section 15(d) of the 1934 Act.
10. The total number of equity securities of Glencore owned, directly or indirectly, by residents of Canada does not exceed 10 per cent, on a fully diluted basis, of the total number of Glencore's equity securities.

### *Viterra*

11. Viterra is an agri-business headquartered in Regina, Saskatchewan with extensive agriculture commodity handling operations across Western Canada and South Australia. Viterra primarily handles wheat, durum, barley, canola and pulses. It derives its revenue from receiving, storing, blending, shipping and marketing these commodities from the producer's farm to end-use markets.
12. The authorized capital of Viterra consists of an unlimited number of Common Shares. All of the issued and outstanding Common Shares are held by Glencore or its affiliates. There are no outstanding securities of Viterra convertible into Common Shares.
13. Viterra is a "venture issuer" (as such term is defined in NI 51-102) and is a reporting issuer in each of the provinces of Canada.
14. Viterra is not in default of any of the requirements of the securities legislation in any of the provinces of Canada.
15. No securities of Viterra are listed on a securities exchange.
16. As of the date hereof, Viterra has outstanding the following unsecured notes (collectively, the **Notes**):
  - (a) C\$24,207,000 principal amount of 6.406% notes due February 16, 2021 (the **BNY Notes**); and
  - (b) US\$400 million principal amount of 5.950% notes due August 1, 2020 (the **Deutsche Bank Notes**).

### *2012 Consent Solicitation*

17. In July 2012, Glencore solicited the consent of: (a) the holders of the Deutsche Bank Notes to amend the indenture governing the Deutsche Bank Notes (the **2012 DB Amendments**); and (b) the holders of the BNY Notes to amend the indenture governing the BNY Notes (the **Proposed 2012 BNY Amendments**).

18. The 2012 DB Amendments and the Proposed 2012 BNY Amendments each included, among other things, that: (a) Viterra would only have to deliver to the trustee under each indenture and each holder of Notes a copy of any financial statements that Viterra is required to file on SEDAR; and (b) Glencore and Glencore International AG, a wholly-owned subsidiary of Glencore (**GIAG**), would provide a full and unconditional guarantee of the payment, within 15 days of when due, of the principal and interest owing by Viterra to holders of the Notes.
19. The 2012 DB Amendments received the requisite noteholder approval but the Proposed 2012 BNY Amendments did not receive the requisite noteholder approval.
20. On December 17, 2012, the 2012 DB Amendments were implemented and Glencore and GIAG provided a full and unconditional guarantee of Viterra's obligations under the Deutsche Bank Notes.
21. As part of Glencore wanting to conform its guarantee structure for subsidiary bonds that are outstanding across its various subsidiaries, Glencore (Schweiz) AG, a wholly-owned subsidiary of Glencore (**Glencore (Schweiz)**) may provide a full and unconditional guarantee of the payment, within 15 days of when due, of the principal and interest owing by Viterra to holders of the Deutsche Bank Notes.

#### ***BNY Indenture***

22. The terms of the indenture governing the BNY Notes previously required Viterra to provide BNY Trust Company of Canada and each holder of BNY Notes certain information, as follows:
  - (a) audited consolidated financial statements of Viterra, no later than 120 days after the end of each fiscal year; and
  - (b) quarterly consolidated financial statements of Viterra, including year-to-date and year-over-year comparator data, no later than 60 days after the end of the applicable quarter.

Viterra satisfied this obligation by filing the above materials on SEDAR, as permitted under the indenture governing the BNY Notes.

23. On May 5, 2014, Viterra commenced an offer to purchase for cash any and all of the BNY Notes (the **2014 Offer to Purchase**) and at the same time solicited the consent (the **2014 Consent Solicitation**) of the holders of the BNY Notes to, among other things, conform the disclosure requirements under the indenture governing the BNY Notes to the disclosure requirements under the indenture governing the Deutsche Bank Notes (the **2014 BNY Amendments**); that is, amend the indenture governing the BNY Notes to allow Viterra to provide only the financial statements that Viterra is required to file on SEDAR, with the intention, which was disclosed to noteholders in the 2014 Consent Solicitation documentation, that should the Requested Relief be granted, Viterra would

generally only be required to file the financial statements and other continuous disclosure information of Glencore and not of Viterra.

24. On May 23, 2014, the 2014 BNY Amendments received the requisite noteholder approval and Viterra implemented the 2014 BNY Amendments. On May 26, 2014, Viterra purchased for cash \$175,793,000 principal amount of the BNY Notes in accordance with the 2014 Offer to Purchase.

### *Glencore Guarantee*

25. As part of the implementation of the 2014 BNY Amendments, Glencore provided a full and unconditional guarantee of the payments to be made by Viterra, as stipulated in the terms of the BNY Notes or in one or more agreements governing the rights of holders of the BNY Notes, that results in the holders of the BNY Notes being entitled to receive payment from Glencore within 15 days of any failure by Viterra to make a payment.
26. In addition, GIAG and Glencore (Schweiz) have provided a full and unconditional guarantee of the payments to be made by Viterra, as stipulated in the terms of the BNY Notes or in one or more agreements governing the rights of holders of the BNY Notes, that results in the holders of the BNY Notes being entitled to receive payment from GIAG and/or Glencore (Schweiz) within 15 days of any failure by Viterra to make a payment.
27. Therefore, the BNY Notes are guaranteed by Glencore, GIAG and Glencore (Schweiz). The Deutsche Bank Notes are guaranteed by Glencore and GIAG and may be guaranteed by Glencore (Schweiz). As a result of the guarantees provided by Glencore in respect of the Notes, the holders of the Notes in effect have a greater interest in the financial condition of Glencore than they have in Viterra alone.
28. The only securities issued by Viterra that are owned by parties unaffiliated with Glencore are the Notes. The principal amount outstanding of the BNY Notes is C\$24,207,000 (down from C\$200 million as a result of the 2014 Offer to Purchase) and the principal amount outstanding of the Deutsche Bank Notes is US\$400 million. This represents less than 1% of the \$103.5 billion enterprise value of Glencore (calculated as of June 30, 2013). There are no outstanding securities of Viterra convertible into Common Shares.
29. Glencore and Viterra currently have investment grade credit ratings. Glencore's long-term debt securities are presently rated BBB by Standard and Poor's with a stable outlook and Baa2 by Moody's Investors Service with a stable outlook. Viterra's Deutsche Bank Notes are presently rated BBB by Standard and Poor's with a stable outlook and Baa3 by Moody's Investors Service with a stable outlook, and Viterra's BNY Notes are presently rated BBB by Standard and Poor's with a stable outlook and Baa3 by Moody's Investors Service with a stable outlook.
30. Securities legislation currently provides certain exemptions from continuous disclosure and other obligations on reporting issuers incorporated in foreign jurisdictions that have a limited presence in the markets of the provinces and territories of Canada. National

Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers (NI 71-102)* provides exemptions for “designated foreign issuers” (as such term is defined in NI 71-102) from the continuous disclosure requirements of NI 51-102. Although Glencore would qualify as a designated foreign issuer under NI 71-102, the relief provided by NI 71-102 is not available to relieve Viterra from its continuous disclosure obligations, as Viterra is incorporated under the laws of Canada.

31. In addition, section 13.4 of NI 51-102 relieves reporting issuers of a significant portion of the continuous disclosure obligations under NI 51-102 where the reporting issuer is not incorporated in a foreign jurisdiction and has issued only “designated credit support securities” that have been fully and unconditionally guaranteed by an “SEC issuer” (as such terms are defined in NI 51-102).
32. Glencore is not an SEC issuer for the purposes of section 13.4 of NI 51-102. As a result, the exemptions from NI 51-102 for credit support issuers that have issued only designated credit support securities fully and unconditionally guaranteed by an SEC issuer are not applicable to Viterra and Glencore.

## DECISION

33. Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Makers to make the decision.
34. The decision of the Decision Makers under the Legislation is that the relief from the Continuous Disclosure Requirements and the Audit Committee Requirements is granted to Viterra provided that:
  - (a) Glencore is the direct or indirect beneficial owner of all the issued and outstanding voting securities of Viterra;
  - (b) Glencore is not incorporated or organized under the laws of Canada, and Canadian residents own, directly or indirectly, outstanding voting securities carrying no more than 50 per cent of the votes for the election of directors and none of the following is true:
    - (i) the majority of the executive officers or directors of Glencore are residents of Canada;
    - (ii) more than 50 per cent of the consolidated assets of Glencore are located in Canada; and
    - (iii) the business of Glencore is administered principally in Canada;
  - (c) Glencore does not have a class of securities registered under section 12 of the 1934 Act and is not required to file reports under section 15(d) of the 1934 Act;
  - (d) Glencore’s ordinary shares are admitted to the premium listing segment of the Official List of the FCA and admitted to trading on the LSE’s main market for

listed securities and Glencore is subject to and complies with the U.K. Disclosure Requirements and has filed all documents that it is required to have filed by the U.K. Disclosure Requirements;

- (e) the United Kingdom is a “designated foreign jurisdiction” (as such term is defined in section 1.1 of NI 71-102);
- (f) the total number of equity securities of Glencore owned, directly or indirectly, by residents of Canada does not exceed 10 per cent, on a fully diluted basis, of the total number of Glencore’s equity securities, calculated in accordance with sections 1.2 and 1.3 of NI 71-102;
- (g) Viterra does not issue any securities, and does not have any securities outstanding, other than;
  - (i) designated credit support securities for which Glencore has provided a full and unconditional guarantee;
  - (ii) securities issued to and held by Glencore or an affiliate of Glencore;
  - (iii) debt securities issued to and held by banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches, savings or credit unions, financial services cooperatives, insurance companies or other financial institutions; or
  - (iv) securities issued under exemptions from the prospectus requirement in section 2.35 of National Instrument 45-106 – *Prospectus and Registration Exemptions*;
- (h) Glencore has provided a full and unconditional guarantee of the payments to be made by Viterra, as stipulated in the terms of the Notes or in one or more agreements governing the rights of holders of the Notes, that results in the holders of the Notes being entitled to receive payment from Glencore within 15 days of any failure by Viterra to make a payment, and no other person or company (other than a wholly-owned subsidiary of Glencore) has provided a guarantee or “alternative credit support” (as such term is defined in NI 51-102) for the payments to be made under any issued and outstanding securities of Viterra;
- (i) Viterra files on SEDAR in electronic format copies of all documents Glencore is required to file with the FCA under the U.K. Disclosure Requirements, at the same time or as soon as practicable after such documents are made public on the NSM, provided that Viterra shall not be required to file on SEDAR prospectuses submitted to the FCA for securities offerings that do not take place in Canada;
- (j) Viterra files on SEDAR in electronic format copies of all documents that are published by Glencore via a Regulatory Information Service (the approved disseminators of regulatory information under the continuous disclosure regime in the U.K.) and are accessible by the public on the NSM (other than documents not

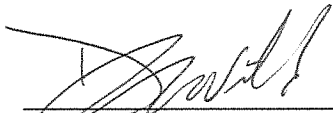


required to be filed on SEDAR pursuant to paragraph (i) above), at the same time or as soon as practicable after such documents are published via a Regulatory Information Service;

- (k) Glencore's disclosure documents required to be filed electronically pursuant to paragraphs (i) and (j) above comply with the requirements of NI 52-107 applicable to foreign issuers;
- (l) at least once a year, Viterra discloses in, or as an appendix to, a document that Glencore is required to file under the U.K. Disclosure Requirements and that Viterra files in the Jurisdictions that:
  - (i) Glencore is subject to the regulatory requirements of the FCA; and
  - (ii) pursuant to the terms of this decision, the Decision Makers have provided Viterra with exemptive relief from certain continuous disclosure requirements under the Legislation provided that, among other things, Viterra files in each of the provinces of Canada and provides to its securityholders the disclosure documents filed by Glencore and provided to its securityholders pursuant to the U.K. Disclosure Requirements;
- (m) Glencore complies with the U.K. Disclosure Requirements in respect of making public disclosure of material information on a timely basis and immediately issues and files in each of the provinces of Canada any news release that discloses a material change in Glencore's affairs;
- (n) Viterra issues a news release and files a material change report on SEDAR for all material changes in respect of the affairs of Viterra that are not also material changes in the affairs of Glencore;
- (o) Viterra files on SEDAR, in electronic format, in or with the copy of each consolidated interim financial report and consolidated annual financial statements of Glencore, filed pursuant to paragraph (i) above, for the periods covered by the consolidated interim financial report or consolidated annual financial statements of Glencore filed, consolidating summary financial information for Glencore presented with a separate column for each of the following:
  - (i) Glencore on a non-consolidated basis;
  - (ii) Viterra and its subsidiaries on a consolidated basis;
  - (iii) any other subsidiaries of Glencore on a combined basis;
  - (iv) consolidating adjustments; and
  - (v) the total consolidated amounts;

- (p) the consolidating summary financial information required by paragraph (o) above shall be prepared on a basis consistent with section 13.4(1.1) of NI 51-102;
  - (q) so long as the securities issued by Viterra include debt, Viterra concurrently sends to all holders of such securities in the provinces of Canada all disclosure materials that are sent to holders of similar debt of Glencore in the manner and at the time required by the U.K. Disclosure Requirements and if any such documents are required to be sent, at least once each year, Glencore includes with such documents the disclosure required under paragraph (l) above;
  - (r) in the event that Viterra issues designated credit support securities that are non-convertible preferred shares or convertible preferred shares that are convertible into securities of Glencore, Viterra concurrently sends to all holders of such securities in the provinces of Canada all disclosure materials that are sent to holders of similar preferred shares of Glencore in the manner and at the time required by the U.K. Disclosure Requirements and if any such documents are required to be sent, at least once each year, Glencore includes with such documents the disclosure required under paragraph (l) above;
  - (s) any amendments or supplements to disclosure documents of Glencore filed by Viterra pursuant to this decision shall also be filed in the same manner by Viterra;
  - (t) Viterra files such other documents relating to Glencore that Glencore would be required to file under current and future requirements of the Legislation if Glencore were a designated foreign issuer and Glencore complies with current and future requirements of the Legislation applicable to designated foreign issuers as if Glencore were a designated foreign issuer, provided that Glencore will not be considered to be a reporting issuer because it complies with such requirements in order to satisfy the conditions of this decision, and provided further that any requirement of the Legislation that requires designated foreign issuers to file disclosure documents may be satisfied by the filing of such documents by Viterra; and
  - (u) the relief from the Continuous Disclosure Requirements and Audit Committee Requirements will expire on March 15, 2018.
35. The further decision of the Decision Makers under the Legislation is that the relief from the Certification Requirements is granted to Viterra provided that:
- (a) Viterra qualifies for the relief from the Continuous Disclosure Requirements and Audit Committee Requirements and Viterra and Glencore are in compliance with the requirements and conditions set out in paragraph 34 above;
  - (b) Viterra is not required to, and does not, file its own annual or interim filings; and
  - (c) the relief from the Certificate Requirements will expire on March 15, 2018.

36. The further decision of the Decision Makers is that the relief from the Insider Reporting Requirements be granted to insiders of Viterra provided that:
- (a) if the insider is not Glencore,
    - (i) the insider does not receive, in the ordinary course, information as to material facts or material changes concerning Glencore before the material facts or material changes are generally disclosed; and
    - (ii) the insider is not an insider of Glencore in any capacity other than by virtue of being an insider of Viterra;
  - (b) if the insider is Glencore, Glencore does not beneficially own any designated credit support securities of Viterra;
  - (c) Viterra qualifies for the relief from the Continuous Disclosure Requirements and Audit Committee Requirements and Viterra and Glencore are in compliance with the requirements and conditions set out in paragraph 34 above; and
  - (d) the relief from the Insider Reporting Requirements will expire on March 15, 2018.

  
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Dave Wild  
Chair, Financial and Consumer Affairs  
Authority of Saskatchewan.