

DATE: August 30, 2016

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO,
QUÉBEC, NEW BRUNSWICK, PRINCE EDWARD ISLAND, NOVA SCOTIA,
NEWFOUNDLAND AND LABRADOR, THE 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
GLENCORE CANADA CORPORATION
(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 (the **OSC**) 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 herein.

REPRESENTATIONS

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

1. The Filer (formerly Xstrata Canada Corporation (**Xstrata Canada**)) is a corporation amalgamated under the *Business Corporations Act* (Ontario) (the **OBCA**) and is the successor by amalgamation of Xstrata Canada Inc. (**XCI**), a corporation incorporated under the OBCA. XCI was incorporated for the purpose of acquiring Falconbridge Limited, which corporation was the result of an amalgamation between Noranda Inc. (**Noranda**) and the former Falconbridge Limited that occurred on June 30, 2005. The head office of the Filer is located at 100 King Street West, Suite 6900, Toronto, Ontario, M5X 1E3.
2. The Filer is a reporting issuer in each of the Jurisdictions. The Filer is not in default of any of the requirements of the Legislation in any of the Jurisdictions.
3. On May 2, 2013, Glencore International plc (now Glencore plc) (**Glencore**) indirectly acquired all of the issued and outstanding common shares of the Filer (the **Common Shares**) in connection with the acquisition by Glencore of all of the outstanding shares of Xstrata plc (**Xstrata**) pursuant to a merger agreement dated February 7, 2012 between Glencore and Xstrata, as amended October 1, 2012. The Filer is now an indirect wholly-owned subsidiary of Glencore.
4. The Filer is applying for a decision that it is not a reporting issuer in all of the jurisdictions of Canada in which it is currently a reporting issuer.
5. The authorized capital of the Filer consists of an unlimited number of Common Shares, an unlimited number of Preference Shares, issuable in series, and an unlimited number of Preference Shares, Series I. All of the issued and outstanding common and preference shares of the Filer are held by Glencore or its affiliates. There are no outstanding securities of the Filer convertible into Common Shares.
6. The Filer has two classes of debt securities outstanding:
 - (a) US\$250 million principal amount of 5.5% unsecured notes due June 15, 2017 (the **2017 Notes**); and
 - (b) US\$250 million principal amount of 6.2% unsecured notes due June 15, 2035 (the **2035 Notes** and, with the 2017 Notes, the **Notes**).

The Notes were issued pursuant to the tenth supplemental indenture dated June 8, 2005 to the trust indenture dated July 1, 1992 between Noranda and Montreal Trust Company of Canada (predecessor of Computershare Trusts Company of Canada), as trustee (the **Trustee**), as supplemented or amended from time to time (the **Indenture**).

7. The Notes are not convertible or exchangeable into Common Shares. The Notes were initially issued pursuant to an underwriting agreement dated June 2, 2005 between Noranda and a syndicate of underwriters led by Deutsche Bank Securities Inc. and

including Citigroup Global Markets Inc., HSBC Securities (USA) Inc., J.P. Morgan Securities Inc., Merrill Lynch, Pierce, Feller & Smith Incorporated, Barclays Capital Inc., BNP Paribas Securities Corp., Comerica Securities, Inc., Fifth Third Securities, Inc., SG Americas Securities LLC and SunTrust Capital Markets Inc. The Notes were not qualified for sale under the securities laws of any of the Jurisdictions and, to the knowledge of the Filer, were not offered for sale in Canada. All of the underwriters of the offering of the Notes were U.S. financial institutions. The Notes are not listed for trading on any stock exchange or marketplace.

8. On September 15, 2006, Xstrata Canada (then Falconbridge Limited), XCI and Xstrata made an application, as amended and supplemented, to the OSC, as principal regulator and the other Jurisdictions in accordance with the then-existing Mutual Reliance and Review System procedures, pursuant to which the filers obtained an order from the OSC dated December 8, 2006 (the **2006 Order**) relieving Xstrata Canada, on the conditions and restrictions set out therein, from certain requirements of, inter alia, NI 51-102 *Continuous Disclosure Obligations (NI 51-102)*.
9. The relief granted under the 2006 Order was subject to a five-year sunset clause. On June 14, 2011, Xstrata and Xstrata Canada applied to the OSC, as principal regulator for and on behalf of the other Jurisdictions under Multilateral Instrument 11-102 *Passport System (MI 11-102)*, for a decision (the **2012 Order**) extending the 2006 Order for a further five years. The 2012 Order was issued on March 2, 2012.
10. On October 16, 2012, Xstrata Canada and Glencore International plc made an application to the OSC, as principal regulator for and on behalf of the other Jurisdictions under MI 11-102, for a decision (the **2013 Order**) relieving the Filer, subject to the conditions and restrictions set out therein, from certain requirements of, *inter alia*, NI 51-102 including filing financial statements that would otherwise be required under NI 51-102 on the basis that the Filer instead file on SEDAR copies of all financial statements and certain other filings made by Glencore pursuant to the Listing Rules and the Disclosure Rules and the Transparency Rules of the United Kingdom Financial Conduct Authority (the **FCA**) (collectively, the **U.K. Disclosure Rules**). The 2013 Order was issued on March 15, 2013.
11. Also on March 15, 2013, the Filer, Glencore and the Trustee entered into the fifteenth supplemental indenture pursuant to which Glencore fully, unconditionally and irrevocably guaranteed the Notes and the performance by the Filer of its obligations under the Indenture.
12. The Filer, Glencore, Glencore International AG (**GIAG**), Xstrata (Schweiz) AG (now Glencore (Schweiz) AG) (**Glencore Schweiz**) and the Trustee subsequently entered into the sixteenth supplemental indenture dated June 5, 2013, pursuant to which each of GIAG and Glencore Schweiz fully, unconditionally and irrevocably guaranteed the Notes and the performance of the Filer of its obligations under the Indenture.
13. In addition, in connection with an internal corporate reorganization, the Filer, Glencore International Investments Limited (**GILL**), Glencore, Xstrata Limited, GIAG, Glencore

Schweiz and the Trustee entered into the seventeenth supplemental indenture dated September 29, 2015, pursuant to which GIIL assumed, on a joint and several basis with the Filer, all of the covenants and obligations of the Filer under the Indenture in respect of the Notes.

14. Pursuant to the 2013 Order, the Filer currently files on SEDAR in electronic format, among other documents, copies of all documents Glencore is required to file with the FCA under the U.K. Disclosure Rules, at the same time or as soon as practicable after such documents are made public on the online facility known as the National Storage Mechanism, provided that the Filer is not required to file on SEDAR prospectuses submitted to the FCA for securities offerings that do not take place in Canada.
15. Upon granting of the Exemptive Relief Sought, the Filer will no longer be subject to reporting obligations under applicable Canadian securities laws or under the terms of the Indenture.
16. The Notes are issued in book-entry form and are represented by global certificates registered in a nominee name of The Depository Trust Company (**DTC**), with beneficial interests therein recorded in records maintained by DTC and its participants as financial intermediaries that hold securities on behalf of their clients. In accordance with industry practice and custom, the Filer has obtained from Broadridge Financial Solutions Inc. (**Broadridge**) a geographic survey of beneficial holders of 2017 Notes and 2035 Notes as of March 31, 2016 (the **Geographic Report**), which provides information as to the number of noteholders and Notes held in each jurisdiction of Canada and in the United States and other foreign jurisdictions. Broadridge advises that its reported information is based on securityholder addresses of record identified in the files provided to it by the financial intermediaries holding Notes.
17. The Geographic Report covers approximately 91% of the outstanding principal amount of 2017 Notes for a total of US\$226,816,500 and reports a total of 414 beneficial holders residing in the following jurisdictions:
 - (a) 413 in the United States holding US\$226,816,000 principal amount of Notes; and
 - (b) 1 in another foreign jurisdiction holding US\$5,000 principal amount of Notes;The Geographic Report does not report any known beneficial holders of 2017 Notes that are resident in Canada.
18. The Geographic Report covers approximately 95% of the outstanding principal amount of 2035 Notes and reports a total of 200 beneficial holders residing in the United States holding a total of US\$237,787,000. The Geographic Report does not report any known beneficial holders of 2035 Notes that are resident in Canada or other foreign jurisdictions.
19. Broadridge has confirmed that its searches are unable to report on 100% of the geographic ownership of the Notes.

20. In addition to obtaining the Geographic Report, the Filer made diligent enquiry with DTC to identify the names and locations of financial intermediaries holding the remaining approximately 7% of the aggregate principal amount of Notes outstanding (being approximately 9% of the outstanding principal amount of 2017 Notes and approximately 5% of the outstanding principal amount of 2035 Notes) not covered by the Geographic Report. In this regard, the Filer obtained security position reports from DTC indicating the position of each financial intermediary holding 2017 Notes and 2035 Notes through DTC as of March 31, 2015 (being the date of the Geographic Report) (the **DTC Position Reports**). The DTC Position Reports provide the names of all financial intermediaries that are reported by DTC as holding 2017 Notes and 2035 Notes and cover the entire US\$250 million principal amount of 2017 Notes and US\$250 million principal amount of 2035 Notes.
21. Based on the information contained in the DTC Position Reports, to the knowledge of the Filer after diligent enquiry, the 2017 Notes are held by financial intermediaries in the following locations:
 - (a) US\$231,995,000 principal amount of 2017 Notes (representing approximately 92.8% of the outstanding principal amount of 2017 Notes) is held by financial intermediaries in the United States; and
 - (b) US\$18,005,000 principal amount of 2017 Notes (representing approximately 7.2% of the outstanding principal amount of 2017 Notes) is held by financial intermediaries in Canada.
22. Based on the information contained in the DTC Position Reports, to the knowledge of the Filer, 100% of the outstanding principal amount of 2035 Notes is held by financial intermediaries in the United States.
23. Based on the foregoing, financial intermediaries in Canada hold approximately 7.2% of the outstanding principal amount of 2017 Notes and approximately 3.6% of the aggregate principal amount of all Notes outstanding. The DTC Position Reports do not provide information as to beneficial ownership of Notes, and it is not possible for the Filer to access that information or make further inquiries of DTC in this regard; as such, the Filer is unable, despite diligent inquiry, to identify the beneficial holders of Notes that are not covered by the Geographic Report or to obtain information with respect to the number or jurisdiction of residence of beneficial holders of such Notes.
24. Based on the information contained in the Geographic Report, there are no known Canadian beneficial holders of Notes. The Filer is unable to determine based on the information available to it whether there are any unreported Canadian beneficial holders of Notes. However, even if one were to assume that all of the Notes held by financial intermediaries in Canada were beneficially owned by Canadians, such holders would hold only approximately 7.2% of the outstanding principal amount of 2017 Notes and only approximately 3.6% of the aggregate principal amount of all Notes outstanding.

25. The only securities issued by the Filer that are owned by third parties are the Notes, which are fully and unconditionally guaranteed by Glencore, GIAG and Glencore Schweiz. The Notes entitle the holders only to the payment of principal and interest, and do not entitle the holders to receive or to convert into Common Shares (or any other equity securities), or to participate in the distribution of the assets of the Filer upon a liquidation or winding up.
26. The Notes are rated by rating agencies based on the guarantees and credit support provided by Glencore, GIAG and Glencore Schweiz, rather than by any independent assessment of the condition and performance, financial or otherwise, of the Filer. The Filer has confirmed that the 2017 Notes and 2035 Notes will continue to be rated by at least one recognized rating agency upon the cessation by the Filer of its reporting under Canadian securities laws for the foreseeable future.
27. There is no obligation or covenant in the Indenture for the Filer to maintain its status as a reporting issuer or the equivalent in any of the Jurisdictions or to file financial statements or any other continuous disclosure documentation of itself, Glencore or any other person on SEDAR. However, the Filer has provided an undertaking to the OSC that the Filer will provide a copy of the continuous disclosure documents of Glencore referred to in paragraph 14 upon request of any holder of Notes.
28. The Filer issued a news release on August 10, 2016 announcing that it has applied to each of the Decision Makers for a decision that it is not a reporting issuer in the applicable Jurisdiction and, if those decisions are granted, the Filer will no longer be a reporting issuer in any jurisdiction of Canada.
29. The Filer is not eligible to surrender its status as a reporting issuer in British Columbia pursuant to British Columbia Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status* because the Filer has more than 50 securityholders, being the holders of the Notes. Similarly, and because the Notes are beneficially owned, directly or indirectly, by more than 50 securityholders worldwide, the Filer is not eligible to file under the simplified procedure under CSA Staff Notice 12-307 *Application for a Decision that an Issuer is not a Reporting Issuer*.
30. No securities of the Filer, including debt securities, are listed, traded or quoted in Canada or another country on a marketplace (as defined in National Instrument 21-101 *Marketplace Operations*) or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported. In the 12 months before this application, the Filer has not taken any steps that indicate there is a market for its securities in Canada.
31. The Filer has no intention to distribute any securities to the public in Canada, nor to seek financing by way of a public offering or private placement of its securities in Canada.

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.



Ontario Securities Commission



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