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Court dismisses Real Gold Mining's challenge to SFC's investigation

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The High Court today dismissed a judicial review application by Real Gold Mining Ltd (Real Gold) seeking to challenge an investigation by the Securities and Futures Commission (SFC) in relation to the company.

On 22 August 2011, Real Gold applied to the Court for leave to seek orders that the SFC informs the company whenever it obtains the company's information from a third party and gives the company a copy of that information. The company would then review that information to decide whether to claim legal professional privilege (privilege) or determine if it was relevant to the SFC's investigation.

Real Gold also sought to stop the SFC from reviewing any information it obtained if the company claimed privilege or determined that the information was irrelevant or until the company had finished this reviewing process.

The SFC today argued that there was no basis for any of these orders and told the court that where the company had signaled that it might have claims of privilege over documents seized or produced to the SFC in its investigation, those documents had been sealed and the seals had not been broken pending the company exercising its right to inspect the material and confirm its claims.

Since the company has yet to exercise these rights, the SFC has not prejudiced or affected the company's right to preserve the confidentiality of its legal communications in any way. Moreover, a company under investigation cannot determine the relevance of evidence gathered by the SFC nor supervise the SFC's investigation.

The Court agreed and refused to grant Real Gold's application for leave (Note 1).

End

Note:

1. Today's application was heard before the Hon Mr Justice McWalters.

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