

**IN THE MATTER OF THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED**

- and -

**IN THE MATTER OF REX DIAMOND MINING CORPORATION
SERGE MULLER AND BENOIT HOLEMANS**

**AMENDED STATEMENT OF ALLEGATIONS
OF STAFF OF THE
ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission (the “Commission”) make the following allegations:

I. BACKGROUND

The Respondents

1. Rex Diamond Mining Corporation (“Rex”) was established under the *Business Corporations Act* (Ontario) by Articles of Amalgamation dated September 14, 1995. Rex was continued under the *Business Corporations Act* (Yukon) on July 31, 2000. Rex is a reporting issuer in Ontario with its shares listed on the TSX. Rex is based in Antwerp, Belgium.
2. Serge Muller (“Muller”) is the President, Chief Executive Officer and a director of Rex. Muller is a Belgian citizen who resides in Zurich, Switzerland.
3. Benoit Holemans (“Holemans”) is the Chief Financial Officer of Rex. Holemans is a Belgian citizen who resides in Antwerp, Belgium.

The Sierra Leone Mining Leases

4. In February 1994, the Government of Sierra Leone (the “Government”) granted Rex Diamond Mining Company NV, a wholly-owned subsidiary of Rex, mining leases with respect to property located in the Pujehun District, Sierra Leone (the “Tongo Lease”) and property located in the Kono District, Sierra Leone (the “Zimmi Lease”) (collectively, the “Leases”).

II. DISCLOSURE

Failure to Disclose Risk of Cancellation of Leases

5. By letter dated January 3, 2003 from the Government to Rex, the Government advised Rex that it had breached the terms of the Leases and that “the Minerals Advisory Board has recommended to the Minister of Mineral Resources that your two leases in Pujehun ML 9/94 and Tongo ML 10/94 be terminated.”

6. By letter dated April 16, 2003 from the Government to Rex, the Government advised Rex that the Leases were not in good standing. The Government stated:

... the Rex Mining Corporation has definitely contravened Section 100(1) & (2) of the Mining and Minerals Act, a situation this Ministry and indeed Cabinet will not entertain much longer. ...

You are therefore advised in your Company’s interest to honour your financial obligation without further delay in order to avoid any unpleasant decisions that Government may take to redress the situation.

7. By letter dated June 4, 2003 from the Government to Rex with the subject heading “FINAL NOTICE,” the Government outlined Rex’s breaches of the terms of the Leases and gave Rex 90 days’ notice to fulfill its obligations failing which the Leases would be cancelled. Rex failed to remedy the breaches and the Government ultimately cancelled the Leases.

8. The risk that the Leases would be cancelled by the Government was a material change in the business and operations of Rex. This substantial risk would have been clear to Rex on January 3, 2003 and, in any event, by no later than June 4, 2003.

9. Nonetheless, following receipt of the above correspondence on January 3, 2003, April 16, 2003 or June 4, 2003, Rex failed to issue news releases or file Material Change Reports forthwith with the Commission disclosing the risk that the Leases would be cancelled contrary to subsections 75(1) and 75(2) of the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the “Act”).

Misleading Disclosure in Rex's Public Filings

10. During the period of February 2003 through November 2003, Rex provided misleading disclosure in its public filings with respect to its operations in Sierra Leone, the particulars of which are described below.

11. In a press release dated February 28, 2003 (the "February Press Release"), Rex stated: "In Sierra Leone, Rex's partner, Fauvilla Ltd., is moving heavy mining equipment onto the Zimmi concession while the mining camp is being established." The February Press Release did not, however, make any reference to the issues raised by the Government regarding the Leases.

12. In its Annual Information Form for the year ended March 31, 2003 (dated August 15, 2003) (the "AIF"), Rex stated that it holds the Leases until February 28, 2019. Further, Rex stated that:

The Tongo dykes are reputedly among the highest grade diamond-bearing dykes in the world. During fiscal 2003 a team was set up to start surveying the Tongo dyke system and a ground magnetic survey was carried out, as well as a topographical survey, allowing a better definition of the extent of the kimberlite dykes. ...

Geological reports based on sampling programs carried out on the [Zimmi Lease] property indicate that the property contains deposits of large stones of high quality. The Corporation believes that the Zimmi property has the potential to produce alluvial diamonds at surface and that high-grade paleo channels and other geophysical features indicate the possibility of a primary kimberlite source. Under the MOU, Fauvilla has agreed to invest US\$5,000,000 to begin operations on the "Zimmi" property. The Corporation will, however, retain 100% of the concession rights to the property. Fauvilla, a diamond mining company operating alluvial mines in West Africa, has also agreed to pay all costs associate with mining operations. ...

13. At the time of the filing of the AIF, Rex was aware of the risk that the Leases would be cancelled. Rex failed to disclose this risk or make any reference in its public filings to any dispute with the Government regarding the Leases. Meanwhile, Rex indicated in the AIF that the Leases were held until 2019, had significant potential value, and Rex was preparing to start mining operations. By providing favourable news in its public filings regarding the Leases but

withholding negative news, Rex provided shareholders with an unbalanced and misleading view of Rex's operations in Sierra Leone.

14. In its Management Discussion and Analysis for the six months ended September 30, 2003 (filed November 28, 2003) (the "MD&A"), Rex stated that:

"... a private placement of 6.0 million units was completed on November 28, 2003. ... The gross proceeds of Cdn.\$3.6 million will be used to build up the rough supply from Sierra Leone and for general working capital purposes. ...

The first shipment to Rex Antwerp of Sierra Leone rough diamonds have been sold in Antwerp during the month of November. Sierra Leone sales were strong, with high prices obtained, as the diamond market is in short supply. Imports from Sierra Leone are expected to reach a sustained level of \$2 million per month within a year, thereby compensating for the currency exchange related losses of the South African operations.

15. The information contained in the MD&A was misleading. The "first shipment" of diamonds did not come from the properties covered by the Leases. Further, it does not appear that there was a reasonable basis for Rex to state that imports were expected to reach a level of \$2 million per month within a year. Rex's imports did not reach a level of \$2 million per month. Rex never commenced any actual mining operations on the properties covered by the Leases.

Failure to Disclose Issuance of Notice of Tender Forthwith

16. On December 11, 2003, the Government issued a public announcement that the Tongo Lease was open to tenders from mining companies (the "Notice of Tender"). The Notice of Tender stated that the Tongo Lease was previously held by Rex.

17. Rex became aware of the Notice of Tender on or about December 15, 2003 when it received a letter from its joint venture partner quoting the Notice of Tender, including the portion that stated the Tongo Lease was previously held by Rex.

18. The issuance of the Notice of Tender was a material change in the business and operations of Rex. Rex failed to forthwith issue a news release disclosing the issuance of the

Notice of Tender and failed to file a Material Change Report with the Commission contrary to subsections 75(1) and (2) of the Act.

19. On March 30 2004, the Government announced that the tender bids had been evaluated and named the company that was awarded the Tongo Lease (the “Tender Evaluation”). The Tender Evaluation stated that in October 2003 the Government had cancelled the Leases held by Rex. On April 2, 2004, Rex issued a news release stating that the Leases had been cancelled. Rex did not file a Material Change Report.

III. MISLEADING STATEMENTS

20. Rex provided misleading information to Market Regulation Services Inc. (“RS”) and omitted to advise RS of key facts relating to the Leases.

21. Rex’s press release of April 2, 2004 prompted RS to conduct a review of trading in Rex shares. RS requested that Rex provide a chronological listing of all events and developments relating to the Leases during the relevant period. The chronology provided to RS by Rex contained misleading information and omitted key facts with respect to the Leases.

IV. CONDUCT CONTRARY TO THE PUBLIC INTEREST

22. On each occasion in 2003 that Rex received correspondence from the Government stating the risk that the Leases would be cancelled, Rex acted contrary to the public interest in breaching section 75 of the Act by failing to issue news releases or file Material Change Reports forthwith disclosing this risk. Specifically, Rex received Government correspondence to this effect on January 3, 2003, April 16, 2003, and June 4, 2003.

23. Further, after it became aware of the Notice of Tender on December 15, 2003, Rex acted contrary to the public interest in breaching section 75 of the Act by failing to issue a news release or file a Material Change Report forthwith disclosing the issuance of the Notice of Tender and its effect on the business and operations of Rex.

24. After the Government announced on March 31, 2004 that the Leases held by Rex had been cancelled, Rex acted contrary to the public interest in breaching section 75 of the Act by failing to file a Material Change Report forthwith disclosing the material change in the business and operations of Rex.

25. Muller and Holemans, as officers and directors of Rex, authorized, permitted or acquiesced in Rex's non-compliance with section 75 of the Act and thereby contravened Ontario securities law and acted in a manner contrary to the public interest.

26. Similarly, Rex acted contrary to the public interest by providing misleading disclosure regarding its operations in Sierra Leone in each of its public filings of February 28, 2003, August 15, 2003, and November 28, 2003.

27. Muller and Holemans, as officers and directors of Rex, authorized, permitted or acquiesced in Rex's provision of misleading information to RS and misleading disclosure in its public filings and thereby contravened Ontario securities law and acted in a manner contrary to the public interest.

28. Staff reserves the right to make such further and other allegations as Staff may submit and the Commission may permit.

DATED at Toronto this 4th day of December, 2007.