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December 20, 2007

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 114(2) Takeover Bids - Exemption from the formal take over bid requirements in Part 13 of the Securities Act - Identical consideration - Issuer needs relief from the requirement in s. 107(1) of the *Securities Act* (British Columbia) that all holders of the same class of securities must be offered identical consideration - Under the bid, Canadian resident shareholders may receive shares, cash, or a combination of both; US resident shareholders will receive substantially the same value as Canadian shareholders, in the form of cash paid to the US shareholders based on the proceeds from the sale of their shares; US resident shareholders hold greater than 10% but less than 20% of the target's shares; and the US does not have an identical consideration requirement

## **Applicable British Columbia Provisions**

Securities Act, R.S.B.C. 1996, c. 418, ss. 107(1), 114(2)

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova  
Scotia, New Brunswick and Newfoundland and Labrador  
(the Jurisdictions)

and

In the Matter of  
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of  
Mercator Minerals Ltd.  
(the Filer)

## MRRS Decision Document

## **Background**

1. The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from the requirement in the Legislation to offer identical consideration to all holders of the same class of securities subject to a take-

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over bid (the Identical Consideration Requirement) in connection with the proposed take-over bid to be made by the Filer for all of the issued and outstanding common shares (the Tyler Shares) of Tyler Resources Inc. (Tyler) (the Requested Relief).

2. Under the Mutual Reliance Review System for Exemptive Relief Applications:
  - (a) the Alberta Securities Commission (the Commission) is the principal regulator for this application; and
  - (b) this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

3. Defined terms in National Instrument 14-101 Definitions have the same meaning in this decision unless they are defined differently in this decision.

### **Representations**

4. This decision is based on the following facts represented by the Filer:
  - (a) The Filer is a corporation existing under the Business Corporations Act (British Columbia). The registered and Canadian head office of the Filer is located in Vancouver, British Columbia.
  - (b) The Filer is a reporting issuer in Alberta, British Columbia and Ontario and is not in default of any requirements of the applicable securities legislation of any such jurisdiction in which it is a reporting issuer.
  - (c) The common shares of the Filer (the Mercator Shares) are listed and posted for trading on the Toronto Stock Exchange (the TSX).
  - (d) Tyler is a corporation continued under the Business Corporations Act (Alberta) and is headquartered in Calgary, Alberta.
  - (e) Tyler is a reporting issuer in Alberta, British Columbia, Ontario and Québec.
  - (f) The Tyler Shares are listed and posted for trading on the TSX Venture Exchange.

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- (g) On October 19, 2007, the Filer issued a press release announcing its intention to make an offer (the Offer) to acquire all of the issued and outstanding Tyler Shares on the basis of 0.113 of a Mercator Share of the Filer for each one Tyler Share.
- (h) Because the Mercator Shares issuable pursuant to the Offer to holders of Tyler Shares resident in the US (the US Shareholders) have not been registered under the 1933 Act, and are not eligible for sale under the securities laws of a substantial number of states in the United States without registration, the offer, sale and delivery of such Mercator Shares to US Shareholders without further action by the Filer would constitute a violation of United States securities laws.
- (i) Rule 802 of the 1933 Act (Rule 802) provides an exemption from the registration requirements of the 1933 Act for offers and sales in any exchange offer for a class of securities of a foreign private issuer or in any exchange of securities for the securities of a foreign private issuer in any business combination if the holders of the foreign subject company resident in the United States hold no more than 10% of the securities that are the subject of the exchange offer or business combination. Rule 802 provides that for the purposes of this calculation, securities held by persons who hold more than 10% of the subject securities are to be excluded, as are securities held by the offeror. In order for this exemption to apply, holders resident in the United States must participate in the exchange offer or business combination on terms at least as favourable as those offered to the other holders of the subject securities, subject to an exception which allows the offeror to offer cash consideration to securityholders resident in states of the United States that do not have an applicable state “blue sky” exemption from the registration or qualification requirements of state securities laws.
- (j) To the knowledge of the Filer, based on public disclosure, Tyler is a “foreign private issuer” within the meaning of Rule 405 of Regulation C under the 1933 Act. Furthermore, to the knowledge of the Filer, based on public disclosure contained in Tyler’s management information circular filed with the Canadian securities regulators on April 26, 2007, there are no persons that hold more than 10% of the Tyler Shares. To the knowledge of the Filer, based on an affidavit provided to staff of the Commission on December 6, 2007, approximately 13.68% of the issued and outstanding Tyler Shares are beneficially held by the US Shareholders.
- (k) On November 9, 2007, the date on which Mercator launched the bid, Mercator believed, based on publicly available information and

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information provided to Mercator by Tyler, that U.S. Shareholders beneficially owned 10% or less of the Tyler common shares and consequently Mercator believed it was in compliance with Rule 802.

- (l) There is no general exemption from state “blue sky” laws that coordinates with Rule 802. As a result, the securities laws of a significant number of states would prohibit delivery of the Mercator Shares to US Shareholders without registration of the Mercator Shares to be issued to US Shareholders resident in such states unless such holders are otherwise exempt investors under the laws of such states. The Multi-Jurisdictional Disclosure System does not provide relief from the registration or qualification requirements of United States state securities laws.
- (m) Registration under the 1933 Act and applicable state securities laws of the Mercator Shares deliverable to US Shareholders would be costly and burdensome to the Filer.
- (n) For US Shareholders (and Tyler Shareholders who appear to the Filer or to the depository (the Depository) designated under the Offer to be US Shareholders) who are resident in one of the subject states with no available registration exemption, the Filer proposes to deliver to the Depository the Mercator Shares that those US Shareholders would otherwise be entitled to receive under the Offer, and an agent or nominee of the Depository will then sell (or cause to be sold) the Mercator Shares on behalf of those US Shareholders through the facilities of the TSX. As soon as possible after the completion of the sale, the Depository or selling agent will deliver to each US Shareholder their respective pro rata share of the cash proceeds of sale, less commissions and applicable withholding taxes.
- (o) Any sale of the Mercator Shares will be completed as soon as practicable after the date on which the Filer issues the Mercator Shares in exchange for the Tyler Shares tendered by the US Shareholders under the Offer and will be done in a manner intended to maximize the consideration to be received from the sale by the applicable US Shareholder and minimize any adverse impact of the sale on the market for the Mercator Shares.
- (p) The take-over bid circular to be prepared by the Filer and sent to all Tyler Shareholders will disclose the procedure described in paragraph (n) above to be followed by US Shareholders who tender their Tyler Shares to the Offer.

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- (q) Except to the extent that relief from the Identical Consideration Requirement is granted, the Offer will otherwise be made in compliance with the requirements under the Legislation governing take-over bids.

### **Decision**

5. Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met.
6. The decision of the Decision Makers under the Legislation is that, in connection with the Offer, the Requested Relief is granted so that US Shareholders who would otherwise receive Mercator Shares under the Offer instead receive cash proceeds from the sale of those Mercator Shares in accordance with the procedure set out in paragraph 4(n) above.

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