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## Headnote

An issuer requires an exemption from all issuer bid requirements to acquire its own shares in connection with a negotiated agreement - The issuer will acquire securities resulting from the negotiation of a commercial agreement; the acquisition is not an independent transaction in which the issuer is repurchasing its own securities from one securityholder in preference to other shareholders; the agreement was negotiated at arm's length between the issuer and the transferring securityholder; the value of the consideration being paid to the transferring securityholder will not exceed the market value of the securities being acquired by the issuer at the time of such acquisition

## Exemption Order

### Esperanza Resources Corp.

#### Section 114(2) of the *Securities Act*, R.S.B.C. 1996, c. 418

#### Section 6.1 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*

## Background

- ¶ 1 Esperanza Resources Corp. has applied to the British Columbia Securities Commission under section 114(2) of the Securities Act (British Columbia) for an exemption from the issuer bid requirements of Part 2 of Multilateral Instrument 62-104 (MI 62-104).

## Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined.

## Representations

- ¶ 3 Esperanza represents that:
1. Esperanza is a company amalgamated under the laws of British Columbia and its head office is located in Vancouver, British Columbia;
  2. Esperanza is a reporting issuer in British Columbia, Alberta, Ontario, Quebec and Nova Scotia and is currently not in default of the securities legislation of any jurisdiction;
  3. there were 57,304,921 common shares of Esperanza issued and outstanding as of May 9, 2011;
  4. its common shares are listed on the TSX Venture Exchange;

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5. Silver Standard Resources Inc. is a company incorporated under the laws of British Columbia and its head office is located in Vancouver, British Columbia;
6. Silver Standard is a reporting issuer in all of the provinces of Canada and its common shares are listed on the Toronto Stock Exchange and The NASDAQ Stock Market;
7. from June 2003 to February 2007 Silver Standard acquired 6,459,600 common shares of Esperanza (the Subject Shares) representing 11.27% of Esperanza's currently outstanding shares;
8. neither Silver Standard nor Esperanza has any representatives on the Board of Directors of the other nor do they have the right to appoint any such representatives;
9. other than the ownership of the Subject Shares by Silver Standard, Esperanza and Silver Standard are arm's length to each other;
10. the San Luis Project is a mineral exploration project located in Peru owned by Esperanza and Silver Standard and of which Silver Standard is the majority owner;
11. Silver Standard has agreed to purchase, and Esperanza has agreed to sell, Esperanza's minority interest in the San Luis Project (the San Luis Interest) to Silver Standard for a payment of \$17 million, a 1% net smelter return royalty and the surrender to Esperanza of the Subject Shares;
12. Esperanza intends to cancel the Subject Shares immediately after the completion of the sale of the San Luis Interest thereby increasing the percentage equity ownership of Esperanza by its other shareholders;
13. the sale of the San Luis Interest by Esperanza was agreed to by Esperanza and Silver Standard following arm's length negotiations between them;
14. Silver Standard has a right of first refusal to purchase the San Luis Interest and Esperanza's Board of Directors believes that Silver Standard, as the majority owner, is the only logical and willing buyer of the San Luis Interest;
15. Esperanza's Board of Directors resolved that:

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- (a) the sale of the San Luis Interest and acquisition of the Subject Shares is in the best interests of Esperanza and its shareholders,
  - (b) the consideration deemed to be paid for the Subject Shares will not be greater than the market price, determined in accordance with section 1.11 of MI 62-104, of Esperanza's shares on the TSX Venture Exchange at the time the transaction was announced, and
  - (c) the acquisition of the Subject Shares will not adversely affect the financial position of Esperanza and will increase the value of the equity ownership positions of its other shareholders;
16. the purpose of the acquisition of the Subject Shares is not to give preferential treatment to Silver Standard or provide a method for Esperanza to purchase the Subject Shares but rather to facilitate the sale of the San Luis Interest and realize the value of such interest for the benefit of Esperanza and its shareholders;
17. the shareholders of Esperanza not offered the opportunity to sell their shares to Esperanza under the proposed transaction would otherwise be entitled to sell their shares into the market; and
18. the transfer of the Subject Shares by Silver Standard to Esperanza is an "issuer bid" as that term is defined in MI 62-104 and absent exemptive relief, the transaction would be subject to Part 2 of MI 62-104.

### **Order**

- ¶ 4 Considering that to do so would not be prejudicial to the public interest, the Commission orders under section 114(2) of the Act that the transaction is exempt from Part 2 of MI 62-104.

May 16, 2011

Sheryl Thomson  
Acting Director, Corporate Finance  
British Columbia Securities Commission