



Citation: 2014 BCSECCOM 1

**Headnote**

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Takeover Bids and Issuer Bids - Exemption from the issuer bid requirements of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* - 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 as part 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

**Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, s. 114(2)  
Multilateral Instrument 62-104, Part 2

December 30, 2013

**Exemption Order**

**Providence 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 Providence Resources Corp. (Providence) 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 Providence represents that:

1. it is a company incorporated under the laws of British Columbia and its head office is located in Vancouver, British Columbia;
2. it is a reporting issuer in British Columbia and Alberta, and is currently not in default of the securities legislation of any jurisdiction;
3. there were 22,505,479 common shares of Providence issued and outstanding as of November 15, 2013;
4. its common shares are listed on the TSX Venture Exchange;
5. Eagle Plains Resources Ltd. (Eagle Plains) is a company incorporated under the laws of British Columbia and its head office is located in Vancouver, British Columbia;
6. Eagle Plains is a reporting issuer in British Columbia and Alberta and its common shares are listed on the TSX Venture Exchange;
7. under the terms of an option agreement dated April 21, 2010 (Option Agreement) between Providence and Eagle Plains:
  - (a) Providence had the right to earn a 60% interest in the Iron Range Project located near Creston, British Columbia, and
  - (b) Providence issued to Eagle Plains a total of 1,000,000 common shares of Providence (Property Shares) representing approximately 4% of Providence's currently outstanding shares;
8. neither Eagle Plains nor Providence 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 Property Shares by Eagle Plains, Providence and Eagle Plains are at arm's length to each other;
10. in March 2012, Providence fulfilled the terms of the Option Agreement and earned a 60% interest in the Iron Range Project and Providence (as to 60%) and Eagle Plains (as to 40%) entered into a joint venture agreement dated March 8, 2012 (JV Agreement) for the exploration and development of the Iron Range Project;
11. Providence has agreed to sell its interest in the Iron Range Project (Iron Range Interest) to Eagle Plains for:
  - (a) issuance by Eagle Plains to Providence of 500,000 common shares of Eagle Plains,
  - (b) a 1% net smelter return royalty, and

- (c) the surrender to Providence of 900,000 of the Property Shares (Consideration Shares);
- 12. Providence intends to cancel the Consideration Shares immediately after the completion of the sale of the Iron Range Interest thereby increasing the remaining Providence shareholders' percentage equity ownership of Providence;
- 13. Providence and Eagle Plains agreed to the sale of the Iron Range Interests following arm's length negotiations between them;
- 14. under the JV Agreement, Eagle Plains has a right of first refusal to purchase the Iron Range Interest and Providence's Board of Directors believes that Eagle Plains, as co-owner, is the only logical and willing buyer of the Iron Range Interest;
- 15. Providence's Board of Directors resolved that:
  - (a) the sale of the Iron Range Interest and acquisition of the Consideration Shares is in the best interests of Providence and its shareholders,
  - (b) the consideration deemed to be paid for the Consideration Shares will not be greater than the market price, determined in accordance with section 1.11 of MI 62-104, of Providence's shares on the TSX Venture Exchange, and
  - (c) the acquisition of the Consideration Shares will not adversely affect the financial position of Providence and will increase the value of the equity ownership positions of its other shareholders;
- 16. the purpose of the acquisition of the Consideration Shares is not to give preferential treatment to Eagle Plains or provide a method for Providence to purchase the Consideration Shares but rather to facilitate the sale of the Iron Range Interest and realize the value of such interest for the benefit of Providence and its shareholders;
- 17. the shareholders of Providence not offered the opportunity to sell their shares to Providence under the proposed transaction are otherwise entitled to sell their shares into the market for cash proceeds;
- 18. no shareholder, including Eagle Plains, will receive cash consideration for Providence's acquisition of the Consideration Shares and it is impossible for Providence to offer to acquire its shares from its remaining shareholders on the same terms;
- 19. the offer to acquire the Consideration Shares is an "issuer bid" under MI 62-104, cannot be made in reliance upon any of the exemptions from the issuer bid requirements under MI 62-104 and, absent exemptive relief, the transaction would be subject to Part 2 of MI 62-104; and

20. the Providence shareholders recently approved, and the TSX Venture Exchange conditionally approved, the sale of the Iron Range Interest by Providence to Eagle Plains.

**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.

Peter Brady  
Director, Corporate Finance  
British Columbia Securities Commission