

## 2002 BCSECCOM 831

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – Relief from registration and prospectus requirements for trades made in connection with a take over bid using exchangeable shares for tax reasons where statutory exemptions are not available – Relief also granted from continuous disclosure requirements, insider reporting requirements and take over bid form requirements for Offeror, subject to certain conditions – Relief also granted from the requirement to deliver and provide withdrawal rights in connection with a notice of change filed to supplement the take over bid circular.

### **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61, 76, 85, 87, 91, 108(2), 105(d), and 114(2)(c)

*Securities Rules*, B.C. Reg. 194/97, ss. 144, 145 and 149

**IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA,  
BRITISH COLUMBIA, SASKATCHEWAN, MANITOBA, ONTARIO,  
QUÉBEC, NEW BRUNSWICK, PRINCE EDWARD ISLAND, NOVA  
SCOTIA AND NEWFOUNDLAND AND LABRADOR**

**AND**

**IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM  
FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

**IN THE MATTER OF PROVIDENT ENERGY TRUST, PROVIDENT  
ENERGY LTD., PROVIDENT ACQUISITIONS INC. AND MEOTA  
RESOURCES CORP.**

### **MRRS DECISION DOCUMENT**

- ¶ 1 WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Prince Edward Island, Nova Scotia, Newfoundland and Labrador (the "Jurisdictions") has received an application from Provident Energy Trust ("PET" or the "Trust"), Provident Energy Ltd., a wholly-owned subsidiary of PET ("PEL") and Provident Acquisitions Inc., a wholly-owned subsidiary of PEL (the "Offeror", and collectively PET, PEL and the Offeror are referred to herein as the "Filer"), for a decision under the securities legislation of the Jurisdictions (the "Legislation") that:

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1. the registration requirement and the prospectus requirement will not apply to certain trades in securities to be made in connection with the offer (the "Offer") to purchase all of the issued and outstanding common shares (the "Common Shares") of Meota Resources Corp. ("Meota"), including any trades in connection with the use of applicable statutory compulsory acquisition provisions following the Offer under which the Offeror acquires Common Shares (a "Subsequent Acquisition Transaction");
2. in those Jurisdictions in which the Offeror becomes a reporting issuer or the equivalent under the Legislation, the requirements to issue a press release and file a report upon the occurrence of a material change, file an annual report where applicable, file interim financial statements and audited financial statements and deliver such statements to the security holders of the Offeror, file an information circular or make an annual filing in lieu of filing an information circular, where applicable, file an annual information form and provide management's discussion and analysis of financial condition and results of operations (the "Continuous Disclosure Requirements"), will not apply to the Offeror;
3. in those Jurisdictions in which the Offeror becomes a reporting issuer or the equivalent under the Legislation, the requirement that insiders file reports disclosing the insider's direct or indirect beneficial ownership of, or control or direction over, securities and the requirement under National Instrument 55-102 *System for Electronic Disclosure by Insiders* relating to the electronic filing of insider profiles (the "Insider Reporting Requirements"), will not apply to insiders of the Offeror;
4. the take over bid circular form requirements of the Legislation, insofar as such form requirements require prospectus-level disclosure with respect to the Offeror (the "Take Over Bid Circular Form Requirements") in the take over bid circular to be mailed to the holders of Common Shares (the "Take Over Bid Circular"), will not apply to the Offeror;
5. the take over bid requirements of the Legislation regarding the delivery of a notice of change and the right of depositing security holders to withdraw their Common Shares at any time before the expiration of the prescribed period from the date of a notice of change (the "Notice of Change Requirements") will not apply to depositing security holders or to the filing of a notice of change to incorporate the certificate of PET into the Take Over Bid Circular, as the case may be;

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- ¶ 2 AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the British Columbia Securities Commission is the principal regulator for this application;
- ¶ 3 AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions* or in Québec Commission Notice 14-101;
- ¶ 4 AND WHEREAS the Filer has represented to the Decision Makers that:
1. Meota is incorporated under the laws of Canada and is a reporting issuer under the Legislation;
  2. the authorized capital of Meota consists of an unlimited number of Common Shares, an unlimited number of first preferred shares issuable in series and an unlimited number of second preferred shares issuable in series of which there were 55,643,136 Common Shares issued and outstanding as of August 12, 2002;
  3. the Common Shares are listed on the Toronto Stock Exchange (the "TSX");
  4. PET is an open-end investment trust established under the laws of Alberta, is a reporting issuer or the equivalent under the Legislation and is not in default of the requirements of the Legislation;
  5. PET is authorized to issue an unlimited number of transferable, redeemable trust units (the "Provident Units") and an unlimited number of special voting units, of which there were 36,927,436 Provident Units outstanding as at August 12, 2002;
  6. the Provident Units are listed on the TSX and the American Stock Exchange;
  7. PEL is incorporated under the laws of Alberta and is a wholly-owned subsidiary of PET;
  8. the Offeror is incorporated under the laws of Alberta and is a wholly-owned subsidiary of PEL;
  9. the authorized capital of the Offeror consists of an unlimited number of common shares and prior to the closing of the Offer, will also include an unlimited number of exchangeable shares ("Exchangeable Shares") that are exchangeable at any time into Provident Units;

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10. the principal rights, privileges, restrictions and conditions attached to the Exchangeable Shares are described in the Take Over Bid Circular mailed to the holders of the Common Shares;
11. PET and Meota have entered into an agreement (the "Acquisition Agreement") under which PET, or a direct or indirect subsidiary of PET, agreed to make the Offer and Meota agreed to support the Offer;
12. on August 13, 2002, PET and Meota issued a joint news release announcing that they had entered into the Acquisition Agreement whereby PET would make an offer to acquire all the outstanding Common Shares of Meota;
13. under the Offer, each holder of Common Shares may elect to receive either:  
(i) \$4.60 in cash, (ii) 0.415 of a Provident Unit, (iii) 0.415 of an Exchangeable Share, or (iv) a combination thereof, subject to a maximum aggregate cash consideration of \$27,821,568 plus \$0.50 for each Common Share issued pursuant to the exercise of an option granted pursuant to Meota's stock option plan between August 12, 2002 and the expiry time of the Offer and subject to a maximum of 6,000,000 Exchangeable Shares being issued in the aggregate;
14. each Exchangeable Share entitles the holder to receive one Provident Unit and an additional number of Provident Units calculated based on the amount of any intervening distributions in respect of the Provident Units;
15. PET, PEL, the Offeror, and Computershare Trust Company of Canada (the "Trustee") will enter into a support agreement (the "Support Agreement") and a voting and exchange trust agreement (the "Voting and Exchange Trust Agreement") in connection with the terms of the Exchangeable Shares;
16. upon completion of the Offer, PET will issue and deposit with the Trustee a special voting unit which will effectively provide the holders of Exchangeable Shares with voting rights equivalent to those attached to the Provident Units;
17. upon completion of the Offer and any Subsequent Acquisition Transaction, Meota will be wholly-owned by the Offeror, and all former shareholders of Meota will hold either cash, Provident Units, Exchangeable Shares or a combination thereof;

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18. the Offer is conditional upon, among other things:
- (a) there being validly deposited under the Offer and not withdrawn prior to the expiry of the Offer that number of Common Shares which represents not less than 66 2/3% of the number of Common Shares outstanding (on a fully diluted basis) as of the time the Offer expires; and
  - (b) all requisite regulatory approvals having been obtained;
19. the Offeror was recently incorporated for the purposes of effecting the Offer and the Exchangeable Shares are in substance a proxy for the Provident Units that are designed to provide an opportunity for the holders of Common Shares to defer the tax consequences of disposing of their Common Shares under the Offer;
20. PET has agreed under the Acquisition Agreement that it, or a wholly-owned subsidiary of it, will mail the Take Over Bid Circular to each holder of Common Shares and each holder of options to purchase Common Shares;
21. the Take Over Bid Circular will contain or incorporate by reference prospectus-level disclosure concerning the business and operations of PET and a detailed description of the rights, privileges, obligations and restrictions respecting the Exchangeable Shares and the Provident Units;
22. the Offeror will become a reporting issuer under the Legislation in British Columbia, Saskatchewan, Québec, Nova Scotia and Newfoundland and Labrador upon the filing of the Take Over Bid Circular and, in British Columbia, upon the take up of, and payment for, the Common Shares, and will be subject to the Continuous Disclosure Requirements in such Jurisdictions, and insiders of the Offeror will be subject to the Insider Reporting Requirements in such Jurisdictions;
23. prior to completion of the Offer:
- (a) the Offeror has no material assets or liabilities;
  - (b) all information material to the business of PET (and relevant to persons considering an investment in Provident Units or Exchangeable Shares) will be contained in the Take Over Bid Circular and in continuous disclosure filings made by PET under the Legislation; and

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- (c) PET will be subject to Continuous Disclosure Requirements under the Legislation and the requirements of the TSX in respect of making public disclosure of material information on a timely basis;
24. following the completion of the Offer:
- (a) the Offeror's principal assets will consist primarily of the Common Shares that are purchased by it under the Offer;
  - (b) the Offeror will have no material liabilities other than the credit arrangements with PET to fund the cash portion of the purchase price of the Common Shares;
25. by virtue of the attributes of the Exchangeable Shares and the rights established for the benefit of holders of Exchangeable Shares under the Support Agreement and the Voting and Exchange Trust Agreement, an investment in Exchangeable Shares will be, in effect, an investment in Provident Units;
26. except as required by applicable law, holders of Exchangeable Shares are not entitled to vote Exchangeable Shares in respect of any matters concerning the Offeror;
27. under the terms of the Voting and Exchange Trust Agreement, holders of Exchangeable Shares will be entitled to vote, through the Trustee as trustee for the benefit of holders of Exchangeable Shares, at any meeting of unitholders of the Trust;
28. the Trustee will hold a special voting unit which will carry a number of votes, exercisable at any meeting at which unitholders of the Trust are entitled to vote equal to the number of Provident Units into which the Exchangeable Shares are then exchangeable;
29. the Trustee will exercise each vote attached to the special voting unit only as directed by the relevant holder of Exchangeable Shares;
30. holders of Exchangeable Shares would not derive any material benefit from the Offeror being subject to the Continuous Disclosure Requirements;
31. PET will agree in the Support Agreement to provide to holders of Exchangeable Shares the same documents and information (including, but not limited to, its annual report and all proxy solicitation materials) that it will provide to holders of Provident Units under the Legislation, and to comply

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with the requirements of the Legislation and the TSX in respect of making public disclosure of material information on a timely basis;

32. the steps involved in the completion of the Offer, any Subsequent Acquisition Transaction, and the creation and exercise of the exchange rights attaching to the Exchangeable Shares, the redemption and retraction of Exchangeable Shares and certain other purchases of Exchangeable Shares in connection therewith and on the liquidation, dissolution or winding-up of the Offeror, PEL or PET involve or may involve a number of trades and distributions of securities (collectively, the "Trades");
33. the filing of the Take Over Bid Circular by the Offeror under the Legislation in British Columbia, Saskatchewan, Québec, Nova Scotia and Newfoundland and Labrador shall constitute the filing of a securities exchange take over bid circular under the Legislation for purposes of the definition of reporting issuer under such Legislation;
34. the Exchangeable Shares will be the economic equivalent of Provident Units and will have the attributes more particularly described in the Take Over Bid Circular;
35. holders of Common Shares will make one investment decision when deciding whether to tender their Common Shares to the Offer and when voting to approve any Subsequent Acquisition Transaction, and the subsequent trades of Exchangeable Shares will arise directly out of the collection of rights acquired by holders of Common Shares who receive Exchangeable Shares in connection with the Offer;
36. if not for income tax considerations, holders of Common Shares who elect to receive Exchangeable Shares may have elected to receive Provident Units directly without receiving Exchangeable Shares;
37. the Exchangeable Shares will be issued on a tax-deferred basis;
38. holders of Exchangeable Shares in essence have a participatory interest in PET rather than in the Offeror and, therefore, certain disclosure required to be provided as a reporting issuer or the equivalent under the Legislation would not be meaningful to the holders of Exchangeable Shares;

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39. the Take Over Bid Circular discloses that, in connection with the Offer, the Filer has applied for relief from the Continuous Disclosure Requirements and the Insider Reporting Requirements;
  40. the Take Over Bid Circular also specifies the disclosure requirements from which the Offeror has applied to be exempted and identifies the disclosure that will be made in substitution therefor if such exemptions are granted;
  41. PET and the Offeror will file a notice of change on SEDAR incorporating the certificate of PET into the Take Over Bid Circular;
  42. PET is a qualifying issuer under Multilateral Instrument 45-102 *Resale of Securities* ("MI 45-102");
- ¶ 5 AND WHEREAS under the System, this MRRS Decision Document evidences the decision of the Decision Makers (the "Decision");
- ¶ 6 AND WHEREAS 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;
- ¶ 7 THE DECISION of the Decision Makers under the Legislation is that:
1. the registration requirement and prospectus requirement will not apply to the Trades, provided:
    - (a) the first trade in Exchangeable Shares, except for a Trade, in a Jurisdiction shall be a distribution, or primary distribution to the public, under the Legislation of such Jurisdiction; and
    - (b) the first trade in Provident Units obtained pursuant to a Trade in a Jurisdiction shall be a distribution, or primary distribution to the public, under the Legislation of such Jurisdiction unless:
      - (i) except in Québec, the conditions in subsection (3) of section 2.6 of MI 45-102 are satisfied;
      - (ii) in Québec, PET is and has been a reporting issuer in Québec for the twelve months immediately preceding the alienation, and



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- (A) no unusual effort is made to prepare the market or to create a demand for the Provident Units that are the subject of the alienation,
  - (B) no extraordinary commission or consideration is paid in respect of the alienation, and
  - (C) if the seller of the Provident Units is an insider of PET, the seller has no reasonable grounds to believe PET is in default of any requirement of the Legislation;
- 2. in the Jurisdictions where the Offeror becomes a reporting issuer under the Legislation, the Continuous Disclosure Requirements will not apply to the Offeror, for so long as:
  - (a) PET is a reporting issuer in at least one of the jurisdictions listed in Appendix B of MI 45-102 and is an electronic filer under National Instrument 13-101;
  - (b) PET concurrently sends to all holders of Exchangeable Shares resident in all the Jurisdictions all disclosure material furnished to holders of Provident Units under the Continuous Disclosure Requirements, including, but not limited to, copies of its annual report and all proxy solicitation materials;
  - (c) PET complies with the requirements of the TSX (or such other principal stock exchange on which the Provident Units are then listed) in respect of making public disclosure of material information on a timely basis and forthwith issues in the Jurisdictions and files with the Decision Makers any press release that discloses a material change in PET's affairs;
  - (d) the Offeror provides each recipient of Exchangeable Shares resident in all the Jurisdictions with a statement that, as a consequence of this Decision, the Offeror and its insiders will be exempt from certain disclosure requirements applicable to reporting issuers and insiders, and specifying those requirements the Offeror and its insiders have been exempted from and identifying the disclosure that will be made in substitution therefor;

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- (e) the Offeror complies with the requirements of the Legislation to issue a press release and file a report with the Decision Makers upon the occurrence of a material change in respect of the affairs of the Offeror that is not also a material change in the affairs of PET;
  - (f) PET remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities of the Offeror;
  - (g) PET will include in all future mailings of proxy solicitation materials to holders of Exchangeable Shares a clear and concise insert explaining the reason for the mailed material being solely in relation to PET and not to the Offeror, such insert to include a reference to the economic equivalency between the Exchangeable Shares and Provident Units and the right to direct voting at meetings of holders of Units; and
  - (h) the Offeror does not issue any securities to the public other than the Exchangeable Shares;
- 3. in the Jurisdictions where the Offeror becomes a reporting issuer under the Legislation, the Insider Reporting Requirements will not apply to any insider of the Offeror who is not also an insider of PET;
- 4. the Take Over Bid Circular Form Requirements contained in the Legislation will not apply to the Offeror, provided that:
  - (a) the Take Over Bid Circular contains prospectus-level disclosure in respect of PET and a complete description of the rights, privileges, obligations and restrictions in respect of the Exchangeable Shares; and
  - (b) PET files a notice of change with the Decision Makers on SEDAR incorporating the certificate of PET into the Take Over Bid Circular; and
- 5. the Notice of Change Requirements will not apply to PET or the Offeror in connection with the notice of change filed to incorporate the certificate of PET into the Take Over Bid Circular.

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¶ 8 DATED September 30, 2002.

Brenda Leong  
Director