

# 2005 BCSECCOM 492

July 7, 2005

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - *Securities Act* s. 114(2) Take over Bids - Exemption from the formal take over bid requirements in Part 13 of the Act - An issuer wants relief from all take over bid requirements - The offeror has obtained irrevocable lock-up agreements from shareholders holding 90% of the target's outstanding shares; the offeror will be entitled to use the compulsory acquisition provisions of the target's incorporating legislation to force the other 10% of the target's shareholders to sell their shares to the offeror; all of the target's shareholders will receive the same consideration under the offer

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 105 – 110, 114(2)

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

and

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

and

In the Matter of Krang Energy Inc. (Krang) and Viking Holdings Inc. (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 Krang and the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the requirements contained in the Legislation relating to take-over bids (the Take-over Bid Requirements) shall not apply to the acquisition by the Filer or a wholly-owned subsidiary of the Filer of all of the issued and outstanding shares of Krang (the Requested Relief).
2. Under the Mutual Reliance Review System for Exemptive Relief Applications (the MRRS):

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- 2.1 the Alberta Securities Commission is the principal regulator for this application, and
- 2.2 this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

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

### **Representations**

- 4. This decision is based on the following facts represented by Krang and the Filer:
  - 4.1 The Filer was incorporated by certificate of amalgamation under the *Business Corporations Act* (Alberta)(the ABCA) on May 1, 2005.
  - 4.2 The head office of the Filer is located in Calgary, Alberta.
  - 4.3 The Filer is not a reporting issuer in any jurisdiction of Canada, nor are any of its securities listed or posted for trading on any exchange or marketplace.
  - 4.4 The Filer is a wholly owned subsidiary of Viking Energy Royalty Trust which is a reporting issuer in the Jurisdictions, Manitoba, Quebec, Prince Edward Island and Newfoundland and Labrador.
  - 4.5 Krang was incorporated under the ABCA on June 21, 2001 as 940223 Alberta Ltd., and by certificate of amendment issued on August 29, 2001 its name was changed to Krang Energy Inc.
  - 4.6 The head office of Krang is located in Calgary, Alberta.
  - 4.7 Krang is not a reporting issuer in any jurisdiction of Canada, nor are any of its securities listed or posted for trading on any exchange or marketplace.
  - 4.8 The authorized share capital of Krang consists of an unlimited number of common voting shares (the Common Shares), an unlimited number of Class A convertible voting shares (the Class A Shares), an unlimited number of special voting shares and an unlimited number of preferred shares.
  - 4.9 Krang has the following securities issued and outstanding:

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- 4.9.1 33,874,616 Class A Shares,
  - 4.9.2 3,260,561 options, each exercisable into one Common Share,  
and
  - 4.9.3 3,503,537 performance warrants, each entitling the holder to  
purchase one Common Share.
- 4.10 Pursuant to the terms of a pre-acquisition agreement entered into between Krang and the Filer on June 28, 2005, the Filer agreed to make an all-cash offer to acquire, directly or through a wholly-owned subsidiary, all of the issued and outstanding shares of Krang on a fully diluted basis (the Krang Shares) at a price of \$3.35 per Krang Share (the Offer).
- 4.11 There are a total of 40,638,714 Krang Shares held by 201 beneficial holders, all of whom are residents of the Jurisdictions, with the exception of one beneficial holder who is a resident of Indonesia and one beneficial holder who is a resident of Prince Edward Island.
- 4.12 The board of directors of Krang (the Board) has determined that the Offer is fair, from a financial point of view, to the shareholders of Krang (the Shareholders) and is in the best interests of Krang and the Shareholders (the Board Determinations).
- 4.13 The Board will deliver to all Shareholders, with the documents delivered pursuant to the Offer, a letter detailing the Board Determinations and the basis on which the Board Determinations were made (the Determination Letter).
- 4.14 The information provided in the Determination Letter will enable Shareholders who do not tender their Krang Shares to the Offer to make an informed decision as to whether to exercise their right of dissent granted to them under the ABCA.
- 4.15 The Offer is being made to all of the Shareholders on identical terms and for identical consideration.
- 4.16 The Filer has entered into irrevocable lock-up agreements (the Lock-Up Agreements) with certain Shareholders who hold 90.5% of the Krang Shares (the Lock-Up Shareholders) whereby the Lock-Up

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Shareholders have irrevocably agreed to tender their Krang Shares to the Offer.

- 4.17 Under the compulsory acquisition procedures of the ABCA, once the Lock-Up Shareholders tender their Krang Shares to the Offer in accordance with the Lock-Up Agreements, the Filer will automatically be entitled to purchase the Krang Shares held by those Shareholders that are not party to the Lock-Up Agreements (the Non Lock-Up Shareholders) regardless of whether the Non Lock-Up Shareholders elect to tender their Krang Shares to the Offer.
- 4.18 There are no exemptions from the Take-over Bid Requirements available to allow the Offer to occur.

### **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 the Requested Relief is granted.

Glenda A. Campbell, Q.C., Vice-Chair  
Alberta Securities Commission

Stephen R. Murison, Vice-Chair  
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