

# 2012 BCSECCOM 17

January 12, 2012

## 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

In the Matter of  
the Securities Legislation of  
British Columbia (the Jurisdiction)

and

In the Matter of  
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of  
Cobra Venture Corporation  
(the Filer)

## Decision

## Background

- ¶ 1 The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) exempting the Filer from the issuer bid requirements in Part 2 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* (MI 62-104) in connection with a proposed repurchase of Subject

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Shares (defined below) by the Filer from Keystone Royalty Corp. (Keystone) as partial consideration for the sale to Keystone of certain assets of the Filer (Exemption Sought).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

- (a) the British Columbia Securities Commission is the principal regulator for this application; and
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta.

### **Interpretation**

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

### **Representations**

- ¶ 3 This decision is based on the following facts represented by the Filer:
- 1. it is a corporation incorporated under the *Business Corporations Act* (Alberta) focused on the acquisition and development of strategic oil and natural gas reserves in Western Canada; the Filer's head office is located in West Vancouver, British Columbia;
  - 2. it is a "reporting issuer" in Alberta and British Columbia; the Filer is not in default of its obligations under the provincial securities legislation of Alberta and British Columbia;
  - 3. it's authorized share capital consists of: (i) an unlimited number of common shares (Cobra Shares); and (ii) an unlimited number of preferred shares, issuable in series; as of December 21, 2011, 17,670,748 Cobra Shares and no preferred shares were issued and outstanding;
  - 4. the Cobra Shares are listed on the TSX Venture Exchange (TSXV) under the symbol "CBV";
  - 5. Keystone, a corporation whose head office is located in Regina, Saskatchewan, owns, to the best knowledge of the Filer, 1,767,000 Cobra Shares (Subject Shares), representing 9.99% of the issued and outstanding Cobra Shares;

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6. other than the ownership of the Subject Shares by Keystone, the Filer and Keystone are at arm's length to each other;
7. on November 30, 2011, the Filer accepted, subject to certain conditions, some of which are described below, an offer (Purchase Agreement) from Keystone to purchase all of the Filer's freehold mineral and royalty interests in the Province of Saskatchewan (Assets) for an amount of \$5,250,000, subject to standard industry adjustments (Purchase Price), effective as of January 1, 2012 (Sale Transaction);
8. under the Purchase Agreement, the Purchase Price would payable by Keystone in part by cash and in part through the purchase by and return to the Filer (Repurchase) of the Subject Shares for cancellation at an agreed value of \$0.30 per Subject Share (Deemed Price);
9. it obtained a confidential written valuation (Valuation) from Sayer Energy Advisors (Sayer), an independent third party, of the current fair market value of the Cobra Shares; the Valuation provides the Filer with a range of prices for the current fair market value of the Cobra Shares, and the Deemed Price falls within that range;
10. it received a verbal opinion (Fairness Opinion) from Sayer that the Purchase Price is fair, from a financial point of view, to the Filer and its shareholders; Sayer has advised that they will provide a written opinion in respect of the same to the Filer for inclusion in the Circular (defined below) which will be mailed to the shareholders of the Filer in connection with the Meeting (defined below);
11. the completion of the Sale Transaction is conditional upon, among other things, obtaining shareholder approval of the Sale Transaction and the approval of the TSXV;
12. the board of directors of the Filer has determined that: (i) the Sale Transaction, including the Repurchase is in the best interests of the Filer; and (ii) based upon the Fairness Opinion, the Sale Transaction is fair, from a financial point of view, to the Filer and its shareholders, and recommended in the Circular (defined below) that the shareholders of the Filer vote in favour of the Sale Transaction, including the Repurchase;
13. the Filer has called a special meeting (Meeting) of its shareholders to consider a special resolution to approve the Sale Transaction; the Meeting is scheduled for January 30, 2012; all holders of Cobra Shares on record as of the close of business on December 23, 2011 (Record Date) will be entitled to one vote per

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Cobra Share held; the resolution must be approved by two-thirds of the votes cast at the Meeting, either in person or by proxy;

14. in connection with the Meeting, the Filer prepared and mailed a management information circular (Circular) to its shareholders in accordance with the requirements of National Instrument 51-102 *Continuous Disclosure Obligations*; the Circular contains the prescribed disclosure relating to the Sale Transaction and the Purchase Agreement;
15. the Repurchase is an integral part of the Sale Transaction; although the Filer and Keystone have agreed that the Subject Shares forming part of the consideration for the Assets have an agreed value equal to the Deemed Price, Keystone is not receiving any cash for the Repurchased Shares; instead, as part of the consideration for the Assets, the Repurchased Shares are to be purchased by and returned to the Filer, at a deemed value equal to the Deemed Price; no Shareholder other than Keystone will be participating in the Sale Transaction;
16. the Repurchase is an issuer bid by the Filer under MI 62-104 and cannot be made in reliance upon any of the exemptions from the issuer bid requirements contained in that Instrument; and
17. no shareholder, including Keystone, is receiving any cash consideration for Cobra Shares; although the Repurchase will constitute an issuer bid under MI 62-104, in the circumstances, since no other shareholder is acquiring the Assets, it is not practical for the Filer to offer to acquire Cobra Shares from all shareholders on the same terms and conditions as contemplated under the Sale Transaction.

### **Decision**

- ¶ 4 The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted.

Martin Eady, CA  
Director, Corporate Finance  
British Columbia Securities Commission