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January 29, 2008

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Identical consideration - Issuer needs relief from the requirement in s. 107(1) of the *Securities Act* (British Columbia) that all holders of the same class of securities must be offered identical consideration (the Identical Consideration Requirement) - Under the bid, Canadian resident shareholders may receive shares, cash, or a combination of both; US resident shareholders and other shareholders not resident in Canada or the US will receive substantially the same value as Canadian shareholders, in the form of cash paid to the US and other foreign shareholders based on the proceeds from the sale of their shares; the number of shares held by US and other foreign residents is *de minimis*; the US does not have an identical consideration requirement

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, s. 107(1), 114(2)

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

and

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

and

In the Matter of  
Sherwood Copper Corporation  
(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 the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption

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from the requirement in the Legislation to offer identical consideration to all holders of the same class of securities subject to a take-over bid (the Identical Consideration Requirement) in connection with the proposed take-over bid to be made by the Filer for all of the issued and outstanding common shares (the Keltic Shares) of Western Keltic Mines Inc. (Keltic) (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the British Columbia Securities Commission is the principal regulator for this application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

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

### **Representations**

- ¶ 3 This decision is based on the following facts represented by the Filer:
1. the Filer is a corporation existing under the *Canada Business Corporations Act*; the registered and Canadian head office of the Filer is located in Vancouver, British Columbia;
  2. the Filer is a reporting issuer, or equivalent, in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and is not in default of any requirements of the applicable securities legislation of any such jurisdiction in which it is a reporting issuer;
  3. the common shares of the Filer (the Sherwood Shares) are listed and posted for trading on the TSX Venture Exchange;
  4. Keltic is a corporation continued under the *Business Corporations Act* (British Columbia); the registered and head office of Keltic is located in Vancouver, British Columbia;
  5. Keltic is a reporting issuer in British Columbia and Alberta;
  6. the Keltic Shares are listed and posted for trading on the TSX Venture Exchange;

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7. on November 26, 2007, the Filer issued a press release announcing its intention to make an offer (the Offer) to acquire all of the issued and outstanding Keltic Shares on the basis of 0.08 of a Sherwood Share of the Filer for each one Keltic Share;
8. because the Sherwood Shares issuable pursuant to the Offer to the US Shareholders have not been registered under the United States Act of 1933, as amended (the 1933 Act), and are not eligible for sale under the securities laws of a substantial number of states in the United States without registration, the offer, sale and delivery of such Sherwood Shares to US Shareholders without further action by the Filer would constitute a violation of United States securities laws;
9. Rule 802 under the 1933 Act (Rule 802) provides an exemption from the registration requirements of the 1933 Act for offers and sales in any exchange offer for a class of securities of a foreign private issuer or in any exchange of securities for the securities of a foreign private issuer in any business combination if the holders of the foreign subject company resident in the United States hold no more than 10% of the securities that are the subject of the exchange offer or business combination; Rule 802 provides that for the purposes of this calculation, securities held by persons who hold more than 10% of the subject securities are to be excluded, as are securities held by the offeror; in order for this exemption to apply, holders resident in the United States must participate in the exchange offer or business combination on terms at least as favourable as those offered to the other holders of the subject securities, subject to an exception which allows the offeror to offer cash consideration to securityholders resident in states of the United States that do not have an applicable state “blue sky” exemption from the registration or qualification requirements of state securities laws;
10. based on public disclosure reviewed by the Filer, Keltic is a “foreign private issuer” within the meaning of Rule 405 of Regulation C under the 1933 Act; furthermore, based on public disclosure contained in Keltic’s management information circular filed with the Canadian securities regulators on May 14, 2007, there are no persons that hold more than 10% of the Keltic Shares; to the knowledge of the Filer, after reasonable inquiry, approximately 8.18% of the issued and outstanding Keltic Shares on a non-diluted basis are beneficially held by the holders of Keltic Shares (Keltic Shareholders) who are resident in the United States (US Shareholders);
11. therefore, to the knowledge of the Filer, after reasonable inquiry, the 10% ownership condition and the other conditions of Rule 802 have been met and

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the offer and sale of the Keltic Shares is exempt from the registration requirements of the 1933 Act;

12. there is no general exemption from state “blue sky” laws that coordinates with Rule 802; as a result, the securities laws of a significant number of states would prohibit delivery of the Sherwood Shares to US Shareholders without registration of the Sherwood Shares to be issued to US Shareholders resident in such states unless such holders are otherwise exempt investors under the laws of such states; the Multi-Jurisdictional Disclosure System does not provide relief from the registration or qualification requirements of United States state securities laws;
13. registration under the 1933 Act and applicable state securities laws of the Sherwood Shares deliverable to US Shareholders would be costly and burdensome to the Filer;
14. for US Shareholders (and Keltic Shareholders who appear to the Filer or to the depositary (the Depositary) designated under the Offer to be US Shareholders) who are resident in one of the subject states with no available registration exemption, the Filer proposes to deliver to the Depositary the Sherwood Shares that those US Shareholders would otherwise be entitled to receive under the Offer, and an agent or nominee of the Depositary will then sell (or cause to be sold) the Sherwood Shares on behalf of those US Shareholders through the facilities of the TSX Venture Exchange; as soon as possible after the completion of the sale, the Depositary or selling agent will deliver to each such holder their respective pro rata share of the cash proceeds of sale, less commissions and applicable withholding taxes;
15. to the extent that any of the Keltic Shareholders are in jurisdictions which do not permit the Sherwood Shares to be delivered without registration or qualification under the laws of their own jurisdiction (**Foreign Shareholders**), the Filer may utilize a mechanism similar to the one described in paragraph 14 above, modified as necessary to comply with the laws of such foreign jurisdiction;
16. any sale of Sherwood Shares described in paragraphs 14 and 15 above will be completed as soon as practicable after the date on which the Filer takes up the Keltic Shares tendered by the US Shareholders or Foreign Shareholders under the Offer and will be done in a manner intended to maximize the consideration to be received from the sale by the applicable US Shareholders or Foreign Shareholders and minimize any adverse impact of the sale on the market for the Sherwood Shares;

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17. the take-over bid circular to be prepared by the Filer and sent to all Keltic Shareholders will disclose the procedure described in paragraph 14 above to be followed by US Shareholders who tender their Keltic Shares to the Offer; and
18. except to the extent that relief from the Identical Consideration Requirement is granted, the Offer will otherwise be made in compliance with the requirements under the Legislation governing take-over bids.

### **Decision**

- ¶ 4 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.

The decision of the Decision Makers under the Legislation is that, in connection with the Offer, the Requested Relief is granted so that US Shareholders and Foreign Shareholders who would otherwise receive Sherwood Shares under the Offer instead receive cash proceeds from the sale of those Sherwood Shares in accordance with the procedures set out in paragraph 14 and 15 above.

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