

### **Headnote**

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 62-104, Part 6 Take-Over Bids – Exemption from the formal take-over bid requirements – Filers want an exemption from the formal take-over bid requirements of Part 2 of NI 62-104 – Filers propose to make normal course purchases of common shares of the issuer; Filers acquired large block of the issuer's common shares in connection with a plan of arrangement involving the issuer such that the Filers cannot rely on the normal course purchase exemption set out in section 4.1 of NI 62-104; Filers seeking flexibility to purchase additional common shares in the market and to provide liquidity; Filers granted relief to acquire common shares in the normal course provided that such purchases satisfy the requirements of section 4.1 of NI 62-104, except that, for the purpose of calculating the 5% purchase limit, the common shares of the issuer acquired by the Filers in connection with the plan of arrangement will be excluded; Issuer advised of and supports the application

### **Applicable Legislative Provisions**

National Instrument 62-104 *Take-Over Bids and Issuer Bids*, Part 2 and s. 6.1

September 14, 2017

In the Matter of  
the Securities Legislation of  
British Columbia and Ontario  
(the Jurisdictions)

and

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

and

In the Matter of  
Pacific Road Capital Management Pty Ltd.,  
Pacific Road Resources Fund II and  
Pacific Road Resources Fund II L.P.  
(collectively, the Filers)

### **Decision**

### **Background**

¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (each a Decision Maker) has received an application (the Application) from the Filers for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption (the Requested

Relief), pursuant to section 6.1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* (NI 62-104), from the requirements applicable to take-over bids in Part 2 of NI 62-104 in connection with certain normal course market purchases of common shares (Common Shares) of Trek Mining Inc. (Trek Mining) by the Filers.

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

- (a) the British Columbia Securities Commission is the principal regulator for the Application;
- (b) the Filers have provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island and Saskatchewan; and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

### **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 herein.

### **Representations**

- ¶ 3 The decision is based on the following facts represented by the Filers:
- 1. Pacific Road Capital Management Pty Ltd. (Pacific Road Management) is a privately held private equity firm governed by the laws of Australia; its principal executive office is located in Sydney, Australia;
  - 2. Pacific Road Resources Fund II and Pacific Road Resources Fund II L.P. (together, the Pacific Road Funds) are private equity funds for which Pacific Road Management acts as manager or advisor;
  - 3. Trek Mining is a corporation governed by the laws of the Province of British Columbia; Trek Mining's head office is located at Suite 730 - 800 West Pender Street, Vancouver, British Columbia, V6C 2V6; Trek Mining is a reporting issuer in each of the provinces of Canada other than Quebec;
  - 4. Trek Mining is authorized to issue an unlimited number of Common Shares, of which Trek Mining reported that 177,732,772 Common Shares were issued and outstanding as at May 26, 2017; the Common Shares are listed on the TSX Venture Exchange;
  - 5. on March 31, 2017, Luna Gold Corp. (Luna) and JDL Gold Corp. (JDL) completed a business combination by way of statutory plan of arrangement (the Arrangement); JDL was renamed Trek Mining Inc. upon completion of the Arrangement;

6. pursuant to the Arrangement, among other things: (a) each common share of Luna was exchanged for 1.105 Common Shares; and (b) each outstanding common share purchase warrant of Luna was exchanged for warrants of Trek Mining in accordance with the terms of the applicable warrant indenture or agreement;
7. pursuant to the Arrangement, the Pacific Road Funds acquired ownership of an aggregate of 23,824,968 Common Shares and warrants to purchase 23,724,350 Common Shares (the Warrants); as a result of the Arrangement, the Pacific Road Funds own approximately: (a) 13.4% of the issued and outstanding Common Shares; (b) 23.6% of the Common Shares on a partially-diluted basis (assuming exercise of the Warrants); and (c) 15.9% of the Common Shares on a fully-diluted basis;
8. none of the Filers have acquired any Common Shares subsequent to the completion of the Arrangement;
9. as a result the Arrangement, the Pacific Road Funds own more than 20% of the outstanding Common Shares on a partially-diluted basis; any additional acquisitions of Common Shares by any of the Filers would constitute a take-over bid under the applicable provisions of the Legislation, unless an exemption is available;
10. the Filers are unable to acquire additional Common Shares through normal course purchases in the market pursuant to the take-over bid exemption in section 4.1 of NI 62-104 (the Normal Course Purchase Exemption) until March 31, 2018, being the date which is 12 months after the date that the Pacific Road Funds acquired the Common Shares and the Warrants pursuant to the Arrangement;
11. subject to applicable law and depending on the prices at which the Common Shares are trading, the Pacific Road Funds intend to acquire up to 5% of the issued and outstanding Common Shares pursuant to normal course market purchases;
12. the interest of the Pacific Road Funds in being able to acquire Common Shares is not to gain legal control of Trek Mining, but instead to preserve their ability to purchase Common Shares, depending on the prices at which the Common Shares are trading, and to provide liquidity to the market;
13. none of the Filers has any current intention of making a take-over bid for all of the issued and outstanding Common Shares, or otherwise acquiring all of the issued and outstanding Common Shares by way of a plan of arrangement or other similar voting transaction;
14. none of the Filers will purchase Common Shares at any time when it has knowledge of any material fact or material change about Trek Mining which has not been generally disclosed; and
15. the Filers have advised Trek Mining that they have submitted an application to the Decision Makers for the Requested Relief; management of Trek Mining supports the Requested

Relief on the basis that normal course purchases of the Common Shares will provide additional liquidity in the market.

**Decision**

- ¶ 4 Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that the purchases by the Filers comply with the Normal Course Purchase Exemption, except that, for the purpose of determining the number of Common Shares acquired by the Filers within the 12-month period preceding the date of any such purchase of Common Shares in the market, the Common Shares and Warrants acquired by the Pacific Road Funds pursuant to the Arrangement shall be excluded in the calculation of acquisitions of Common Shares otherwise made by the Filers within the previous 12-month period.

John Hinze  
Director, Corporate Finance  
British Columbia Securities Commission