

# 2002 BCSECCOM 135

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from the registration and prospectus requirements for trades made in connection with or after an arrangement - issuer deemed to be a reporting issuer

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 1(1), 34(1)(a), 48, 61, 76  
Multilateral Instrument 45-102 *Resale of Securities*, ss. 2.6, 2.8

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

AND

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

AND

IN THE MATTER OF RICHLAND PETROLEUM CORPORATION,  
TERRAQUEST ENERGY CORPORATION,  
PROVIDENT ENERGY LTD.  
AND PROVIDENT ENERGY TRUST

## 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, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador (the "Jurisdictions") has received an application from Richland Petroleum Corporation ("Richland"), Terraquest Energy Corporation ("Terraquest") and Provident Energy Trust (the "Trust") (collectively, the "Filer") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that:

1.1. the requirements contained in the Legislation to be registered to trade in a security and to file and obtain a receipt for a preliminary prospectus and a prospectus (the "Registration and Prospectus Requirements") shall not apply to certain trades made in connection with or subsequent to a proposed plan of arrangement (the "Arrangement") under the *Business Corporations Act* (Alberta) (the "ABCA") involving Richland, Terraquest, the Trust and Provident Energy Ltd. ("Provident"); and

1.2. in the provinces of British Columbia, Alberta, Saskatchewan, Ontario and Québec, provided that such provinces' securities laws contain the concept of a reporting issuer or the equivalent, Terraquest shall be deemed to be a reporting issuer as of the effective time of the Arrangement;

2. AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System") the Alberta Securities Commission is the principal regulator for this application;

3. AND WHEREAS the Filer has represented to the Decision Makers that:

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3.1. Richland is a corporation incorporated under the ABCA and is headquartered in Calgary, Alberta;

3.2. Richland is a junior oil and natural gas exploration and production company engaged in exploration for crude oil and natural gas in the Western Canada Sedimentary Basin and in the East Lost Hills area of California. Conducting its Canadian activities primarily in Saskatchewan and Alberta, Richland initiates and operates the majority of its prospects, maintaining a high working interest in all new operations;

3.3. the authorized capital of Richland consists of an unlimited number of common shares ("Common Shares"), of which, as at the date hereof, 26,772,586 Common Shares are issued and outstanding. In addition, as at the date hereof, 2,207,007 Common Shares have been reserved for issuance on exercise of outstanding stock options;

3.4. Richland is, and has been for a period of time in excess of 12 months, a reporting issuer (where such concept exists) under the securities legislation of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Quebec. To the best of its knowledge, information and belief, Richland is not in default of any requirements of the securities Legislation of the Jurisdictions in which it is a reporting issuer;

3.5. the Common Shares are listed and posted for trading on The Toronto Stock Exchange (the "TSE") under the symbol "RLP";

3.6. the Trust is an open and unincorporated investment trust created under the laws of Alberta pursuant to the Provident Trust indenture dated as of January 25, 2001 as amended as of March 5, 2001 between Montreal Trust Company of Canada and Founders Energy Ltd. (the "Provident Trust Indenture"). The beneficiaries of the Trust are the holders of trust units of the Trust ("Unitholders"). The head and principal offices of the Trust are located at 900, 606 - 4<sup>th</sup> Street S.W., Calgary, Alberta, T2P 1T1. The registered office of the Trust is 3700, 400 - 3<sup>rd</sup> Avenue S.W., Calgary, Alberta, T2P 4H2;

3.7. the Trust is a reporting issuer (where such concept exists) in each of the provinces of Canada and is a "qualifying issuer" as defined under Multilateral Instrument 45-102 *Resale of Securities* ("MI 45-102");

3.8. the Trust is authorized to issue an unlimited number of trust units ("Trust Units"). As at November 26, 2001, there were 17,022,321 Trust Units issued and outstanding;

3.9. the Trust was established to acquire and hold, directly and indirectly, interests in petroleum and natural gas properties. Cash flow from the properties is distributed from Provident to the Trust by way of royalty payments, interest payments and principal repayments on promissory notes issued by Provident to the Trust. Distributable cash generated by the royalties, interest and principal repayments is then distributed monthly to Unitholders;

3.10. the Unitholders will continue to be entitled to the entire economic interest in Provident (after the proposed amalgamation with Richland), as a wholly-owned subsidiary of the Trust, upon the Arrangement being completed;

3.11. The attributes of the Trust Units are as follows:

3.11.1. each Trust Unit represents an equal fractional undivided beneficial interest in any distribution by the Trust (whether of net income, net realized capital gains or other amounts) and in any net assets of the Trust in the event of termination or winding-up;

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3.11.2. Trust Units shall rank among themselves equally and rateably without discrimination, preference or priority;

3.11.3. Unitholders are not subject to any liability whatsoever to any person in connection with the assets, the obligations or the affairs of the Trust or with respect to any act performed by the trustee of the Trust;

3.11.4. Unitholders are entitled to receive a proportionate share of the net income, net realized capital gains or other amounts of the Trust to be distributed on a monthly basis;

3.11.5. the Trust Units have no restrictions on transfer and are listed on The Toronto Stock Exchange (the "TSE") under the symbol "PVE.UN" and the American Stock Exchange (the "AMEX") under the symbol "PVX";

3.11.6. the Trust Units are redeemable at the option of the holder from time to time and at any time either in cash or by the distribution of a note instrument having an aggregate principal amount equal to the amount of cash such redeeming holder of Trust Units would otherwise be entitled to; and

3.11.7. annual meetings of the Unitholders (with the Unitholders being entitled to one vote per Trust Unit) shall be held each year at which the trustee shall be appointed, auditors shall be appointed and other matters requiring approval of Unitholders shall be put forward for approval as may be required from time to time;

3.12. to the best of its knowledge, information and belief, the Trust is not in default of any requirements under the Legislation;

3.13. Provident is a corporation wholly-owned by the Trust. Provident, was incorporated under the ABCA on January 17, 2001 and was amalgamated with Founders Energy Ltd. pursuant to a statutory plan of arrangement. Provident was amalgamated with Maxx Petroleum Ltd. effective May 25, 2001 pursuant to a statutory plan of arrangement. It is anticipated that as the final step in the Arrangement, Provident will amalgamate with Richland and continue under the name "Provident Energy Ltd." The head and principal offices of Provident are located at 900, 606 – 4<sup>th</sup> Street S.W., Calgary, Alberta, T2P 1T1. The registered office of Provident is 3700, 400 – 3<sup>rd</sup> Avenue S.W., Calgary, Alberta, T2P 4H2. The principal business of Provident is to manage and administer the operating activities associated with the oil and gas properties in which it has an interest;

3.14. Terraquest is a corporation incorporated under the ABCA and is headquartered in Calgary, Alberta.

3.15. Terraquest has not conducted any business to date, except for the entering into of an arrangement agreement with Richland, Provident and the Trust. After giving effect to the Arrangement, the properties currently owned by Richland located at Bow Island, Firebird, McLeans Creek, Eyremore, and Whitecourt, Alberta (collectively, the "Terraquest Properties"), will be transferred to Terraquest.

3.16. the authorized capital of Terraquest consists of an unlimited number of common shares ("Terraquest Shares"), an unlimited number of first preferred shares and an unlimited number of second preferred shares of which, as at the date hereof, one Terraquest Share is issued and outstanding and such Terraquest Share is held by Richland;

3.17. Terraquest is not a reporting issuer in any jurisdiction;

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3.18. Terraquest will apply to list the Terraquest Shares on either the TSE or the Canadian Venture Exchange Inc.

3.19. the proposed directors and officers of Terraquest are listed in Appendix E to the Information Circular of Richland (the "Information Circular");

3.20. on November 26, 2001, Richland and the Trust announced the intention, by way of the Arrangement, to transfer the Terraquest Properties to Terraquest and then to combine the remaining business of Richland with Provident;

3.21. under the terms of the Arrangement, the Richland shareholders will exchange their Common Shares for Trust Units and Terraquest Shares on the basis of 0.40 Trust Units and one Terraquest Share for each Common Share held;

3.22. Terraquest intends to issue approximately 9,500,000 Terraquest Shares to investors, including certain directors and officers of Richland and associates of them, a portion of which will be issued as "flow-through" shares, and will be issued at a price per share determined by the Terraquest Board of Directors but will not be less than the weighted average trading price of the Terraquest Shares for the first five trading days following the listing of the Terraquest shares on the TSE;

3.23. the Arrangement consists of a number of steps and trades as set out in the Plan of Arrangement, which was appended to the Information Circular, none of which will be effective unless all are effective;

3.24. the Arrangement provides for the following transactions to occur:

3.24.1. all Common Shares, other than Common Shares owned by dissenting shareholders ("Dissenting Shares") owned by non-residents of Canada within the meaning of the *Income Tax Act of Canada* ("Tax Act") shall be transferred to Provident (free of any claims) and such Richland Common shareholders ("Richland Shareholders") shall receive acquisition notes ("Acquisition Notes") and Terraquest Shares from Provident on the basis of the Per Share Principal Amount (as defined in the Information Circular) of Acquisition Notes and one Terraquest Share for every one Common Share and such Terraquest Shares shall be delivered by Provident to such Richland Shareholders upon the completion of the event referred to in subsection (f) below;

3.24.2. with respect to Common Shares acquired by Provident from the non-resident holders:

3.24.2.1. the non-resident holders of such Common Shares shall cease to be holders of such Common Shares and such non-resident holders shall be removed from the register of Common Shares with respect to such Common Shares;

3.24.3. Provident shall and shall be deemed to be, the transferee of all such Common Shares (free of any claims) and shall be entered in the register of Common Shares; and

3.24.4. there shall be deemed to be issued to each such holder an aggregate principal amount of Acquisition Notes equal to the number of Common Shares previously held by such holder multiplied by the Per Share Principal Amount and such holder's name shall be added to the register of Acquisition Notes and the share certificate representing Common Shares shall represent such principal amount of Acquisition Notes after the above described transfer;

3.24.5. the articles of Richland shall be amended to change its authorized capital by the addition of an unlimited amount of Class A Shares and Class B Shares;

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3.24.6. the articles of Richland shall be amended such that each of the issued and outstanding Common Shares (other than Dissenting Shares) shall and shall be deemed to be changed into one Class A Share and one Class B Share;

3.24.7. Richland shall sell the Terraquest Properties to Terraquest in accordance with the Purchase and Sale Agreement, pursuant to which Terraquest shall issue to Richland as consideration for the Terraquest Properties such number of Terraquest Shares which when added to Terraquest's then issued and outstanding shares shall be equal to the total number of Class B Shares issued and outstanding immediately after the change referred to in subsection (d) above;

3.24.8. Richland shall redeem all of the issued and outstanding Class B Shares in consideration of the transfer to the holders thereof of one Terraquest Share for each Class B Share redeemed;

3.24.9. each issued and outstanding Class A Share (other than those held by Provident), shall be and shall be deemed to be, exchanged with Provident for Acquisition Notes on the basis of the Per Share Principal Amount of Acquisition Notes for every one Class A Share;

3.24.10. the Acquisition Notes shall be, and shall be deemed to be, exchanged with the Trust, without recourse, resulting in the acquisition by the Trust, free of any claims, of all of the Acquisition Notes and the acquisition by the holders of Acquisition Notes, free of any claims, of Trust Units, on the basis of 0.40 Trust Units for each Per Share Principal Amount of Acquisition Notes;

3.24.11. in lieu of fractional Trust Units each holder of a Class A Share who would otherwise be entitled to receive a fractional Trust Unit shall be paid by the Trust an amount equal to the product of (a) such fraction multiplied by (b) \$9.50, such amount shall be provided to a depository ("the Depository") by the Trust upon request in full satisfaction of such fractional entitlement;

3.24.12. the trades and distributions of securities in this paragraph are defined as the "Trades";

3.25. if the effective date ("Effective Date") shall not occur on a date which results in the shareholders of Richland being unitholders of the Trust of record for the purposes of receiving the Trust's January 2002 cash distribution (such record date being anticipated to be on or about January 31, 2002) each Richland shareholder shall receive, in addition to the 0.40 of a Trust Unit and 1 Terraquest Share, a cash payment for each Common Share of 0.40 multiplied by the per Trust Unit amount of the January cash distribution payable by the Trust;

3.26. Richland and Provident shall be amalgamated and continue as one corporation under the name of "Provident Energy Ltd.";

3.27. the Information Circular has been provided to all shareholders and filed in the Jurisdictions and contains prospectus level disclosure of Richland, Terraquest, Provident and the Trust;

3.28. the Board of Directors of Richland has determined that the Arrangement is fair to the holders of Common Shares, that the Arrangement is in the best interests of Richland and the holders of Common Share and has resolved to unanimously recommend that the holders of Common Shares vote in favour of the Arrangement. The Board of Directors of Richland has also received an opinion from Griffiths McBurney & Partners, its financial advisors, that the Arrangement is fair, from a financial point of view, to the holders of Common Shares who vote in favour of the Arrangement;

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3.29. the Terraquest Properties have been the subject of continuous disclosure on an ongoing basis for more than 12 months pursuant to Richland's responsibilities as a reporting issuer;

3.30. the shareholders will have the right to dissent from the Arrangement under Section 184 of the ABCA, the Information Circular will disclose full particulars of this right in accordance with applicable law;

3.31. the Arrangement is subject to both shareholder approval and the approval of the Court of Queen's Bench of Alberta;

3.32. exemptions from registration and prospectus requirements of the Legislation in respect of the Trades, and exemptions from prospectus requirements of the Legislation in respect of the first trades in Terraquest shares and Trust Units following the Arrangement, are not otherwise available in all Jurisdictions;

3.33. Terraquest will not be a reporting issuer within the definitions of all of the applicable Jurisdictions at the time of the Arrangement becoming effective.

4. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

5. 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;

6. THE DECISION of the Decision Makers under the Legislation is that the Registration and Prospectus Requirements shall not apply to the Trades made in connection with the Arrangement provided that the first trade in Terraquest Shares and Trust Units acquired pursuant to this Decision in a Jurisdiction shall be deemed to be a distribution or primary distribution to the public under the Legislation of such Jurisdiction (the "Applicable Legislation") unless

(i) except in Québec, the conditions in subsections (3) or (4) of section 2.6 and subsections (2) or (3) of section 2.8 (except for the requirement that Terraquest have been a reporting issuer for 12 months) of MI 45-102 Resale of Securities are satisfied; and

(ii) in Québec,

(a) the issuer is a reporting issuer in Québec immediately preceding the trade,

(b) no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade,

(c) no extraordinary commission or consideration is paid to a person or company in respect of the trade, and

(d) if the selling shareholder is an insider or officer of the issuer, the selling shareholder has no reasonable grounds to believe that the issuer is in default of securities legislation.

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7. AND WHEREAS the Decision of the Decision Makers under the Legislation is that: in the provinces of British Columbia, Alberta, Saskatchewan, Ontario and Québec where an issuer can be deemed to be a reporting issuer or the equivalent under such provinces' securities laws, Terraquest shall be deemed to be a reporting issuer as of the effective time of the Arrangement.

DATED this 16<sup>th</sup> day of January, 2002.

Stephen P. Sibold, Q.C. Chair

Glenda A. Campbell, Vice-Chair