

# 2011 BCSECCOM 534

December 2, 2011

## Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203  
*Process for Exemptive Relief Applications in Multiple Jurisdictions*

National Instrument 51-102 *Continuous Disclosure Obligations*, s. 13.1 – all continuous disclosure requirements - General - An issuer wants an exemption from having to file continuous disclosure documents to permit it to rely on the continuous disclosure documents of its parent issuer - The issuer is an exchangeable share issuer that complies with all of the conditions for continuous disclosure relief in section 13.3 of National Instrument 51-102 *Continuous Disclosure Obligations* except that its parent issuer is not a Canadian reporting or SEC issuer and it has issued securities other than those permitted in s. 13.3(2)(c) of NI 51-102; the parent issuer meets the definition of designated foreign issuer under NI 71-102; the issuer will comply with conditions that parallel those in section 13.3 of NI 51-102, except it will file its parent's documents that a designated foreign issuer is entitled to file under NI 71-102

Multilateral Instrument 52-109 *Certification of Disclosure in Issuers Annual and Interim Filings*, s.8.6 – certification requirements - An issuer wants relief from the requirements in Parts 4 and 5 of NI 52-109 to file annual and interim certificates - The issuer has applied for and received an exemption from filing interim and annual financial statements

National Instrument 52-110 *Audit Committee Requirements* – audit committee requirements, s. 8.1 - An exchangeable share issuer wants an exemption from NI 52-110 *Audit Committees* - The issuer is an exchangeable share issuer; the issuer is exempt from continuous disclosure requirements provided it files the continuous disclosure of its parent; the parent meets the definition of designated foreign issuer under NI 71-102

National Instrument 58-101 *Disclosure of Corporate Governance Practices*, s.3.1 – corporate governance disclosure requirements - An exchangeable share issuer wants an exemption from NI 58-101 - The issuer is an exchangeable share issuer; the issuer is exempt from continuous disclosure requirements provided it files the continuous disclosure of its parent; the parent meets the definition of designated foreign issuer under NI 71-102

National Instrument 55-104 *Insider Reporting Requirements and Exemptions* – insider reporting requirements - An issuer wants relief from the requirement to file insider reports for its insiders - The issuer is an exchangeable security issuer that

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cannot rely on the exemption in National Instrument 51-102 *Continuous Disclosure Obligations* because it does not comply with all of the conditions for continuous disclosure relief in NI 51-102; as a result, its insiders cannot rely on the insider reporting exemptions in NI 51-102; the issuer has been granted discretionary relief from NI 51-102 requirements

National Instrument 55-102 *System for Electronic Disclosure by Insiders*, s.6.1 – issuer SEDI requirements - An issuer wants relief from the requirement to file an insider profile for its insiders - The issuer has applied for and received an exemption from the requirement to file insider reports for all of its insiders

### **Applicable Legislative Provisions**

*Securities Act*, ss. 85, 87 and 91

National Instrument 51-102, s. 13.1 and 13.3

Multilateral Instrument 52-109, s.8.6

National Instrument 52-110, s. 8.1

National Instrument 58-101, s. 3.1

National Instrument 55-102, s. 6.1

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  
San Leon Canada Limited  
(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) that:

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- (a) the Filer be exempt from continuous disclosure obligations under National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) and related Legislation;
  - (b) the Filer be exempt from requirements for the certification of disclosure in annual and interim filings under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (NI 52-109);
  - (c) the Filer be exempt from requirements relating to the composition and obligations of audit committees contained in National Instrument 52-110 *Audit Committees* (NI 52-110);
  - (d) the Filer be exempt from the requirements contained in National Instrument 58-101 *Disclosure of Corporate Governance Practices* (NI 58-101); and
  - (e) the insiders of the Filer be exempt from insider reporting requirements under the Legislation and requirements to file an insider profile under National Instrument 55-102 *System for Electronic Disclosure by Insiders* (NI 55-102) in respect of the securities of the Filer
- (collectively, the Exemptive Relief Sought, and such requirements, the Reporting Issuer Requirements).

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

- (a) the British Columbia Securities Commission (BCSC) 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 and the Yukon.

### **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. San Leon Energy plc (San Leon Energy) is a public company with limited liability incorporated and registered under the Irish Companies Act, 1963 to

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2009; San Leon Energy's Canadian head office is located in Vancouver, British Columbia;

2. San Leon Energy's ordinary shares (San Leon Energy Shares) are currently admitted to trading on the Alternative Investment Market (AIM) of the London Stock Exchange under the symbol "SLE";
3. San Leon Energy is subject to the reporting requirements of AIM;
4. San Leon Energy is a reporting issuer in the provinces of British Columbia and Alberta and the Yukon Territory and is not in default of securities legislation in any jurisdiction;
5. San Leon Energy is a "designated foreign issuer" as such term is defined in National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (NI 71-102) and, among its other continuous disclosure obligations, files and, where applicable, sends to its shareholders, analogous documents filed with AIM, under the requirements of NI 71-102;
6. San Leon Energy is a "designated foreign issuer" as such term is defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (NI 52-107) and uses accounting principles acceptable under AIM, under the requirements of NI 52-107.
7. prior to the completion of the Arrangement (as defined below):
  - (a) 0921644 B.C. Ltd. (Exchangeco) was a corporation incorporated under the *Business Corporations Act* (British Columbia) (the Act);
  - (b) the common shares of Exchangeco were not listed or posted for trading on any stock exchange;
  - (c) Exchangeco was not a reporting issuer or the equivalent in any of the provinces or territories of Canada;
  - (d) San Leon Energy owned all of the issued and outstanding common shares of 0921642 B.C. Unlimited Liability Company (Callco), and Callco owned all of the issued and outstanding common shares in the capital of Exchangeco;
8. prior to the completion of the Arrangement:

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- (a) Realm Energy International Corporation (Realm Energy) was a corporation existing under the Act with a head office located in Vancouver, British Columbia;
  - (b) the common shares of Realm Energy (Realm Energy Shares) were listed on the TSX Venture Exchange under the symbol “RLM”;
  - (c) Realm Energy was a reporting issuer in the provinces of British Columbia and Alberta and the Yukon Territory;
9. on November 10, 2011 (the Effective Date), San Leon Energy, through Exchangeco, acquired all of the issued and outstanding Realm Energy Shares by way of a plan of arrangement (the Arrangement) under the Act;
10. under the Arrangement, each shareholder of Realm Energy received for each Realm Energy Share held, at their election and subject to pro-ration: (a) \$1.30 in cash; (b) 3.3 San Leon Energy Shares or 3.3 exchangeable shares (Exchangeable Shares) in the capital of Exchangeco, exchangeable, at the holder’s option, into San Leon Energy Shares; or (c) a combination thereof, subject to a maximum of C\$17.7 million in cash (subject to adjustment) being paid to Realm Energy shareholders in the aggregate, in exchange for the aggregate number of Realm Energy Shares in respect of which such election was made; as a result of certain Realm Energy shareholders exercising rights of dissent under Canadian law, the cash available was adjusted to a maximum of approximately C\$14.0 million; in aggregate, 284,084,336 San Leon Energy Shares and 41,292,848 Exchangeable Shares were issued under the Arrangement;
11. immediately following the acquisition of Realm Energy by Exchangeco and as part of the Arrangement, Exchangeco and Realm Energy amalgamated to form the Filer;
12. the Filer is a corporation amalgamated under the Act and formed under the amalgamation of Exchangeco and Realm Energy, with its head office located in Vancouver, British Columbia;
13. the Filer is a reporting issuer in provinces of British Columbia and Alberta and the Yukon Territory as it inherited the reporting issuer status of Realm Energy; the Filer is not in default of securities legislation in any jurisdiction;
14. the Filer’s outstanding capital is comprised of (i) common shares, all of which are owned indirectly (through Callco) by San Leon Energy; and (ii) Exchangeable Shares, which are exchangeable into San Leon Energy Shares;

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15. the Filer is a subsidiary of San Leon Energy and its operational and financial results are consolidated with the operational and financial results of San Leon Energy for the purposes of San Leon Energy's satisfaction of its continuous disclosure obligations;
16. the Filer has no intention of (i) accessing the capital markets in the future by issuing any further securities to the public; and (ii) issuing any securities other than those that are currently outstanding;
17. the Exchangeable Shares have certain rights, privileges, restrictions and conditions attaching to them and provide the holders thereof with economic rights which are, as nearly as possible, equivalent to the San Leon Energy Shares;
18. on the Effective Date, San Leon Energy, Exchangeco (now the Filer) and the trustee entered into an exchange trust agreement, under which the holders of Exchangeable Shares were not provided with any voting rights in respect of matters relating to San Leon Energy;
19. the Filer is not entitled to rely on the exemptions in section 13.3 of NI 51-102 in respect of the Exchangeable Shares because the Exchangeable Shares do not provide voting rights equivalent to the San Leon Energy Shares, and accordingly are not "designated exchangeable securities" for the purposes of section 13.3;
20. the Filer cannot comply with the exemptions for exchangeable security issuers in NI 52-109, NI 52-110, NI 58-101, and NI 55-102 because these exemptions require exchangeable security issuers to comply with section 13.3 of NI 51-102; and
21. continuous disclosure about San Leon Energy is more relevant to holders of Exchangeable Shares than continuous disclosure about the Filer because the economic value of the Exchangeable Shares is ultimately determined by the operational and financial performance of San Leon Energy and not the Filer, and because the Exchangeable Shares are directly exchangeable for San Leon Energy Shares.

### **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.

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The decision of the principal regulator under the Legislation is that the Exemptive Relief Sought is granted provided that:

- (a) San Leon Energy is the beneficial owner of all of the issued and outstanding voting securities of the Filer;
- (b) the Filer does not issue any securities other than (i) the Exchangeable Shares and (ii) the securities issued to, and held by, San Leon Energy or an affiliate of San Leon Energy;
- (c) San Leon Energy is a designated foreign issuer (as that term is defined in NI 71-102 and NI 52-107);
- (d) the Filer files on SEDAR copies of all documents that San Leon Energy is required to file with AIM at the same time as, or as soon as practicable after, the filing by San Leon Energy of those documents with AIM;
- (e) the Filer concurrently sends to all registered and beneficial holders of Exchangeable Shares all disclosure materials that are sent to the holders of San Leon Energy Shares, in the manner and at the time required by AIM;
- (f) San Leon Energy complies with the requirements of AIM in respect of making public disclosure of material information on a timely basis, and immediately issues in Canada and files on SEDAR any news release that discloses a material change in its affairs;
- (g) the Filer complies with the requirements of the Legislation to issue a news release and file a material change report on SEDAR in accordance with Part 7 of NI 51-102 for all material changes in respect of the Filer's affairs that are not also material changes in San Leon Energy's affairs;
- (h) San Leon Energy includes in all mailings of proxy solicitation materials to registered and beneficial holders of Exchangeable Shares in a clear and concise statement that:
  - (i) explains the reason the mailed material relates solely to San Leon Energy;
  - (ii) indicates that the Exchangeable Shares are the economic equivalent to San Leon Energy Shares; and
  - (iii) describes the voting rights associated with the Exchangeable Shares;

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- (i) each insider of the Filer, other than directors or senior officers of San Leon Energy, does not receive, in the ordinary course, information as to material facts or material changes concerning the Filer before the material facts or material changes are generally disclosed; and
- (j) each insider of the Filer, other than directors or senior officers of San Leon Energy, is not an insider of San Leon Energy in any capacity other than by virtue of being an insider of the Filer.

Martin Eady, CA  
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British Columbia Securities Commission