

## Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*- offeror granted exemption from Part 2 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* in connection with the offeror's bid for the outstanding securities of a non-reporting issuer.

## Applicable Legislative Provisions

National Instrument 62-104 *Take-Over Bids and Issuer Bids*, Part 2; Section 6.1

**Citation: Re Catamount Resources Inc., 2017 ABASC 133**

**Date: 20170804**

In the Matter of  
The Securities Legislation of  
Alberta and Ontario  
(the **Jurisdictions**)

and

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

and

In the Matter of  
2031373 Alberta Ltd. (**203 Alberta**) and  
Catamount Resources Inc. (the **Buyer**)  
(together, the **Filers**)

Decision

## Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filers for a decision (the **Exemption Sought**) under the securities legislation of the Jurisdictions (the **Legislation**) that the Filers are exempt from Part 2 of National Instrument 62-104 *Take-over Bids and Issuer Bids* (**NI 62-104**) with respect to the proposed acquisition by the Buyer of all of the issued and outstanding common shares (**Shares**) of 203 Alberta.

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

- (a) the Alberta Securities Commission is the principal regulator for this 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 Quebec and Saskatchewan; and

- (c) this decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

### **Interpretation**

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**

This decision is based on the following facts represented by the Filers:

1. 203 Alberta is a corporation subsisting under the laws of Alberta pursuant to the *Business Corporations Act* (Alberta) (the **ABCA**), with its head office located in Calgary, Alberta. It is not a reporting issuer in any jurisdiction of Canada and there is no published market in respect of the Shares.
2. The Buyer is a corporation subsisting under the laws of Alberta pursuant to the ABCA, with its head office located in Calgary, Alberta. The Buyer is not a reporting issuer in any jurisdiction of Canada.
3. The Filers are not in default of securities legislation in any jurisdiction of Canada.
4. The Buyer is proposing to acquire all of the issued and outstanding Shares for cash (the **Bid**). The Bid will be made to each holder of Shares (each a **Shareholder**) and each Shareholder will be offered the same consideration under the Bid. The Bid will constitute a "take-over bid" as that term is defined in NI 62-104.
5. Pursuant to section 4.3 of NI 62-104 (the **NRI Exemption**) a take-over bid is exempt from Part 2 of NI 62-104 if all of the following conditions are satisfied:
  - (a) the offeree issuer is not a reporting issuer;
  - (b) there is no published market for the securities that are the subject of the bid;
  - (c) the number of holders of that class of securities at the commencement of the bid is not more than 50, exclusive of holders who
    - (i) are in the employment of the offeree issuer or an affiliate of the offeree issuer, or
    - (ii) were formerly in the employment of the offeree issuer or in the employment of an entity that was an affiliate of the offeree issuer at the time of that employment, and who while in that employment were, and have continued after that employment to be, security holders of the offeree issuer.
6. The Buyer cannot rely on the NRI Exemption with respect to the Shares because the Shareholders number more than 50.

7. According to 203 Alberta's shareholder register, there are 67 registered Shareholders, of whom:
  - (a) 30 reside in Alberta, holding 11,366,711 Shares or 50.83% of the issued and outstanding Shares;
  - (b) 7 reside in Ontario, holding 3,583,016 Shares or 16.02% of the issued and outstanding Shares;
  - (c) 1 resides in Saskatchewan, holding 350,000 Shares or 1.56% of the issued and outstanding Shares;
  - (d) 1 resides in Quebec, holding 438,895 Shares or 1.96% of the issued and outstanding Shares; and
  - (e) 1 is a registrant with an office in Quebec, holding 6,622,000 Shares or 29.61% of the issued and outstanding Shares registered in the name of 28 separate Shareholders.
8. Based on information supplied by and on behalf of 203 Alberta's management, there are 59 separate beneficial Shareholders of 203 Alberta, of whom
  - (a) 3 are officers of 203 Alberta, and
  - (b) 2 are employees of 203 Alberta holding positions other than officer positions,such that excluding employees, 203 Alberta has 54 beneficial Shareholders.
9. 203 Alberta is fundamentally a closely held issuer and the majority of its security holders are directors, officers or employees of 203 Alberta, or persons or companies that have a close personal or business relationship with a director or executive officer of 203 Alberta.
10. Although 203 Alberta is not a "private issuer" as defined in National Instrument 45-106 *Prospectus Exemptions* (NI 45-106), all of the Shareholders are persons to whom a private issuer is permitted to distribute securities under the private issuer exemption in section 2.4 of NI 45-106.

**Decision**

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 Exemption Sought is granted.

*“original signed by”*

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Denise Weeres  
Manager, Legal  
Corporate Finance  
Alberta Securities Commission