

Headnote

Mutual Reliance Review System for Exemptive Relief Applications -- Relief granted from the issuer bid requirements of Part XX in connection with the proposed repurchase of an "out of the money" convertible debentures where offer is made to accredited investors and purpose of transaction is to re-finance debt.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., Part XX, s. 104(2)(c).

April 20, 2007

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,
MANITOBA AND ONTARIO
(the Jurisdictions)**

AND

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

AND

**IN THE MATTER OF
LANDMARK OIL & GAS CORP.
(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) that the requirements contained in the Legislation, including Sections 105 to 110 of the *Securities Act* (British Columbia) (the Act) and the related provisions set out in the regulations to the Act and the equivalent provisions of the securities legislation of each of the other Jurisdictions, relating to, among other things, commencement and delivery of an issuer bid circular and any notices of change or variation thereto, minimum deposit periods and withdrawal rights, take-up of and payment for securities tendered to an issuer bid, disclosure, restrictions upon purchases of securities, formal valuation, identical consideration and collateral

benefits contained in the Legislation (collectively, the Issuer Bid Requirements) do not apply to the repurchase or redemption of all the issued and outstanding debentures of the Filer (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications (the MRRS):

(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 contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

3 This decision is based on the following facts represented by the Filer:

1. the Filer is a corporation incorporated under the *Business Corporations Act* (Alberta) on February 21, 2001; the head office of the Filer is located at Suite 303, 1726 Dolphin Avenue, Kelowna, British Columbia V1Y 9R9;

2. the Filer is a reporting issuer in British Columbia and Alberta and, to the best of its knowledge, is not in default of any requirements of the Legislation;

3. the Filer is authorized to issue an unlimited number of common shares (Common Shares) without nominal or par value; the Common Shares are listed for trading on the TSX Venture Exchange (the Exchange) under the symbol "LMK"; the Filer has no issued and outstanding debt securities other than the Debentures;

4. on April 22, 2005, the Filer issued, on a private placement basis, an aggregate principal amount of \$330,000 of unsecured convertible debentures (the April 2005 Debentures); the April 2005 Debentures bear interest at 10% per annum, payable quarterly, and will mature and be fully payable on April 22, 2007; the April 2005 Debentures are convertible at any time prior to maturity at the holders' option at a conversion rate of one Common Share per \$0.25 of principal amount;

5. on September 14, 2005, the Filer issued, on a private placement basis, an aggregate principal amount of \$1,250,000 of unsecured convertible debentures (the September 2005 Debentures); the September 2005 Debentures bear interest at 12% per annum, payable monthly, and will mature and be fully payable on September 14, 2007; the September 2005 Debentures are convertible at any time prior to maturity at the holders' option at a conversion rate of one Common Share per \$0.25 of principal amount in the first year and \$0.40 of principal amount in the second year;

6. on November 18, 2005 and December 30, 2005, the Filer issued, on a private placement basis, an aggregate principal amount of \$1,914,900 of unsecured convertible debentures (the November/December 2005 Debentures); the November/December 2005 Debentures bear interest at 12% per annum, payable monthly, and will mature and be fully payable on November 18, 2007 and December 30, 2007, respectively; the November/December 2005 Debentures are convertible at any time prior to maturity at the holders' option at a conversion rate of one Common Share per \$0.35 of principal amount in the first year and \$0.50 of principal amount in the second year;

7. on August 15, 2006, the Filer issued, on a private placement basis, an aggregate principal amount of \$1,065,750 of unsecured convertible debentures (the August 2006 Debentures); the August 2006 Debentures bear interest at 12% per annum, payable bi-monthly, and will mature and be fully payable on August 15, 2008; the August 2006 Debentures are convertible at any time prior to maturity at the holders' option at a conversion rate of one Common Share per \$0.75 of principal amount;

8. on December 31, 2006, the Filer issued, on a private placement basis, an aggregate principal amount of \$1,000,000 of unsecured convertible debentures (the December 2006 Debentures); the December 2006 Debentures bear interest at 12% per annum, payable monthly, and will mature and be fully payable on December 31, 2008; the April 2005 Debentures are convertible at any time prior to maturity at the holders' option at a conversion rate of one Common Share per \$0.50 of principal amount in the first year and \$1.00 of principal amount in the second year;

9. the April 2005 Debentures, the September 2005 Debentures, the November/December 2005 Debentures, the August 2006 Debentures and the December 2006 Debentures are collectively referred to herein as the Debentures; the Debentures were issued to

"accredited investors" (within the meaning of National Instrument 45-106 Prospectus and Registration Exemptions (NI 45-106)) resident in the Jurisdictions;

10. the Debentures are not listed on any stock exchange and there is no secondary market for them;

11. other than an aggregate principal amount of \$130,000 of the April 2005 Debentures currently held by two directors of the Filer, none of the Debentures are owned by any insiders of the Filer;

12. the Filer has issued 160,000 Common Shares upon conversion of a principal amount of \$40,000 of the April 2005 Debentures, 400,000 Common Shares upon conversion of a principal amount of \$100,000 of the September 2005 Debentures, and 457,141 Common Shares upon conversion of a principal amount of \$160,000 of the December 2005 Debentures; the conversion rights of approximately 94.6% of the aggregate principal amount of the Debentures have not been exercised;

13. there are no provisions in the instruments describing the terms and conditions of the Debentures that would permit the purchase, redemption or acquisition of the Debentures by the Filer without the prior agreement of the holders thereof to the purchase, redemption or acquisition except in the case of a change of control;

14. subject to the approval of the Exchange, the Filer intends to repurchase or redeem all the issued and outstanding Debentures by issuing to each of the holders thereof unsecured convertible debentures (the New Debentures) representing the equivalent principal amount originally purchased by such holder, each bearing interest at 12% per annum in the first year, 12.5% per annum in the second year and 13% per annum in the third year, payable monthly, and maturing on the third anniversary of the date of issuance thereof; the New Debentures are convertible at any time prior to maturity at the holders' option at a conversion rate of one Common Share per \$0.25 of principal amount in the first year, \$0.50 of principal amount in the second year and \$0.75 of principal amount in the third year; all other material terms of the New Debentures will remain substantially similar, if not identical, to those contained in the Debentures but for expanded redemption and repurchase rights;

15. all holders of the Debentures will be treated equally;

16. in light of the fact that the Debentures are out-of-the-money, the conversion features of the Debentures are of no material value and the purpose of the repurchase or redemption of the Debentures is not to acquire, directly or indirectly, the Common Shares, but rather to attempt to re-finance the Filer's outstanding indebtedness on more favourable terms for the Filer and for the holders of the Debentures;

17. the terms of the New Debentures are superior to the terms of the Debentures; without any action required or any costs imposed on the part of the holders of the Debentures, other than the surrender of the Debentures, they can have the benefit of acquiring the same instrument with more favourable terms and an extended timeframe to exercise their conversion rights; further, the holders of the Debentures are under no obligation to surrender their Debentures in exchange for the New Debentures; if a holder of Debentures does not wish to receive New Debentures, the holder continues to be bound by the terms of the Debentures and the holder is entitled to receive a return of the holder's initial investment plus interest in the Debentures;

18. the repurchase or redemption of the Debentures will not adversely affect the Filer or the rights of any of the Filer's shareholders and will not materially affect control of the Filer;

19. the Filer believes that all holders of the Debentures are knowledgeable of the affairs of the Filer, consider themselves able to evaluate the repurchase or redemption of the Debentures without the assistance of an issuer bid circular or a valuation of the Debentures; the Filer believes that all holders of the Debentures are sophisticated investors with extensive knowledge of the Canadian securities markets and would qualify as "accredited investors" within the meaning of NI 45-106 and therefore do not require the protections afforded by the Issuer Bid Requirements; and

20. the repurchase or redemption of the Debentures will constitute an "issuer bid" under the Legislation; the exemptions from the Issuer Bid Requirements contained in the Legislation are not available to the Filer.

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 the Requested Relief is granted provided that:

(a) the repurchase or redemption of the Debentures is carried out by issuing the New Debentures to each of the holders of the Debentures representing the equivalent principal amount originally purchased by such holder;

(b) the New Debentures are issued to holders who, at the distribution date of each of the New Debentures, are "accredited investors" as that term is defined in NI 45-106;

(c) the Filer provides each holder of Debentures with written notice of the proposed issuance of the New Debentures describing why the Filer is proposing the repurchase or redemption, the material terms of the New Debentures, the proposed form of the New Debentures, and the date the holder of Debentures is required to make an investment decision about the repurchase or redemption of the Debentures; and

(d) the Filer provides the notice in paragraph (c) above to each holder of Debentures at the same time, and at least 20 days before the holders of the Debentures are required to make an investment decision about the repurchase or redemption of the Debentures.

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