

**THE SECURITIES ACT**

)

**Order No. 5668**

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**Sections 95(2)(c) and 94(2)**

)

**April 2, 2008**

**SHERRITT INTERNATIONAL CORPORATION**

**WHEREAS**

(A) Sherritt International Corporation (the "Applicant") has applied to The Manitoba Securities Commission (the "Commission") pursuant to section 95(2)(c) of *The Securities Act* (Manitoba) R.S.M. 1988 c.S50 (the "Act") and section 94(2) of The Regulations for an Order exempting the Applicant from:

(a) the requirement under the Legislation that a take-over bid circular in respect of an "insider bid" contain a summary of a valuation of the offeree issuer (the Formal Valuation Requirement) and an outline of every prior valuation of the offeree issuer made within 24 months preceding the date of the take-over bid, including a description of the source and circumstances under which it was made (the Prior Valuation Requirement and together with the Formal Valuation Requirement, the Valuation Requirements) in connection with the proposed offer (the Offer) by the Filer to purchase all of the outstanding units (the Units) of Royal Utilities Income Fund (Royal Utilities); and

(b) the Valuation Requirements in connection with any second step business combination or going private transaction pursued by the Filer.

(collectively, the Exemptive Relief Sought).

(B) The Applicant has represented to the Commission that:

1. The Filer commenced the Offer by mailing the Offer and a take-over bid circular (the Circular), prepared in compliance with the Legislation and the securities legislation of the provinces of Canada other than the Jurisdictions, to the registered holder of Units on March 22, 2008.

2. Under the terms of the Offer, the consideration offered for each Unit is, at the election of each holder of Units: (i) \$12.25 in cash (the Cash Alternative); (ii) 0.8033 of a common share of Sherritt (the Share Alternative), or any combination thereof, subject, in each case, to pro rata as set forth in the Offer. The total amount of cash available under the Offer is limited to \$225 million and the total number of common shares of Sherritt (the Sherritt Shares) is limited to 31,438,717 Sherritt Shares.

3. The Units are listed and posted for trading on the Toronto Stock Exchange (TSX) under the symbol "RU.UN". The Sherritt Shares are listed and posted for trading on the TSX under the

symbol "S". The closing prices of the Units and the Sherritt Shares on March 17, 2008, the last trading day prior to the announcement of the Offeror's intention to make the Offer, were \$10.03 and \$16.41, respectively.

4. The Offeror filed a prospectus supplement dated March 19, 2008 with respect to the issuance of Sherritt Shares at \$15.25 per Sherritt Share. The Cash Alternative and, based on a \$15.25 value per Sherritt Share, the Share Alternative each represent a premium of approximately 22.1%, based on the closing trading price of the Units on the TSX on March 17, 2008, the last trading day prior to the announcement of the Offeror's intention to make the Offer, and a premium of approximately 15.5%, based on the volume weighted average trading price of the Units on the TSX for the 20 trading days immediately preceding March 18, 2008.

5. The Filer is a corporation continued under the *Business Corporations Act* (Ontario).

6. The Filer owns 40,255,342 Units, representing approximately 41.2% of the outstanding Units. The Filer also provides management and administrative services to Royal Utilities pursuant to the terms of a management and administrative services agreement.

7. Because, among other things, the Filer beneficially owns more than 10% of the outstanding Units, the Offer is an "insider bid" for the purpose of the Legislation and therefore subjects the Circular to the Valuation Requirements.

8. In Ontario and Quebec, the Filer is exempt from the requirement to obtain a formal valuation pursuant to section 2.4(1)(b)(ii)(B) of Multilateral Instrument 61-101 - *Protection of Minority Security Holders in Special Transactions* (MI 61-101), on the basis that the Filer and OTPPB have, through arm's length negotiations, entered into the Lock-Up Agreement and pursuant to the Lock-Up Agreement, OTPPB has agreed to tender all of its Units, representing approximately 41.2% of the outstanding Units, to the Offer.

9. In accordance with Section 2.2(c) of MI 61-101, the Filer has included the required disclosure in the Circular regarding the formal valuation exemption on which the Filer is relying and the facts supporting that reliance.

10. As disclosed in the Circular, the Filer believes, after reasonable inquiry, that at the time the Lock-up Agreement was entered into:

(a) 11. the consideration was determined as a result of arm's length negotiations;

(b) OTPPB had full knowledge and access to information concerning Royal Utilities and its securities;

(c) any factors peculiar to OTPPB, including non-financial factors, that were considered relevant by OTPPB in assessing the consideration did not have the effect of reducing the price that would otherwise have been considered acceptable by OTPPB; and

(d) the Filer did not know of any material non-public information in respect of Royal Utilities or its securities that had not been generally disclosed and if generally disclosed, could have reasonably been expected to increase the consideration.

11. In accordance with Section 6.8 of MI 61-101, the requirement comparable to the Prior Valuation Requirement, the Filer has disclosed in the Circular that, after reasonable inquiry, it is not aware of any prior valuation (as such term is defined in MI 61-101) made in respect of Royal Utilities in the last 24 months before the date of the Circular.

12. If, within 120 days after the date the offer is made, the Offer is accepted by holders representing at least 90% of the total outstanding Units, excluding the Units held by the Filer, and the Filer agrees to be bound by the provisions of the Royal Utilities' declaration of trust dated June 26, 2006, amended on January 22, 2007 (the "Declaration of Trust") with respect to the Offer, the Filer may elect to acquire the remainder of the Units pursuant to the provisions of the Declaration of Trust, on the same terms as such Units were acquired under the Offer (a Compulsory Acquisition). It is the Filer's current intention to exercise its right of Compulsory Acquisition if a sufficient number of Units are tendered to the Offer.

13. If the Filer takes up and pays for Units pursuant to the Offer and a right of Compulsory Acquisition is not available for any reason or if the Filer determines not to avail itself of such right, the Filer currently intends to use reasonable commercial efforts to acquire directly or indirectly, all of the Units in accordance with applicable law and the Declaration of Trust. Such means include, by way of example but without limitation: (a) the transfer by Royal Utilities and/or its subsidiaries of its assets to, and the assumption of liabilities of Royal Utilities and/or its subsidiaries by, the Filer or one or more affiliates of the Filer; (b) the redemption of all of the outstanding notes and shares of Prairie Mines & Royalty Ltd., a wholly-owned subsidiary of Royal Utilities; and the redemption of all of the outstanding Units (other than those held by the Filer, its joint actors or affiliates) at the price per Unit under the Offer (which right is not currently permitted under the Declaration of Trust) and a wind-up and termination of any of such entities; (c) lowering the threshold to effect a Compulsory Acquisition to 66 $\frac{2}{3}$ % of the outstanding Units; and (d) amendments to the Declaration of Trust to facilitate the implementation of such transactions and consequential matters (including amendments to permit the redemption of the Units at the option of Royal Utilities and to permit redemptions in cash or in kind) (each, a Subsequent Acquisition Transaction).

14. A Subsequent Acquisition Transaction may constitute a "business combination" within the meaning of MI 61-101 if that Subsequent Acquisition Transaction would result in the interest of a holder of Units (the "affected securities") being terminated without the consent of the Unitholder.

15. MI 61-101 provides that, unless exempted, an issuer proposing to carry out a business combination is required to prepare a valuation of the affected securities (and any non-cash consideration being offered therefor) and provide to the holders of the affected securities a summary of that valuation.

16. In connection with any Subsequent Acquisition Transaction, the Filer intends to rely upon the exemption contained under paragraph(d) — Second Step Business Combination in Section 4.4(1) of MI61-101 in that:

(a) the business combination in respect of Royal Utilities will be effected by the Filer or an affiliate of the Filer following the formal bid constituted by the Filer and will be in respect of the Units that will be the subject of the bid contemplated thereby;

(b) the business combination will be completed no later than 120 days after the expiry of the Offer;

(c) the consideration per Unit paid by the Filer or an affiliate of the Filer in the business combination:

(i) will be at least equal in value to the consideration per Unit that is being paid under the Offer; and

(ii) will be in the same form as the consideration per Unit being paid by the Filer under the Offer;

(d) the intent of the Filer to effect a Compulsory Acquisition or Subsequent Acquisition Transaction is disclosed in the Offer and the Circular; and

(e) the Offer and Circular disclose:

(i) the expected tax consequences to a Unitholder of both the Offer and a Subsequent Acquisition Transaction; and

(ii) that the tax consequences to a Unitholder of a Subsequent Acquisition Transaction may differ from the tax consequences to such Unitholder having Units acquired pursuant to the Offer.

17. In connection with any Subsequent Acquisition Transaction, the Filer may also rely on the exemption contained under Section 4.4(1)(b) of MI 61-101 which is comparable to the arm's length negotiation exemption contained in Section 2.4(1)(b)(ii)(B) in the context of an insider bid.

(C) The Commission is of the opinion that it would not be prejudicial to the public interest to grant the order requested.

**IT IS ORDERED:**

1. THAT the exemptive relief sought is granted provided that the Applicant can rely on the liquid market exemption under MI 61-101 and otherwise complies with any applicable requirements under MI 61-101.

**BY ORDER OF THE COMMISSION**

**Deputy Director**