

EARLY WARNING REPORT

National Instrument 62-103
*The Early Warning System and Related Take-Over Bid and
Insider Reporting Issues*

1. **The name and address of the offeror:**

1439442 Alberta Ltd.
Suite 1700, 335-8th Avenue SW
Calgary Alberta T2P 1C9

-and-

Tricap Partners Ltd.
Suite 1700, 335-8th Avenue SW
Calgary Alberta T2P 1C9

The Early Warning Report represented an effort to mislead the common shareholders of Birch Mountain as part of a cover-up for the failure to disclose material changes and insider trading.

2. **The designation and number or principal amount of securities and the offeror's securityholding percentage in the class of securities of which the offeror acquired ownership or control in the transaction or occurrence giving rise to the obligation to file the news release, and whether it was ownership or control that was acquired in those circumstances:**

1439442 Alberta Ltd. ("1439442"), a wholly-owned subsidiary of Tricap Partners Ltd. ("Tricap"), acquired \$29,280,000 aggregate principal amount of 6.0% convertible unsecured subordinated debentures (the "Unsecured Debentures") of Birch Mountain Resources Ltd. (the "Corporation"). The Unsecured Debentures were acquired by way of private agreement.

Assuming conversion of the entire principal amount of the Unsecured Debentures at their conversion price of \$3.30, 1439442 would have ownership and control over 8,872,727 common shares of the Corporation ("Common Shares"), representing approximately 9.5% of the aggregate issued and outstanding Common Shares.

3. **The designation and number or principal amount of securities and the offeror's securityholding percentage in the class of securities immediately after the transaction or occurrence giving rise to obligation to file the news release:**

See paragraph (2) above. As of June 30, 2008, based on information provided by the Corporation, there are approximately 84.4 million Common Shares issued and outstanding.

4. **The designation and number or principal amount of securities and the percentage of outstanding securities of the class of securities referred to in paragraph (3) over which:**

(a) **the offeror, either alone or together with any joint actors, has ownership and control:**

As reported in the early warning report filed September 19, 2008, Tricap, the sole shareholder of 1439442, owns a convertible debenture of the Corporation in the aggregate principal amount of \$34.5 million, convertible into Common Shares at the lower of \$0.40 per Common Share and current market price at the time of conversion (the

Mr. Pattison, a Director of Brookfield Asset Management, receives preferential treatment through a "private option agreement" with Tricap that is "concealed" and not available to other Birch Mountain debenture holders, shareholders, creditors. Is that not Oppression?

Mr. Pattison, a Director of Brookfield Asset Management, was not the only Unsecured Debenture Holder. The terms of the private agreement were not offered to other Unsecured Debenture holders.

"Debenture"). Given the Corporation's current receivership proceedings, neither Tricap nor 1439442 currently intends to exercise any conversion rights under the Debenture or the Unsecured Debentures.

(b) **the offeror, either alone or together with any joint actors, has ownership but control is held by other persons or companies other than the offeror or any joint actor:**

Not applicable.

(c) **the offeror, either alone or together with any joint actors, has exclusive or shared control but does not have ownership:**

Not applicable.

5. **The name of the market in which the transaction or occurrence that gave rise to the news release took place:**

The Unsecured Debentures were acquired by way of private agreement.

6. **The value, in Canadian dollars, of any consideration offered per security if the offeror acquired ownership of a security in the transaction or occurrence giving rise to the obligation to file a news release:**

1439442 paid nominal cash consideration and other non-cash consideration to acquire the Unsecured Debentures.

7. **The purpose of the offeror and any joint actors in effecting the transaction or occurrence that gave rise to the news release, including any future intention to acquire ownership of, or control over, additional securities of the reporting issuer:**

The Unsecured Debentures were acquired to provide Tricap, as a creditor in the Corporation's current receivership proceedings, with greater flexibility.

8. **The general nature and the material terms of any agreement, other than lending arrangements, with respect to securities of the reporting issuer entered into by the offeror, or any joint actor, and the issuer of the securities or any other person or company in connection with the transaction or occurrence giving rise to the news release, including agreements with respect to the acquisition, holding, disposition or voting of any of the securities:**

Not applicable.

9. **The names of any joint actors in connection with the disclosure required herein:**

Tricap Partners Ltd.

10. **In the case of a transaction or occurrence that did not take place on a stock exchange or other market that represents a published market for the securities, including an issuance from treasury, the nature and value of the consideration paid by the offeror:**

As stated above in Item 6, 1439442 paid nominal cash consideration and other non-cash consideration to acquire the Unsecured Debentures.

(1) Misleading statements based on Tricap's Early Warning Report dated 8-1-2008 announced: "Assuming conversion of the entire Debenture at the exercise price of \$0.31, the conversions price in effect as of 7-23-2008, Tricap would have ownership and control over 102,960,197 Common Shares representing approximately 55.0% of the aggregate issued and outstanding Common Shares as of 3-23-2008."

(2) Tricap's Early Warning Report dated 9-19-2008 announced: "Assuming conversion of the entire Debenture at an exercise price of \$0.40, Tricap would have ownership and control over 86,250,000 Common Shares representing approximately 50.5% of the aggregate issued and outstanding Common Shares as of 3-23-2008. Tricap does not own or control and outstanding Common Shares or other securities of the Corporation, other than the Debenture."

(3) Tricap's SEC filing dated 12-16-2008 described the dilution as follows: "As a result of both investments, Tricap may be deemed to be the sole beneficial owner of 3,458,872,727 Common Shares that would be issuable upon the conversion of the Unsecured Subordinated Convertible Debentures and the Secured Senior Convertible Debentures, which represents 97.6% of the Common Shares outstanding."

The Unsecured Debenture shares traded on the TSX until the TSX suspended trading on December 9, 2008.

Were the Unsecured Debentures shares eligible to be sold in a private agreement as long as there was a trading market? Was the EWR filed late to coincide with the TSX suspension of trading so that it would appear the only way to sell the Unsecured Debentures was by way of private agreement?

Misleading and may not be accurate in view of the fact that Birch Mountain was in receivership and the Birch Mountain Common Shares were listed on the TSX and AMEX.

This was to cover-up the extremely favorable options given to Pattison in the "Pattison Option Agreement" which does not disclose the future intention to acquire a portion of the assets of Birch Mountain. The words "greater flexibility" are intended to mislead and cover-up.

This is a cover-up and the words "not-applicable" are misleading in view of the fact that Tricap is a joint actor.

11. If applicable, a description of any change in any material fact set out in a previous report by the person or company under the early warning requirements or Part 4 of National Instrument 62-103 in respect of the reporting issuer's securities:

Not applicable.

12. If applicable, a description of the exemption from securities legislation being relied on by the offeror and the facts supporting that reliance.

Not applicable.

Dated this 10th day of December, 2008.

1439442 ALBERTA LTD.

By: "Jim Reid"

Name: Jim Reid

Title: President

TRICAP PARTNERS LTD.

By: "Jim Reid"

Name: Jim Reid

Title: Managing Partner, Energy

● Again, this was to cover-up the extremely favorable options given to Pattison in the Pattison Option Agreement.

● The "last shovel of dirt" thrown on the cover-up.

● The private agreement and material change took place on November 27, 2008. That would make this misleading disclosure several days past the filing deadline per the National Instrument 51-102 (7.1):
"(b) as soon as practicable, and in any event within 10 days of the date on which the change occurs, file a Form 51-102F3 Material Change Report with respect to the material change."

Coincidentally, this report was filed one day after the Unsecured Debenture shares were suspended from trading on the TSX.

This indicates Brookfield was more concerned about the TSX regulations over the OSC rules and national instrument. The TSX has the power to stop the money flow.