

2.1.4 Voyager Digital Ltd.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the take-over bid requirements in Part 2 of NI 62-104 to allow for take-over bid thresholds to be calculated based on the aggregate number of shares outstanding, as opposed to on a per-class basis – dual-class share structure among common shares and variable voting shares was implemented solely to ensure the issuer’s continued status as a “foreign private issuer” under U.S. securities laws; all classes of shares are freely tradable, trade under the same trading symbol, have identical economic attributes and are automatically and mandatorily inter-convertible based on the shareholder’s status as a U.S. Resident – relief granted to allow offerors to calculate their ownership position by combining the outstanding classes of shares for the purposes of determining whether take-over bid requirements are triggered.

Relief from the early warning requirements to allow early warning thresholds to be calculated based on the aggregate number of shares outstanding, as opposed to on a per-class basis – dual-class share structure among common shares and variable voting shares was implemented solely to ensure the issuer’s continued status as a “foreign private issuer” under U.S. securities laws; all classes of shares are freely tradable, trade under the same trading symbol, have identical economic attributes and are automatically and mandatorily inter-convertible based on the shareholder’s status as a U.S. Resident – relief granted to allow acquirors to calculate their ownership position by combining the outstanding classes of shares for the purposes of determining whether early warning requirements are triggered.

Relief from the requirement to issue and file a news release in section 5.4 of NI 62-104 to provide that the threshold triggering the requirement for an acquiror to file a news release during a take-over bid or an issuer bid is to be calculated based on the aggregate number of shares outstanding, as opposed to on a per-class basis – dual-class share structure among common shares and variable voting shares was implemented solely to ensure the issuer’s continued status as a “foreign private issuer” under U.S. securities laws; all classes of shares are freely tradable, trade under the same trading symbol, have identical economic attributes and are automatically and mandatorily inter-convertible based on the shareholder’s status as a U.S. Resident – relief granted to allow acquirors to calculate their ownership position by combining the outstanding classes of shares for the purposes of determining whether the requirement to file a news release during a take-over bid or issuer bid is triggered.

Relief so that the issuer can provide disclosure on significant shareholders in its information circular on a combined basis among shares, rather than for each class of shares – to be calculated based on the aggregate number of shares outstanding, as opposed to on a per-class basis – dual-class share structure among common shares and variable voting

shares was implemented solely to ensure the issuer’s continued status as a “foreign private issuer” under U.S. securities laws; all classes of shares are freely tradable, trade under the same trading symbol, have identical economic attributes and are automatically and mandatorily inter-convertible based on the shareholder’s status as a U.S. Resident – relief granted to allow issuer to provide disclosure on holders of its shares on a combined basis in its information circular.

Issuer granted relief from requirements under National Instrument 41-101 General Prospectus Requirements, National Instrument 51-102 Continuous Disclosure Requirements and OSC Rule 56-501 Restricted Shares to refer to Variable Voting Shares using prescribed restricted security term – relief subject to condition that specified alternate term is used.

Applicable Legislative Provisions

- National Instrument 62-104 Take-Over Bids and Issuer Bids, Part 2, ss. 5.2, 5.4 and 6.1.
- National Instrument 62-103 The Early Warning System and Related Take-Over Bid and Insider Reporting Issues, ss. 4.1, 4.5 and 11.1.
- National Instrument 51-102 Continuous Disclosure Obligations, s. 13.1.
- National Instrument 41-101 General Prospectus Requirements, s. 19.1.
- Ontario Securities Commission Rule 56-501 Restricted Shares, s. 4.2.

December 17, 2021

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the “Jurisdiction”)**

AND

**IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF
APPLICATIONS
IN MULTIPLE JURISDICTIONS**

AND

**IN THE MATTER OF
VOYAGER DIGITAL LTD.
(the “Filer”)**

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the “**Application**”) from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the “**Legislation**”) that:

1. in connection with National Instrument 62-104 *Take-Over Bids and Issuer Bids* (“**NI 62-104**”) and National Instrument 62-103 *The Early Warning*

System and Related Take-over Bid and Insider Reporting Issues (“**NI 62-103**”):

- (a) an offer to acquire outstanding variable voting shares (“**Variable Voting Shares**”) or common shares (“**Common Shares**”, and collectively with the Variable Voting Shares, the “**Shares**”) of the Filer, as the case may be, which would constitute a take-over bid under the Legislation as a result of the securities subject to the offer to acquire, together with the offeror’s securities, representing in the aggregate 20% or more of the outstanding Variable Voting Shares or Common Shares, as the case may be, at the date of the offer to acquire, be exempt from the requirements set out in Part 2 of NI 62-104 applicable to take-over bids (the “**TOB Relief**”),
- (b) an acquiror who triggers the disclosure and filing obligations pursuant to the early warning requirements contained in the Legislation with respect to the Variable Voting Shares or Common Shares, as the case may be, be exempt from such requirements (the “**Early Warning Relief**”),
- (c) an acquiror who acquires, during a take-over bid or an issuer bid, beneficial ownership of, or control or direction over, Variable Voting Shares, or Common Shares, as the case may be, that, together with the acquiror’s securities of that class, would constitute 5% or more of the outstanding Variable Voting Shares or Common Shares, as the case may be, be exempt from the requirement to issue and file a news release set out in section 5.4 of NI 62-104 (the “**News Release Relief**”) and together with the TOB Relief and Early Warning Relief, the “**Bid Relief**”);

2. the Filer be exempt from the disclosure requirements in Item 6.5 of Form 51-102F5 *Information Circular* (“**Form 51-102F5**”) (the “**Alternative Disclosure Relief**”, and together with the Bid Relief, the “**Aggregation Relief**”); and

3. the requirements under:
- (a) subsections 12.2(3) and 12.2(4) of National Instrument 41-101 *General Prospectus Exemptions* (“**NI 41-101**”), (ii) Item 1.13(1) of Form 41-101 F1 *Information Required in a Prospectus* (“**Form 41-101F1**”), and (iii) item 1.12(1) of Form 44-101F1 *Short Form Prospectus* (including in respect of any equivalent disclosure in a prospectus or supplement filed pursuant to National Instrument 44-102 *Shelf Distributions* (“**NI 44-102**”))

relating to the use of restricted security terms,

- (b) subsections 10.1(1)(a), 10.1(4) and 10.1(6) of NI 51-102 *Continuous Disclosure Obligations* (“**NI 51-102**”) relating to the use of restricted security terms, and
- (c) subsections 2.3(1)(1.), 2.3(1)(3.) and 2.3(2) of Ontario Securities Commission Rule 56-501 *Restricted Shares* (“**OSC Rule 56-501**”) relating to the use of restricted share terms,

shall not apply to the Variable Voting Shares (the “**Nomenclature Relief**”, and together with the Aggregation Relief, the “**Exemption Sought**”).

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

- (a) the Ontario Securities Commission 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, British Columbia, Manitoba, New Brunswick, Newfoundland, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Quebec, Saskatchewan and the Yukon Territory.

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102, NI 62-103 and NI 62-104, including without limitation, “offeror”, “offeror’s securities”, “offer to acquire”, “acquiror”, “acquiror’s securities”, “eligible institutional investor”, and “security-holding percentage”, 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 Filer:

1. The Filer is a corporation incorporated under the *Business Corporations Act* (British Columbia) (the “**BCBCA**”).
2. The Filer is a reporting issuer in each of the provinces and territories of Canada and is not in default of the securities legislation in any of these jurisdictions.
3. The Filer’s head office is located at 33 Irving Plaza, Suite 3060 New York, NY 10003.
4. The Filer’s authorized share capital consists of (i) an unlimited number of Common Shares and (ii) an unlimited number of Variable Voting Shares.

5. As of December 16, 2021, 170,022,827 Shares are issued and outstanding.
6. The Common Shares and Variable Voting Shares will be listed on the Toronto Stock Exchange (“TSX”) under the symbol “VOYG” on or about December 23, 2021.
7. The Filer is a publicly traded cryptocurrency platform in the United States. The Filer has implemented procedures in order to prevent residents in the provinces and territories of Canada from becoming clients or customers of its crypto-asset trading and investing business. These measures include KYC procedures and geofencing the availability of the Voyager app. To the best of the Filer’s knowledge, the Filer does not have any clients or customers who are ordinarily resident in, or have immigrated to, Canada.

Aggregation Relief

8. As at December 31, 2020, the Filer believes it qualified as a “foreign private issuer” (“FPI”) under Rule 405 of the *U.S. Securities Act of 1933*, as amended, and Rule 3b-4(b) of the *U.S. Securities Exchange Act of 1934*, as amended, as:
 - (a) the Filer is continued under the laws of British Columbia; and
 - (b) based on reasonable enquiry, less than 50% of the Filer’s outstanding voting securities are held directly or indirectly by residents of the United States (the “**FPI Threshold**”).
9. For the purposes of the FPI Threshold “voting securities” are defined as those securities that entitle the holders to vote for the election of directors at the time of such determination.
10. As (a) a majority of the Filer’s executive officers and directors are U.S. citizens or residents, (b) more than 50% of the Filer’s assets are located in the United States, and (c) the Filer’s business is administered primarily in the United States, the Filer will not qualify as an FPI should it exceed the FPI Threshold at the applicable time.
11. The Filer derives material benefits from its status as an FPI.
12. On December 15, 2021, the Filer amended its articles (the “**Amendments**”) to (i) create and set the terms of a new class of shares of the Filer, being the Variable Voting Shares, including applying coattail terms to such shares; and (ii) amend the terms of the Common Shares, including without limitation, by including constraints on who may hold the Common Shares and applying coattail terms to such shares.
13. The Filer received the shareholder approvals required under applicable corporate and securities

14. The Amendments are intended to ensure that the Filer maintains its FPI status under applicable U.S. securities laws and thereby avoids a commensurate material increase in its ongoing costs. This is to be accomplished by implementing a mandatory conversion mechanism in the Filer’s share capital to decrease the number of shares eligible to be voted by U.S. Residents in connection with the election of directors of the Filer if the Filer’s FPI Threshold would be exceeded.
15. For the purposes of the Amendments, a “U.S. Resident” means a resident of the United States, determined as set forth in Rule 405 under the U.S. Securities Act. Without limiting the foregoing but for greater clarity, a security holder is a U.S. Resident if such person’s address appears on the records of the Filer (i.e., a registered holder) as in the United States; provided that (i) the Filer is required to “look through” the record ownership of brokers, dealers, banks or nominees located in (A) the United States, (B) Canada, and (C) the Filer’s primary trading market (if different from Canada) who hold securities for the accounts of their customers, to determine the residency of those customers, and the Filer is also required to take into account information regarding U.S. ownership derived from beneficial ownership reports that are provided to the Filer or filed publicly, as well as information that otherwise is provided to the Filer and a “Non-U.S. Resident” means a person or entity that is not a U.S. Resident. At the request of the Filer, beneficial shareholders and actual or proposed transferees will be required to respond to enquiries regarding their status as U.S. Residents or Non-U.S. Residents, and shall be required to provide declarations or other documents with respect thereto, as may be necessary or desirable, in the discretion of the Filer, failing which they would, in the Filer’s discretion, be deemed to be U.S. Residents.
16. Except as provided in Item 19 below, the Common Shares may only be held, beneficially owned or controlled by Non-U.S. Residents, and will carry one vote per share for the election of directors (and for all other purposes). The Common Shares will be automatically converted, without further act or formality, on a one-for one basis into Variable Voting Shares if they become held, beneficially owned or controlled by a U.S. Resident.
17. Except as provided in Item 19 below, the Variable Voting Shares may only be held, beneficially owned or controlled by U.S. Residents. The Variable Voting Shares will carry one vote per share for the election of directors (and for all other purposes), except where the number of votes that may be exercised in connection with the election or removal of directors, in respect of all issued and outstanding

Variable Voting Shares exceeds 49.9% of the total number of votes that may be exercised, in connection with the election or removal of directors, in respect of all issued and outstanding Shares. In such case the votes attached to each Variable Voting Share in respect of the election or removal of directors will decrease automatically and pro rata and without further act or formality to equal the maximum permitted vote per Variable Voting Share. The Variable Voting Shares as a class cannot carry more than 49.9% of the aggregate votes, in connection with the election or removal of directors, attached to all issued and outstanding Shares of the Filer. The Variable Voting Shares will be automatically converted, without further act or formality, on a one-for-one basis into Common Shares if they become held, beneficially owned or controlled by a Non-U.S. Resident.

18. All Shares shall rank equally with the other Shares as to dividends on a share-for-share basis, without preference or distinction, except that, subject to applicable regulatory and stock exchange approvals, stock dividends or distributions may be declared by the Filer's board of directors that are payable in Common Shares on the Common Shares and in Variable Voting Shares on the Variable Voting Shares, provided an equal number of shares is declared as a dividend or distribution on a per-share basis in each case. All Shares will rank *pari passu* on a per-share basis in the event of the Filer's liquidation, dissolution or winding-up, or a distribution of assets of the Filer for the purposes of a dissolution or winding-up of the Filer. All holders of Shares will be entitled to receive notice of, to attend (if applicable, virtually) and vote at all meetings of the Filer's shareholders, except that they will not be able to vote (but will be entitled to receive notice of, to attend (if applicable, virtually) and to speak) at those meetings at which the holders of a specific class are entitled to vote separately as a class under the BCBCA.
19. The Amendments contain coattail provisions, pursuant to which each class of Shares may be converted into another class of Shares in the event an offer is made to purchase such other class of Shares and the offer is one which is required to be made to all or substantially all the holders in Canada of such other class of Shares (assuming that the offeree was resident in Ontario).
20. Aside from the differences in (a) who may hold Common Shares and Variable Voting Shares as between U.S. Residents and Non-U.S. Residents, and (b) the voting rights attributable to each class of Shares set out above, the Shares are the same in all respects and are mandatorily inter-convertible (continuously and without formality) based on (i) the holder's status as a U.S. Resident and Non-U.S. Resident, and (ii) the Filer's FPI status.
21. The Filer's dual class share structure has been implemented solely to ensure the Filer's continued

status as an FPI and thereby reduce compliance costs; it has no other purpose.

22. Under the terms of the Amendments, (i) only Non-U.S. Residents may own the Common Shares, (ii) only U.S. Residents may own the Variable Voting Shares, (iii) the Variable Voting Shares as a class cannot carry more than 49.9% of the aggregate votes, in connection with the election or removal of directors, attached to all issued and outstanding Shares of the Filer, and (iv) the Variable Voting Shares will carry one vote per share held, except where the number of votes that may be exercised in connection with the election or removal of directors, in respect of all issued and outstanding Variable Voting Shares exceeds 49.9% of the total number of votes that may be exercised, in respect of all issued and outstanding Shares. In such case the votes attached to each Variable Voting Share will decrease automatically and pro rata and without further act or formality to equal the maximum permitted vote per Variable Voting Share. Further, if a Non-U.S. Resident sells his or her Common Shares to a U.S. Resident, whether or not on the TSX, upon settlement the Filer's articles will automatically deem the shares acquired by the U.S. Resident to be converted into Variable Voting Shares at the relevant time.
23. An investor will not control or choose which class of Shares it acquires and holds. There are no unique features of any class of Shares which an existing or potential investor will be able to choose to acquire, exercise or dispose of. The class ultimately available to an investor will be a function of such investor's status as a U.S. Resident or Non-U.S. Resident and the Filer's FPI status only. Moreover, if after having acquired Shares a holder's status as a U.S. Resident or Non-U.S. Resident changes, such Shares will convert accordingly and automatically, without formality or regard to any other consideration.

Nomenclature Relief

24. Section 1.1 of NI 41-101 and Section 1.1 of NI 51-102 defines "restricted security terms" to mean each of the terms "non-voting security", "subordinate voting security" and "restricted voting security".
25. Section 1.1 of OSC Rule 56-501 defines "restricted share terms" to mean "non-voting shares", "subordinate voting shares", "restricted voting shares" or any other term deemed appropriate by the Director.
26. The Variable Voting Shares may be considered restricted securities and restricted shares, as applicable, under NI 41-101, NI 51-102 and OSC Rule 56-501 as there will be another class of shares that carries a disproportionate vote per share relative to the Variable Voting Shares.

27. The Filer desires to use the term “variable voting” to describe the Variable Voting Shares in any offering documents, in any future prospectuses and in all future continuous disclosure documents of the Filer given that (i) in the event the Variable Voting Shares as a class would carry more than 49.9% of the aggregate votes in connection with the election or removal of directors attached to all issued and outstanding Shares of the Filer, the votes attached to each Variable Voting Share will decrease automatically and pro rata and without further act or formality to equal the maximum permitted vote per Variable Voting Share and (ii) other TSX listed issuers with similar capital structures use the term “Variable Voting Shares”.
28. The features of the Variable Voting Shares will be set out in disclosure documents pursuant to NI 41-101, National Instrument 44-101 *Short Form Prospectus Distributions*, NI 44-102 and NI 51-102, as applicable, in compliance with the form requirements of such instruments.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

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

1. the Filer publicly discloses the Exemption Sought and the terms and conditions of this decision in a news release filed on SEDAR promptly following the issuance of this decision;
2. the Filer discloses the Exemption Sought and the terms and conditions of this decision in each of its annual information forms and management information circulars filed on SEDAR following the issuance of this decision and in any other filing where the characteristics of the Shares are described;
3. with respect only to the TOB Relief, the securities subject to the offer to acquire, together with the offeror’s securities, would not represent in the aggregate 20% or more of the outstanding Variable Voting Shares and Common Shares, as the case may be, calculated using (a) a denominator comprised of all of the outstanding Variable Voting Shares and Common Shares, determined in accordance with subsection 1.8(2) of NI 62-104 on a combined basis, as opposed to a per-class basis, and (b) a numerator including as offeror’s securities all of the Variable Voting Shares and Common Shares, as applicable, that constitute offeror’s securities;
4. with respect only to the News Release Relief, the Variable Voting Shares or Common Shares, as the case may be, that the acquiror acquires beneficial ownership of, or control or direction over, when

added to the acquiror’s securities of that class, would not constitute 5% or more of the outstanding Variable Voting Shares or Common Shares, as the case may be, calculated using (a) a denominator comprised of all of the outstanding Variable Voting Shares and Common Shares, determined in accordance with subsection 1.8(2) of NI 62-104 on a combined basis, as opposed to a per-class basis, and (b) a numerator including as acquiror’s securities, all of the Variable Voting Shares and Common Shares that constitute acquiror’s securities;

5. with respect only to the Early Warning Relief:
 - (a) the acquiror complies with the early warning requirements, except that, for the purpose of determining the percentage of outstanding Variable Voting Shares or Common Shares, as the case may be, that the acquiror has acquired or disposed of beneficial ownership, or acquired or ceased to have control or direction over, the acquiror calculates the percentage using (i) a denominator comprised of all of the outstanding Variable Voting Shares and Common Shares, determined in accordance with subsection 1.8(2) of NI 62-104, on a combined basis, as opposed to a per-class basis, and (ii) a numerator including, as acquiror’s securities, all of the Variable Voting Shares and Common Shares, as applicable, that constitute acquiror’s securities; or
 - (b) in the case of an acquiror that is an eligible institutional investor, the acquiror complies with the requirements of the alternative monthly reporting system set out in Part 4 of NI 62-103 to the extent it is not disqualified from filing reports thereunder pursuant to section 4.2 of NI 62-103, except that, for purposes of determining the acquiror’s securityholding percentage, the acquiror calculates its securityholding percentage using (i) a denominator comprised of all of the outstanding Variable Voting Shares and Common Shares determined in accordance with subsection 1.8(2) of NI 62-104 on a combined basis, as opposed to a per-class basis, and (ii) a numerator including all of the Variable Voting Shares and Common Shares, as applicable, beneficially owned or controlled by the eligible institutional investor;
6. with respect only to the Alternative Disclosure Relief, the Filer provides the disclosure required by Item 6.5 of Form 51-102F5 except that for purposes of determining the percentage of voting rights attached to the Variable Voting Shares or Common Shares, the Filer calculates the voting percentage using (a) a denominator comprised of all of the

outstanding Variable Voting Shares and Common Shares on a combined basis, as opposed to a per-class basis, and (b) a numerator including all of the Variable Voting Shares and Common Shares beneficially owned, or over which control or direction is exercised, directly or indirectly, by any person who, to the knowledge of the Filer's directors or executive officers, beneficially owns, controls or directs, directly or indirectly, voting securities carrying 10% or more of the voting rights attached to the outstanding Variable Voting Shares, and Common Shares on a combined basis, as opposed to a per-class basis; and

7. with respect only to the Nomenclature Relief, the Variable Voting Shares are referred to as "Variable Voting Shares".

"David Mendicino"
Manager, Office of Mergers & Acquisitions
Ontario Securities Commission

2.2 Orders

2.2.1 Prairie Storm Resources Corp.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer – issuer deemed to be no longer a reporting issuer under securities legislation.

Applicable Legislative Provisions

Securities Act, R.S.A., 2000, c.S-4, s. 153.

Citation: *Re Prairie Storm Resources Corp.*, 2021 ABASC 184

December 15, 2021

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA AND
ONTARIO
(the Jurisdictions)**

AND

**IN THE MATTER OF
THE PROCESS FOR CEASE TO BE
A REPORTING ISSUER APPLICATIONS**

AND

**IN THE MATTER OF
PRAIRIE STORM RESOURCES CORP.
(the Filer)**

ORDER

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a **Decision Maker**) has received an application from the Filer for an order under the securities legislation of the Jurisdictions (the **Legislation**) that the Filer has ceased to be a reporting issuer in all jurisdictions of Canada in which it is a reporting issuer (the **Order Sought**).

Under the Process for Cease to be a Reporting Issuer Applications (for a dual application):

- (a) the Alberta Securities Commission is the principal regulator for this application;
- (b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System (MI 11-102)* is intended to be relied upon in British Columbia; and
- (c) this order is the order of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.