

2006 BCSECCOM 169

March 6, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - NI 51-102 *Continuous Disclosure Obligations*, s. 13.1 - An issuer wants relief from the requirements to deliver its financial statements and related MD&A to a securityholder that requests them, by the filing deadline - The issuer is an SEC issuer as defined in NI 51-102; the issuer must file its financial statements with the Commission when it files them with the SEC; the issuer prepares and files its financial statements with the SEC before it would otherwise be required to file them with the Commission; the issuer will deliver the financial statements by the later of the day it would be required to file them with the Commission if it did not file the financial statements with the SEC, and 10 days after receiving the request for the financial statements

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418. s. 91

Securities Rules, B.C. Regulation 194/97, ss. 144 and 145

National Instrument 51-102 *Continuous Disclosure Obligations*, ss. 4.6, 5.6 and 13.1

In the Matter of
the Securities Legislation
of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario,
Quebec, New Brunswick, Nova Scotia and Newfoundland and Labrador

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of Enbridge Inc. (the Filer)

MRRS Decision Document

Background

1. The local securities regulatory authority or regulator (the Decision Maker) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Newfoundland and Labrador (the Jurisdictions) has received an application from the Filer for a decision under

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the securities legislation of the Jurisdictions (the Legislation) for an exemption from the requirement to send its interim financial statements and its annual financial statements (collectively, the Financial Statements) and interim and annual MD&A (collectively, MD&A) by the date the Filer files its Financial Statements and related MD&A with the SEC to any securityholder that requests a copy of the Financial Statements and related MD&A (the Requested Relief).

2. Under the Mutual Reliance Review System for Exemptive Relief Applications:
 - 2.1 the Alberta Securities Commission is the principal regulator for this application; and
 - 2.2 this MRRS Decision Document evidences the decision of each Decision Maker.

Interpretation

3. Defined terms contained in National Instrument 14-101 *Definitions* and in National Instrument 51-102 *Continuous Disclosure Obligations* have the same meaning in this decision unless they are otherwise defined in this MRRS Decision Document.

Representations

4. This decision is based on the following facts represented by the Filer:
 - 4.1 The Filer is incorporated under the laws of Canada with its head office located in Calgary, Alberta.
 - 4.2 The Filer is a reporting issuer in each of the Jurisdictions where that concept exists and is a SEC issuer within the meaning of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102).
 - 4.3 The Filer is up-to-date in its current continuous filing obligations under the Legislation and is not on the list of defaulting reporting issuers maintained by any of the Decision Makers.
 - 4.4 The common shares of the Filer are listed on the Toronto Stock Exchange and the New York Stock Exchange.
 - 4.5 The Filer files its Financial Statements and related MD&A with the securities regulatory authorities in each of the Jurisdictions in accordance with the Legislation concurrently with filing those materials with the SEC in accordance with the 1934 Act.

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- 4.6 The Filer files one set of financial statements in both Canada and the United States of America (US) prepared in accordance with Canadian generally accepted accounting principles (GAAP) and audited in accordance with Canadian generally accepted auditing standards. The notes to the annual financial statements include a summary of differences between Canadian and US GAAP.
- 4.7 Under the Legislation, the Filer is required to send a copy of the Financial Statements and related MD&A to security holders of the Filer who have requested Financial Statements and related MD&A (Requesting Security Holders).
- 4.8 The Legislation requires that copies of the requested Financial Statements and MD&A must be sent to a Requesting Security Holder by the later of:
 - 4.8.1 the filing deadline of the Financial Statements and MD&A requested (the Delivery Deadline), and
 - 4.8.2 10 calendar days after the Filer receives the request.
- 4.9 The filing deadline for the Filer is determined pursuant to provisions in the Legislation which state that the Financial Statements and MD&A must be filed:
 - 4.9.1 in the case of the Filer's annual financial statements and related MD&A, on or before the earlier of:
 - 4.9.1.1 the 90th day after the end of its most recently completed financial year; and
 - 4.9.1.2 the date of filing of the Filer's annual financial statements with the SEC; or
 - 4.9.2 in the case of the Filer's interim financial statements and related MD&A, on or before the earlier of:
 - 4.9.2.1 the 45th day after the end of the interim period; and
 - 4.9.2.2 the date of filing of the Filer's interim financial statements with the SEC.

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- 4.10 The Filer files its Financial Statements and related MD&A in each of the Jurisdictions in accordance with the Legislation, concurrent with the filing of those materials with the SEC and, in the ordinary course, these filings are made prior to the filing deadline otherwise applicable pursuant to the Legislation if such materials were not also filed with the SEC.
- 4.11 Accordingly, the Delivery Deadline for Financial Statements and related MD&A is generally determined by reference to the date the Financial Statements are filed with the SEC.
- 4.12 Under the Legislation, reporting issuers that are not SEC issuers, or that do not otherwise file financial statements with a foreign securities regulatory authority, have until 45 days, in the case of interim financial statements and related MD&A, or 90 days, in the case of annual financial statements and related MD&A, following the applicable reporting period to send their financial statements regardless of when the financial statements and related MD&A are filed with Canadian securities regulatory authorities.
- 4.13 Because the Delivery Deadline under the Legislation is effectively triggered for the Filer by the filing of the Financial Statements and related MD&A with the SEC, the Filer would have to delay filing its Financial Statements and related MD&A with Canadian securities regulatory authorities and the SEC, even though they are available for filing, in order to be able to satisfy the delivery obligations under the Legislation.

Decision

5. 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.
6. The decision of the Decision Makers under the Legislation is that the Requested Relief is granted, provided that the Filer sends its Financial Statements and related MD&A to a Requesting Securityholder:
 - 6.1 in the case of annual financial statements and related MD&A, by the later of:
 - 6.1.1 90 days after the end of the applicable financial year end; and
 - 6.1.2 10 calendar days after the Filer receives the request; and

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6.2 in the case of interim financial statements and related MD&A, by the later of:

6.2.1 45 days, after the end of the applicable interim period; and

6.2.2 10 calendar days after the Filer receives the request.

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