

2005 BCSECCOM 129

February 17, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-102, s. 13.1 - Continuous Disclosure Obligations - An issuer wants relief from the requirement to include prospectus-level disclosure in an information circular to be circulated in connection with an arrangement, reorganization, acquisition or amalgamation - Alternate disclosure will be provided about the issuer that is consistent with the information required in the continuous disclosure context for significant acquisitions; information will be provided about the parties to the transaction sufficient for shareholders to assess the transaction as a whole; the alternate disclosure complies with National Instrument 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency and will comply with the applicable prospectus requirements except that the time frame for reporting is shortened from 3 years to 2 years

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. ss. 117 and 119

National Instrument 51-102 *Continuous Disclosure Obligations*, ss. 9.1, 13.1
Form 51-102F5, section 14.2

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New
Brunswick, Nova Scotia, Newfoundland and Labrador and Yukon
(the Jurisdictions)

and

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

and

In the Matter of
Ivanhoe Energy Inc. (the Filer)

MRRS Decision Document

Background

- ¶ 1 The local securities regulatory authority or regulator (the Decision Makers) in each of the Jurisdictions has received an application from the Filer for a decision

2005 BCSECCOM 129

under the securities legislation of the Jurisdictions (the Legislation) for an exemption, and in Québec a variation of the general order that will provide the same result as an exemption order, from the requirement in the Legislation to include the Prospectus Financial Disclosure (as defined below) for a business to be acquired in an information circular prepared in connection with an Agreement and Plan of Merger dated as of December 11, 2004 (the Merger Agreement) among the Filer, Ivanhoe Merger Sub, Inc., a wholly owned subsidiary of the Filer (Merger Sub), and Ensyn Group, Inc. (Target) (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications,

- (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 incorporated under the laws of the Yukon;
 - 2. the Filer's head office is in Vancouver, British Columbia;
 - 3. the Filer's authorized share capital consists of an unlimited number of common shares without par value and an unlimited number of preferred shares without par value, of which 169,664,911 common shares and no preferred shares were outstanding as of January 21, 2005;
 - 4. the common shares are listed on the Toronto Stock Exchange under the symbol "IE" and quoted on the NASDAQ Small Cap Market under the symbol "IVAN";
 - 5. the Filer is a reporting issuer or its equivalent in each of the provinces of Canada and in the Yukon, and has been a reporting issuer in each of the Jurisdictions for longer than twelve months;
 - 6. Merger Sub is a corporation incorporated under the laws of the State of Delaware;

2005 BCSECCOM 129

7. Merger Sub was formed solely for the purpose of participating in the transactions contemplated by the Merger Agreement and has not engaged in any other business activities or conducted any operations;
8. Merger Sub's authorized share capital consists of 100 shares of common stock, \$0.01 par value per share, all of which are outstanding and held by the Filer;
9. Target is a private corporation incorporated under the laws of the State of Delaware;
10. Target is developing a new business involving the application of rapid thermal processing to the production and upgrading of heavy oil (the Petroleum Business);
11. under the terms of the Merger Agreement, before the transactions under the Merger Agreement close, Target will distribute its interest in all of its business, other than the Petroleum Business, to its stockholders so that the Filer will acquire 100% of Target's interest in the Petroleum Business only;
12. under the terms of the Merger Agreement,
 - (a) Merger Sub will merge with Target so Target will become a wholly owned subsidiary of the Filer (the Merger),
 - (b) holders of shares of common stock of Target (Target Shares) will receive a combination of cash and the Filer's common shares in exchange for their Target Shares;
13. the Merger, which is expected to be finalized before the end of March 2005, is being carried out in accordance with the General Corporation Law of the State of Delaware (the DGCL) which requires the approval of Target's shareholders holding at least a majority of the outstanding Target Shares to adopt the Merger Agreement and approve the Merger;
14. all of Target's shareholders will be asked to approve the Merger at a special meeting;
15. depending on the number of common shares that the Filer must issue under the Merger, together with any common shares issued to third parties under private placement equity financing transactions undertaken by the Filer in connection

2005 BCSECCOM 129

with the Merger, the Filer may have to obtain the prior approval of its shareholders to the transactions;

16. the Filer and Target will prepare a joint management information circular/proxy statement (the Information Circular) which they expect to finalize by the end of February 2005 and mail to all of their respective shareholders during the first week of March 2005;
17. as the Filer's acquisition of the Target Shares will be a "significant acquisition" in accordance with section 8.3(2)(b) of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), the Information Circular will contain prospectus-level disclosure in respect of the Target, the Filer and the transactions contemplated by the Merger Agreement;
18. under the Legislation, the Filer would have to include in the Information Circular, in respect of Target,
 - (a) statements of income, retained earnings, and cash flows for each of the three most recently completed financial years ended more than 90 days before the date of the Information Circular, and
 - (b) a balance sheet as at
 - (i) the last day of the most recently completed financial year ended more than 90 days before the date of the Information Circular, and
 - (ii) the last day of the immediately preceding financial year(the Prospectus Financial Disclosure);
19. the Filer will include in the Information Circular the annual financial statements in respect of Target specified in sections 8.4 and 8.5 of NI 51-102, which includes audited financial statements in respect of Target for the financial years ended September 30, 2004 and September 30, 2003, prepared in accordance with U.S. generally accepted accounting principles and reconciled to Canadian generally accepted accounting principles, both in accordance with National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*;
20. because the Petroleum Business is relatively new, and approximately 75% of the book value of the assets of the Petroleum Business is directly attributable to tangible personal property, of which approximately 90% was acquired within the last two years, audited financial statements for Target for the year

2005 BCSECCOM 129

ended September 30, 2002 would reflect *de minimis* assets and liabilities in respect of the Petroleum Business; and

21. the September 30, 2004 financial statements present Target's Petroleum Business as on-going operations while the portion of Target's business that the Filer will not be acquiring has been presented as discontinued operations.

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 Information Circular includes the annual financial statements in respect of Target specified in sections 8.4 and 8.5 of NI 51-102 and set out in representation 19; and
- (b) the disclosure in the Information Circular, including the financial statement disclosure, otherwise complies with the requirements in the Legislation.

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