

# 2005 BCSECCOM 380

May 24, 2005

## **Headnote**

### **Mutual Reliance Review System for Exemptive Relief Applications**

National Instrument 51-101, s. 8.1 Standards of Disclosure for Oil and Gas Activities - A reporting issuer wants relief from the requirements contained in Part 2 Annual Filing Requirements and in Part 3 Responsibilities of Reporting Issuers and Directors - The issuer is a wholly owned subsidiary of a trust; the issuer and the trust are both reporting issuers; the issuer is exempt from continuous disclosure obligations on the basis that the trust's disclosure record will be filed and delivered in place of the issuer's disclosure record; the trust is subject to NI 51-101 and will provide all of the disclosure required in Parts 2 and 3 of NI 51-101

National Instrument 51-102, s. 13.1 Continuous Disclosure Obligations - An issuer wants relief from the requirement to file an annual information form - The issuer is an exchangeable share issuer that complies with all of the conditions for continuous disclosure relief in section 13.3 of National Instrument 51-102 Continuous Disclosure Obligations except that its parent issuer is not an SEC issuer; the issuer has a previous decision exempting it from having to comply with other continuous disclosure obligations and permitting it to instead rely on its parent issuer's continuous disclosure; the issuer will comply with conditions in the previous decision

## **Applicable British Columbia Provisions**

National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*, Parts 2 and 3, s. 8.1

National Instrument 51-102 *Continuous Disclosure Obligations*, Part 6, s. 13.1

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

and

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

and

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In the Matter of  
ARC Resources Ltd. (the Filer)

## MRRS Decision Document

### **Background**

1. The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that:
  - 1.1 the Filer be exempted from Part 2 (Annual Filing Requirements) and Part 3 (Responsibilities of Reporting Issuers and Directors) of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (NI 51-101)(the NI 51-101 Relief),
  - 1.2 in Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Yukon and Nunavut (the AIF Jurisdictions), the Filer be exempted from Part 6 (Annual Information Form) of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102)(the AIF Relief), and
  - 1.3 except in British Columbia, the Filer be exempted from Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (MI 52-109)(the MI 52-109 Relief).
2. Under the Mutual Reliance Review System for Exemptive Relief (the MRRS):
  - 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* have the same meaning in this decision unless they are defined in this decision.

### **Representations**

4. The decision is based on the following facts represented by the Filer:

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- 4.1 The Filer was incorporated under the *Business Corporations Act* (Alberta) on January 22, 1996 and was amalgamated with Orion Energy Holdings Inc. and Pencor Petroleum Limited on March 31, 1999.
- 4.2 The head office and registered office of the Filer are each located in Calgary, Alberta.
- 4.3 The Filer is a reporting issuer in each of the Jurisdictions where such status exists, and is not in default of any of its obligations under the Legislation.
- 4.4 The authorized share capital of the Filer includes an unlimited number of common shares (the ARC Shares) and an unlimited number of exchangeable shares (the Exchangeable Shares).
- 4.5 As at February 28, 2005, the Filer had the following securities issued and outstanding:
  - 4.5.1 100 ARC Shares, all of which are owned by ARC Energy Trust (the Trust), and
  - 4.5.2 1,743,695 Exchangeable Shares.
- 4.6 The Exchangeable Shares are listed and posted for trading on the Toronto Stock Exchange (the TSX).
- 4.7 The Trust was established pursuant to a trust indenture dated May 7, 1996 and amended and restated on May 16, 2003 (the Trust Indenture) pursuant to the laws of Alberta.
- 4.8 The Trust is, for the purposes of the *Income Tax Act* (Canada), an unincorporated, open-end mutual fund trust.
- 4.9 The head office of the Trust is located in Calgary, Alberta.
- 4.10 The Trust is a reporting issuer in each of the Jurisdictions where such status exists, and is not in default of any of its obligations under the Legislation.
- 4.11 The authorized capital of the Trust consists of 650,000,000 trust units (the Trust Units) and an unlimited number of special voting units.

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- 4.12 As at February 28, 2005, the Trust had the following securities issued and outstanding:
  - 4.12.1 186,420,725 Trust Units, and
  - 4.12.2 one special voting unit.
- 4.13 The Trust Units are listed and posted for trading on the TSX.
- 4.14 The holders of Trust Units (the Unitholders) are the sole beneficiaries of the Trust. Computershare Trust Company of Canada (the Trustee) is the trustee of the Trust. The Filer is the administrator of the Trust.
- 4.15 The Exchangeable Shares are exchangeable into Trust Units and, to the extent possible, are the economic equivalent of the Trust Units.
- 4.16 The Exchangeable Shares have voting attributes equivalent to those of the Trust Units.
- 4.17 Holders of Exchangeable Shares will receive all disclosure materials that the Trust is required to send to holders of Trust Units under the Legislation.
- 4.18 The exchange rights attaching to the Exchangeable Shares are governed by a voting and exchange trust agreement among the Trust, the Filer, 908563 Alberta Ltd. and the Trustee that provides the Trustee the right to require the Trust or 908563 Alberta Ltd. to exchange the Exchangeable Shares and which will trigger automatically the exchange of the Exchangeable Shares for Trust Units upon the occurrence of certain specified events.
- 4.19 The Exchangeable Shares are also subject to a support agreement among the Trust, the Filer, 908563 Alberta Ltd. and the Trustee, pursuant to which the Trust and the Filer will take certain actions and make certain payments and will deliver or cause to be delivered Trust Units in satisfaction of the obligations of the Filer.
- 4.20 Pursuant to an MRRS decision document dated January 31, 2001 (the Previous Decision Document) the Filer was exempted from:

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- 4.20.1 in all of the Jurisdictions, the requirements to issue a press release and file a report upon the occurrence of a material change, file an annual report, where applicable, file interim financial statements and audited annual financial statements, and provide management's discussion and analysis of financial condition and results of operations, and
- 4.20.2 in Saskatchewan, Ontario, Quebec and Newfoundland and Labrador, the requirement to file an annual information form.
- 4.21 As a result of the Previous Decision Document and section 13.2 of NI 51-102, the Filer is exempt from the requirements of NI 51-102 other than the requirement to file an annual information form in the AIF Jurisdictions (the NI 51-102 Requirements).

### **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:
  - 6.1 the AIF Relief is granted for so long as the Filer is exempt from or otherwise not subject to the NI 51-102 Requirements and the Filer and the Trust are in compliance with the Previous Decision Document;
  - 6.2 the NI 51-101 Relief is granted for so long as:
    - 6.2.1 the Trust files with each Decision Maker copies of all documents required to be filed by it pursuant to NI 51-101 (the 51-101 Documents) and concurrently with the filing of the NI 51-101 Documents the Trust files in electronic format under the System for Electronic Document Analysis and Retrieval (SEDAR) profile of the Filer either:
      - 6.2.1.1 the NI 51-101 Documents, or
      - 6.2.1.2 a notice that indicates:
        - 6.2.1.2.1 that the Filer has been granted an exemption from the requirements of

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Part 2 (Annual Filing Requirements)  
and Part 3 (Responsibilities of  
Reporting Issuers and the Directors) of  
NI 51-101,

6.2.1.2.2 that the Trust has filed the NI 51-101  
Documents, and

6.2.1.2.3 where a copy of the NI 51-101  
Documents can be found for viewing  
on SEDAR by electronic means,

6.2.2 the Filer disseminates, or causes the Trust to disseminate on  
the Filer's behalf, a news release announcing the filing by  
the Filer or the Trust of the information set out in section  
6.2.1 above, and indicating where a copy of the filed  
information can be found for viewing on SEDAR by  
electronic means,

6.2.3 the Filer is exempt from or otherwise not subject to the NI  
51-102 Requirements and the requirement to file an annual  
information form in the AIF Jurisdictions (collectively, the  
Continuous Disclosure Requirements) and the Filer and the  
Trust are in compliance with the Previous Decision  
Document,

6.2.4 if disclosure to which NI 51-101 applies is made by the  
Filer separately from the Trust, the disclosure includes a  
statement to the effect that the Filer is relying on an  
exemption from the requirements to file information  
annually under NI 51-101 separately from the Trust, and  
indicates where disclosure under NI 51-101 filed by the  
Trust (or by the Filer, if applicable) can be found for  
viewing on SEDAR by electronic means, and

6.2.5 if the Trust files a material change report to which  
section 6.1 of NI 51-101 applies, the Filer files the same  
material change report; and

6.3 the MI 52-109 Relief is granted for so long as:

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- 6.3.1 the Filer is not required to, and does not, file its own interim filings and annual filings (as those terms are defined under MI 52-109),
- 6.3.2 the Trust files in electronic format under the SEDAR profile of the Filer the:
  - 6.3.2.1 interim filings,
  - 6.3.2.2 annual filings,
  - 6.3.2.3 interim certificates, and
  - 6.3.2.4 annual certificates;of the Trust, at the same time as such documents are filed or required under the Legislation to be filed by the Trust under its own SEDAR profile, and
- 6.3.3 the Filer is exempt from or otherwise not subject to the Continuous Disclosure Requirements and the Filer and the Trust are in compliance with the Previous Decision Document.

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