

2004 BCSECCOM 193

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief from continuous disclosure requirements granted to a wholly owned subsidiary issuing debt securities that are fully guaranteed by its reporting issuer parent and relief from the insider reporting requirements – relief subject to certain conditions, including filing under the subsidiary’s SEDAR profile, the annual and interim financial statements of the parent

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 85, 97, 91(1)(b), 117 and 119(2)(b)
Securities Rules, B.C. Reg. 194/97, ss. 144, 145 and 184

IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA, BRITISH COLUMBIA, SASKATCHEWAN, MANITOBA, ONTARIO, QUÉBEC, 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 ENCANA HOLDINGS FINANCE CORP. AND ENCANA CORPORATION

MRRS DECISION DOCUMENT

WHEREAS the Canadian securities regulatory authority or regulator (the “Decision Maker”) in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia and Newfoundland and Labrador (collectively, the “Jurisdictions”) have received an application from EnCana Holdings Finance Corp. (“FinanceCo”) and EnCana Corporation (“EnCana”) (collectively, FinanceCo and EnCana are referred to herein as the “Applicants”) for a decision pursuant to the securities legislation (the “Legislation”) of the Jurisdictions that the requirements contained in the Legislation that:

- (a) FinanceCo file with Decision Makers and send to its security holders audited annual comparative financial statements or annual reports containing such statements (the “Annual Financial Statement Requirements”);

2004 BCSECCOM 193

- (b) FinanceCo file with Decision Makers and send to its security holders interim comparative financial statements (the “Interim Financial Statement Requirements”);
- (c) FinanceCo issue and file with the Decision Makers press releases, and file with the Decision Makers material change reports (together, the “Material Change Requirements”); and
- (d) FinanceCo comply with the proxy and proxy solicitation requirements, including filing with the Decision Makers an information circular or report in lieu thereof, as applicable (the “Proxy Requirements”) (Annual Financial Statement Requirements, Interim Financial Statement Requirements, Material Change Requirements and Proxy Requirements are collectively referred to herein as the “Continuous Disclosure Requirements”),

shall not apply to FinanceCo as a result of FinanceCo becoming a reporting issuer or the equivalent in each of the Jurisdictions which has such a concept; and

- (e) where applicable, a person or company that is an insider of FinanceCo (“Insider”) file reports with the Decision Makers disclosing such person’s or company’s direct or indirect beneficial ownership of, or control or direction over, securities of FinanceCo (the “Insider Reporting Requirements”),

shall not apply to Insiders of FinanceCo as a result of FinanceCo becoming a reporting issuer or the equivalent in each of the Jurisdictions which has such a concept;

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Alberta Securities Commission is the principal regulator for this application;

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions*;

AND WHEREAS the Applicants have represented to the Decision Makers that:

1. FinanceCo was incorporated under the *Companies Act* (Nova Scotia) on August 25, 2003 and is an indirect wholly-owned subsidiary of EnCana.

2004 BCSECCOM 193

2. The registered and head office of FinanceCo is located in Calgary, Alberta.
3. FinanceCo's only business is to access capital markets, principally in the United States and Canada, to raise funds to be loaned to, or otherwise invested in, the subsidiary companies or partnerships of EnCana. Other than the foregoing, FinanceCo does not carry on any operating business.
4. FinanceCo is not a reporting issuer or its equivalent in any of the Jurisdictions. FinanceCo intends to file a short form base shelf prospectus (the "Prospectus") in each of the Jurisdictions to establish the offering (the "Offering") of debt securities ("Debt Securities") from time to time over a 25 month period and, as a result, FinanceCo will become a reporting issuer or the equivalent in each Jurisdiction which has such a concept.
5. FinanceCo is qualified under the provisions of National Instrument 44-102 – *Shelf Distributions* ("NI 44-102") and National Instrument 44-101 *Short Form Prospectus Distributions* ("NI 44-101") (collectively, NI 44-102 and NI 44-101 are referred to herein as the "Shelf Requirements") to file a prospectus in the form of a short form base shelf prospectus on the basis that the Debt Securities will be fully and unconditionally guaranteed non-convertible debt securities as contemplated by section 2.5 of NI 44-101.
6. EnCana was formed through a business combination of PanCanadian Energy Corporation and Alberta Energy Company Ltd. on April 5, 2002 and is a reporting issuer or the equivalent in each of the Jurisdictions which has such a concept and, to the knowledge of EnCana, is not in default of the Legislation.
7. EnCana is one of the world's leading independent oil and natural gas exploration and production companies. As at September 30, 2003, EnCana had an enterprise value worth in excess of \$30 billion.
8. EnCana is registered under the United States *Securities Exchange Act of 1934*, as amended (the "1934 Act").
9. EnCana has filed with the United States Securities and Exchange Commission (the "SEC") all filings required to be made with the SEC under Sections 13 and 15(d) of the 1934 Act since it first became registered under the 1934 Act.
10. As at September 30, 2003, EnCana had approximately US\$2.8 billion and Cdn.\$3.3 billion in long term debt outstanding. All of EnCana's directly issued outstanding long term debt is rated "A-" by Standard & Poor's

2004 BCSECCOM 193

Corporation, “Baa1” by Moody’s Investors Service, Inc. and “A (low)” by Dominion Bond Rating Service Limited.

11. The common shares of EnCana are publicly traded and listed under the symbol “ECA” on both the Toronto Stock Exchange (the “TSX”) and the New York Stock Exchange. Based on their closing price on the TSX on December 18, 2003, the common shares of EnCana had a market value in excess of Cdn.\$23 billion.
12. FinanceCo proposes to file the Prospectus in each of the Jurisdictions pursuant to the Shelf Requirements and in the United States through the Multi-Jurisdictional Disclosure System to conduct the Offering. The Debt Securities will be fully and unconditionally guaranteed by EnCana as to payment of principal, interest and all other amounts due thereunder. All Debt Securities will have an approved rating (as defined in NI 44-101) (an “Approved Rating”).
13. In connection with the Offering:
 - (a) the Prospectus will be prepared pursuant to the Shelf Requirements, with the disclosure required by item 12 of Form 44-101F3 of NI 44-101 (“Form 44-101F3”) being satisfied by incorporating by reference EnCana’s public disclosure documents;
 - (b) the Prospectus will provide disclosure about the consolidated business and operations of EnCana;
 - (c) the Prospectus will state that purchasers of Debt Securities will not receive separate continuous disclosure information regarding FinanceCo;
 - (d) FinanceCo’s only business will continue to be to access capital markets, principally in the United States and Canada, to raise funds to be loaned to, or otherwise invested in, the subsidiary companies or partnerships of EnCana;
 - (e) EnCana will sign the Prospectus as guarantor and promoter; and
 - (f) the Debt Securities will not be listed on any securities exchange based in North America;

2004 BCSECCOM 193

14. EnCana will continue to be a reporting issuer or the equivalent in each of the Jurisdictions which has such a concept and EnCana will continue to file with the Decision Makers all documents required to be filed under the Legislation;
15. FinanceCo will comply with the requirements of the Legislation to issue a news release and file a report with the Decision Makers upon the occurrence of a material change in the affairs of FinanceCo that is not a material change in the affairs of EnCana; and
16. FinanceCo will not distribute additional securities other than:
 - (i) additional Debt Securities which are fully and unconditionally guaranteed by EnCana with respect to payments required to be made by FinanceCo to the holders of such additional Debt Securities;
 - (ii) to EnCana or to entities that are controlled, directly or indirectly, by EnCana; or
 - (iii) debt securities issued to banks, loan corporations, trust corporations, treasury branches, credit unions, insurance companies or other financial institutions.

AND WHEREAS pursuant to the System this MRRS Decision Document evidences the decision of each of the Decision Makers (collectively, the "Decision");

AND WHEREAS 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 pursuant to the Legislation is that:

1. Continuous Disclosure Requirements Relief

FinanceCo be exempt from the Continuous Disclosure Requirements; and

2. Insider Reporting Requirements Relief

the Insiders be exempt from the Insider Reporting Requirements;

provided that:

2004 BCSECCOM 193

- (a) each of EnCana and FinanceCo complies with the requirements in paragraph 12 that the Debt Securities will be fully and unconditionally guaranteed by EnCana and that the Debt Securities will have an Approved Rating;
- (b) each of EnCana and FinanceCo, as applicable, complies with paragraphs 13(a) and (d), 14, 15 and 16 of this Decision;
- (c) the filings referred to in paragraph 14 above are made under each of EnCana's and FinanceCo's SEDAR profiles within the time limits and in accordance with applicable fees required by the Legislation for the filing of such documents;
- (d) all audited annual comparative financial statements and interim comparative financial statements filed by EnCana under the Legislation are prepared on a consolidated basis in accordance with Canadian GAAP or such other standards as may be permitted under the Legislation from time to time;
- (e) EnCana continues to fully and unconditionally guarantee the Debt Securities as to the payments required to be made by FinanceCo to the holders of the Debt Securities;
- (f) the Insiders do not receive, in the ordinary course, information as to material facts or material changes concerning EnCana before the material facts or material changes are generally disclosed;
- (g) the Insiders are not insiders of EnCana in any capacity other than by virtue of being an Insider of FinanceCo; and
- (h) EnCana maintains direct or indirect 100% ownership of the voting shares of FinanceCo.

DATED at Calgary, Alberta on this 24th day of March, 2004.

Agnes Lau, CA
Deputy Director, Capital Markets