

2004 BCSECCOM 206

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - issuer recognized as an “exempt purchaser”

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 45(2)(4) and 74(2)(3)

BC Policy 12-602 *Exempt Purchaser Status*

IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA AND BRITISH COLUMBIA

AND

IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF ARC ENERGY VENTURE FUND 4

MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Alberta and British Columbia (the “Jurisdictions”) has received an application from ARC Energy Venture Fund 4 (the “ARC Fund”) for a decision under the securities legislation (the “Legislation”) of the Jurisdictions to recognize the ARC Fund as an exempt purchaser;
2. AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”) the Alberta Securities Commission is the principal regulator for this application;
3. AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions;
4. AND WHEREAS it was represented by the ARC Fund to the Decision Makers that:
 - 4.1 the ARC Fund is a joint venture, being a joint investment fund created by a contract (the “Joint Investment Agreement”) among certain investors, namely ARC Equity Management (Fund 4) Ltd. (“ARC Equity”), ARC Energy Venture Fund 4 Canadian Limited Partnership

2004 BCSECCOM 206

(the “ARC Canadian LP”) and ARC Energy Venture Fund 4 United States Limited Partnership (the “ARC US LP”, and together with the ARC Canadian LP, the “ARC Limited Partnerships”);

- 4.2 further units in the ARC Fund and in the ARC Limited Partnerships are currently being offered for sale to other limited partners and joint investors (the “Joint Investors”) under a confidential offering memorandum dated February 13, 2004;
- 4.3 certain Joint Investors joined the ARC Fund as parties to the Joint Investment Agreement at the ARC Fund’s initial closing on February 26, 2004 (the “Initial Closing”);
- 4.4 the ARC Fund currently has capital commitments from its investors of \$333 million based on the Initial Closing, which is expected to increase to \$403 million once the final closing is held;
- 4.5 the ARC Canadian LP is a limited partnership established under the laws of Alberta on February 13, 2004, by the filing of a certificate under the Partnership Act (Alberta) (the “Partnership Act”) and pursuant to a limited partnership agreement (the “ARC Canadian LP Agreement”) dated February 13, 2004;
- 4.6 the ARC US LP is a limited partnership established under the laws of Alberta on February 13, 2004, by the filing of a certificate under the Partnership Act and pursuant to a limited partnership agreement (the “ARC US LP Agreement”, and together with the ARC Canadian LP Agreement, the “ARC LP Agreements”) dated February 13, 2004;
- 4.7 ARC Equity is a corporation subsisting under the Canada Business Corporations Act. ARC Equity is the manager of the ARC Fund and is also the general partner of both of the ARC Limited Partnerships;
- 4.8 none of the ARC Fund, the ARC Limited Partnerships or ARC Equity are reporting issuers under the Legislation, or in any other Canadian jurisdiction and none has any intention of becoming a reporting issuer in the future;
- 4.9 none of the ARC Fund, the ARC Limited Partnerships or ARC Equity are in default of any of the requirements of the Legislation;

2004 BCSECCOM 206

- 4.10 the principal place of business for each of the ARC Fund, the ARC Limited Partnerships and ARC Equity and the registered office of ARC Equity is in Calgary, Alberta;
- 4.11 the investment objectives of the ARC Fund are to invest in equity or other securities of various early stage companies ("Portfolio Companies") which are active in the exploration, development or acquisition of oil and gas reserves, the production, processing, transportation or marketing of energy products, the energy service business or the energy-related technology business;
- 4.12 units in the ARC Fund are non-redeemable and are subject to restrictions on transfer as contained in the Joint Investment Agreement and units in each of the ARC Limited Partnerships are non-redeemable and are subject to restrictions on transfer as contained in the applicable ARC LP Agreement;
- 4.13 ARC Financial Corporation ("ARC Financial"), a registered portfolio manager under the Securities Act (Alberta) (the "Alberta Act"), has entered into an advisory agreement with ARC Equity to review the management, operations and business plans of each Portfolio Company proposed for investment and to advise ARC Equity in making investments;
- 4.14 the directors of ARC Financial are identical to those of ARC Equity (other than one director of ARC Financial who is not a director of ARC Equity);
- 4.15 the officers of ARC Financial and ARC Equity are identical;
- 4.16 the investment committee members of ARC Equity are senior officers and directors of ARC Financial and each is a registered officer (advising) under the Alberta Act;
- 4.17 the ARC Fund, through the directors and officers of ARC Equity and the advisory arrangement with ARC Financial, possesses sufficient investment expertise to enable the ARC Fund to evaluate the merits of any particular investment without the need of assistance from another registrant or the requirement of a prospectus;
- 4.18 the ARC Fund has sufficient resources to engage the services of an advisor registered under the Alberta Act (in addition to ARC Financial, which is already so engaged) or under other Canadian or foreign

2004 BCSECCOM 206

securities laws if it deems such services to be necessary in making an investment decision;

- 4.19 ARC Equity is directly owned by 22 employees (the “Shareholder Employees”) of ARC Financial, who are also shareholders of the parent companies of ARC Financial;
- 4.20 on February 26, 2004, the Shareholder Employees also invested in the ARC Canadian LP through a single purpose investment corporation, AF4 Capital (Fund 4) Ltd. (“AF4 Capital”);
- 4.21 of the 22 Shareholder Employees, 18 are “accredited investors” (“Accredited Investors”) as defined in Multilateral Instrument 45-103 Capital Raising Exemptions (“MI 45-103”), but four are not Accredited Investors (the “Non-Accredited Investor Employees”). However, the Non-Accredited Investor Employees spend their full time and attention on the business and affairs of venture capital investing, and, in part due to their employment relationship with ARC Financial, at the time of their investment in ARC Equity and AF4 Capital were able to evaluate the merits and risks of an investment in the ARC Fund;
- 4.22 two of the directors and officers of ARC Equity invested as limited partners in the ARC Canadian LP through personal holding companies (the “Holding Companies”); and while the directors and their spouses are themselves Accredited Investors, as a result of, in each case, a family trust that is not an Accredited Investor also having a shareholder position in the Holding Companies, the Holding Companies themselves are not Accredited Investors;
- 4.23 as a result of the Non-Accredited Investor Employees and the Holding Companies not being Accredited Investors, ARC Equity, AF4 Capital and the ARC Canadian LP do not meet the criteria of an Accredited Investor, and therefore the ARC Fund will be unable to meet the criteria of an Accredited Investor;
- 4.24 other than the Non-Accredited Investor Employees and the Holding Companies, each of the other limited partners in the ARC Limited Partnerships and each of the Joint Investors are Accredited Investors;
- 4.25 since the ARC Fund intends to invest in securities of the Portfolio Companies, many of which may not be listed or traded on a public market, the investment activities of the ARC Fund will require the acquisition of such securities on a private placement basis for which an

2004 BCSECCOM 206

exemption from the registration requirements and the prospectus requirements are available;

4.26 due to the structure of the ARC Fund and the uncertainty of the structure of the various potential Portfolio Companies, exemptions from the registration requirements and/or the prospectus requirements may not be available for a number of its potential investments in the Portfolio Companies;

5. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (together, the “Decision”);
6. 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;
7. THE DECISION of the Decision Makers under the Legislation is that the ARC Fund is recognized as an exempt purchaser under the Legislation for the 5-year period from March 19, 2004 to and including March 19, 2009 in Alberta and for a one-year period from March 19, 2004 to and including March 19, 2005 in British Columbia.

DATED at the City of Calgary in the Province of Alberta this 23rd day of March, 2004.

Glenda A. Campbell, Q.C., Vice-Chair

Stephen R. Murison, Vice-Chair