

2003 BCSECCOM 748

Headnote

Mutual Reliance Review System for Exemptive Relief Application - relief granted to an issuer from requirement to deliver annual financial statements and an annual report where applicable. The annual financial statements covered a short operating period

Applicable British Columbia Provisions

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

Securities Rules, B.C. Reg. 194/97, s. 149

IN THE MATTER OF THE SECURITIES LEGISLATION OF THE PROVINCES OF ONTARIO, BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, QUEBEC, NOVA SCOTIA, NEWFOUNDLAND AND LABRADOR.

AND

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

AND

IN THE MATTER OF ENERGY SPLIT CORP. INC.

WHEREAS the Canadian securities regulatory authority or regulator (the “Decision Maker”) in each of the provinces of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, Nova Scotia, Newfoundland and Labrador (the “Jurisdictions”) has received an application from Energy Split Corp. Inc. (the “Issuer”) for a decision pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that the Issuer be exempt from the requirement to send its annual financial statements and annual report, where applicable, for its fiscal year ended September 16, 2003 to its security holders, as would otherwise be required pursuant to the Legislation;

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “MRRS”), the Ontario 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 or in the Quebec Commission Notice 14-101;

AND WHEREAS the Issuer has represented to the Decision Maker as follows:

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1. On August 28, 2003, the Issuer filed a final prospectus (the "Prospectus") relating to the offering of ROC Preferred Shares (the "ROC Preferred Shares") and Capital Yield Shares (the "Capital Yield Shares") with all of the provincial and territorial securities regulatory authorities. A receipt for this prospectus was issued on August 29, 2003. The Issuer issued 1,549,000 ROC Preferred Shares and 3,098,000 Capital Yield Shares pursuant to the offering on September 18, 2003 (the "Offering").
2. The Issuer was amalgamated under the laws of the Province of Quebec on September 17, 2003. Scotia Capital Inc. ("Scotia Capital") acts as administrator of the Issuer. The fiscal year end of the Issuer is September 16, with the first fiscal year end to occur on September 16, 2003. Pursuant to the requirements of the Legislation, and subject to any relief obtained pursuant to this application, the Issuer would be required to prepare and file in the Jurisdictions and deliver to its security holders its annual financial statements and annual report for the fiscal year ended September 16, 2003.
3. The authorized capital of the Issuer consists of an unlimited number of Capital Yield Shares, of which 3,098,000 are issued and outstanding, an unlimited number of ROC Preferred Shares, of which 1,549,000 are issued and outstanding, an unlimited number of Class B, Class C, Class D and Class E capital shares issuable in series, none of which are issued and outstanding, an unlimited number of Class B, Class C, Class D and Class E preferred shares, issuable in series, none of which are issued and outstanding, and an unlimited number of Class F Shares issuable in series, of which 100 are issued and outstanding. There were not any Capital Yield Shares or ROC Preferred Shares outstanding as at the year end date of September 16, 2003.
4. The Class F Shares are the only class of voting securities of the Issuer. ESC Holdings Limited ("ESC Holdings") owns all of the issued and outstanding Class F Shares.
5. The Issuer has been created in order to generate fixed cumulative preferential tax efficient distributions for the holders of the ROC Preferred Shares and to enable the holders of the Capital Yield Shares to receive leveraged tax efficient distributions from a fixed portfolio (the "Royalty Trust Portfolio") consisting of 17 oil and gas royalty trusts listed on the Toronto Stock Exchange. The Capital Yield Shares will also have a leveraged exposure to any changes in the value of the Royalty Trust Portfolio. The Issuer will use the net proceeds of the Offering to acquire a portfolio consisting primarily of common shares of Canadian public companies and will enter into a forward purchase and sale agreement (the "Forward Agreement") on this portfolio with

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a Canadian chartered bank (the "Counterparty") pursuant to which the Counterparty will agree to pay to the Issuer on September 16, 2006, the economic return provided by the Royalty Trust Portfolio which will be held by the Royalty Fund (the "Fund").

6. In order to achieve its investment objectives, the Issuer will enter into the Forward Agreement, which will provide holders of ROC Preferred Shares and Capital Yield Shares with exposure to the returns of the Royalty Trust Portfolio which will be held by the Fund.
7. The Fund is a newly created investment trust that was established on August 28, 2003 under the laws of Ontario pursuant to a declaration of trust. The Fund is authorized to issue an unlimited number of redeemable, transferable units, each of which represents an equal undivided beneficial interest in the net assets of the Fund. ESC Holdings acts as the trustee of the Fund and Scotia Capital acts as administrator. The holder of units of the Fund will be the Counterparty. The Fund has been established for the purpose of acquiring the Royalty Trust Portfolio.
8. The Prospectus included an audited balance sheet of the Issuer as at August 28, 2003 and an unaudited pro forma balance sheet prepared on the basis of the completion of the sale and issue of ROC Preferred Shares and Capital Yield Shares of the Issuer. There are no material differences in the financial position of the Issuer as at September 16, 2003 and, as such, the financial position of the Issuer as at September 16, 2003 will have been substantially reflected in the pro forma financial statements contained in the Prospectus.
9. The Issuer is an inactive company, the sole purpose of which is to provide a vehicle through which different investment objectives with respect to participation in the Royalty Trust Portfolio may be satisfied.
10. The benefit to be derived by the security holders of the Issuer from receiving a hard copy of the annual financial statements and annual report for the fiscal year ended September 16, 2003 would be minimal in view of (i) the short operating period (i.e. 19 days) from the date of the Prospectus to September 16, 2003; (ii) the pro forma financial statements contained in the Prospectus; (iii) the fact that, no ROC Preferred Shares or Capital Yield Shares had been issued as at the Issuer's initial fiscal year end on September 16, 2003 as the closing of the offering occurred on September 18, 2003; and (iv) the nature of the minimal business carried on by the issuer.
11. The expense to the Issuer of sending to its security holders the financial statements and the annual report for the fiscal year ended September 16, 2003

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would not be justified in view of the benefit to be derived by the security holders from receiving such statements.

AND WHEREAS pursuant to the MRRS, this MRRS Decision Document evidences the decision of each Decision Maker (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 the Issuer is exempted from the requirement to deliver to its security holders its annual financial statements for its fiscal year ended September 16, 2003 and is exempted from preparing, filing and sending to its security holders an annual report, where applicable, for its fiscal year ended September 16, 2003, provided that,

- (i) the Issuer issue, and file on SEDAR, a press release informing security holders of their right to receive such annual financial statements and annual report upon request; and
- (ii) the Issuer send a copy of such annual financial statements and annual report to any security holder of the Issuer who so requests.

DATED October 20, 2003

Robert L Shirriff

Robert W. Davis