

# 2005 BCSECCOM 21

December 14, 2004

## **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 or acquisition - Alternate financial information will be provided about the issuer that is consistent with the financial information required in the continuous disclosure context for significant acquisitions; three years of historical financial information for predecessor issuers is not relevant to the new issuer going forward as the predecessor issuers have ceased their prior operations and the new issuer will be carrying on a new business without the continuing involvement of the former parent company; information will be provided about the parties to the transaction sufficient for shareholders to assess the transaction as a whole

## **Applicable British Columbia Provisions**

National Instrument 51-102 *Continuous Disclosure Obligations*, s. 13.1  
Form 51-102F5, s. 14.2

In the Matter of  
the Securities Legislation  
of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario And Quebec

and

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

and

In the Matter of  
Ketch Resources Ltd.

## MRRS Decision Document

## **Background**

1. The local securities regulatory authority or regulator (the “Decision Maker”) in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario and Quebec (the “Jurisdictions”) has received an application from Ketch Resources Ltd. (“Ketch”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that Ketch be exempt from section 14.2 of Form 51-102F5 *Information Circular* (“Form 51-102F5”) of National Instrument 51-102, *Continuous Disclosure Obligations* (“NI 51-102”) and in

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Quebec by a revision of the general order that will provide the same result as an exemption order, which (i) requires Ketch to include three years of audited financial statements in an information circular in respect of a business for which securities are being distributed in connection with a restructuring transaction; and (ii) requires Ketch to include three years of audited financial statements in an information circular in respect of a business being acquired in connection with a restructuring transaction (the "Requested Relief").

2. Under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"):
  - 2.1 the Alberta Securities Commission is the principal regulator of this application; and
  - 2.2 the MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

3. Unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 – *Definitions*.

### **Representations**

4. Ketch has represented to the Decision Makers that:
  - 4.1 Ketch was incorporated under the laws of the Province of Alberta and Ketch's head office is located in Calgary, Alberta;
  - 4.2 The common shares of Ketch are listed and posted for trading on the Toronto Stock Exchange under the trading symbol "KER";
  - 4.3 Ketch is a reporting issuer in the provinces of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario and Quebec;
  - 4.4 To its knowledge, Ketch is not in default of any of the requirements of the applicable securities legislation in any of the provinces in which it is a reporting issuer;
  - 4.5 911150 Alberta Ltd. ("911150") is incorporated under the laws of the Province and its head office is located in Edmonton, Alberta;
  - 4.6 911150 was established for the manufacture and sale of chemical products and sold its chemical business and has had no substantive activity since December of 2000;

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- 4.7 911150 is not a reporting issuer in any jurisdiction of Canada, nor are its shares listed for trading on any stock exchange or other market;
- 4.8 909612 Alberta Ltd. (“909612”) is incorporated under the laws of the Province of Alberta and its head office is located in Edmonton, Alberta;
- 4.9 909612 was in the pipe coating business. Its operations were not successful and its parent, the Westaim Corporation (“Parent”), publicly announced the discontinuance of its business on May 28, 2002 and this process was completed in February of 2003;
- 4.10 909612 is not a reporting issuer in any jurisdiction of Canada, nor are its shares listed for trading on any stock exchange or other market;
- 4.11 911150 and 909612 are wholly owned subsidiaries of The Westaim Corporation, a public company listed on the Toronto Stock Exchange and NASDAQ;
- 4.12 Ketch and Bear Creek Energy Ltd. (“Bear Creek”) have entered into an arrangement agreement dated October 26, 2004 pursuant to which the two companies have agreed to combine under a plan of arrangement (the “Arrangement”) whereby they will be reorganizing their businesses to create a new oil and gas trust (the “Trust”) and two public exploration-focused producers: Kereco Energy Ltd. (“Kereco”) and Bear Ridge Resources Ltd. (“Bear Ridge”);
- 4.13 Pursuant to the Arrangement, Kereco will acquire certain assets (the “Assets”) from Ketch and Bear Ridge will acquire certain assets from Bear Creek;
- 4.14 The acquisition of the Assets by Kereco will constitute a “significant acquisition” for Kereco under the Legislation;
- 4.15 As a result of the proposed Arrangement, shareholders of Ketch will receive one trust unit of the Trust and 0.4 of a share in each of Kereco and Bear Ridge and Bear Creek shareholders will receive 0.5 of a trust unit of the Trust and 0.2 of a share in each of Kereco and Bear Ridge;
- 4.16 Ketch and Parent have agreed that pursuant to an agreement to be entered into between Ketch and Parent, 911150 and 909612, 911150 and 909612 among other things, will amalgamate on January 1, 2005 to form

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Kereco and Kereco will participate in the Arrangement with Ketch and Bear Creek;

- 4.17 Ketch and Bear Creek are preparing an information circular (the “Information Circular”) in connection with meetings of their securityholders which are expected to be held in early January, 2004. At the meetings, the Ketch and Bear Creek securityholders will be given the opportunity to vote on the Arrangement which includes the Acquisition;
- 4.18 Pursuant to Section 14.2 of NI 51-102F5, because Kereco will be the entity resulting from the amalgamation of 911150 and 909612, and the securityholders of each of Bear Creek and Ketch will receive securities of Kereco pursuant to the Arrangement, Ketch and Bear Creek will be required to include financial statement disclosure in the Information Circular in respect of each of 911150 and 909612, including audited statements of income, retained earnings and cash flows for a three year period;
- 4.19 The combination of the following factors render the audit of financial statements of 909612 and 911150 for the 2001 year impracticable to conduct:
  - (a) in 2001, 909612 was fully operating as an industrial coatings business with revenues of over \$3 million and a loss of \$16.7 million. At that time 909612 was relatively immaterial to the Parent for consolidated audit purposes and audit procedures such as inventory counts and valuation testing were not completed to the extent needed to satisfy a “stand alone audit”. This results in a scope limitation;
  - (b) Parent has confirmed that although 909612 may have basic source documents relating to this period, it does not have all the detailed supporting analysis;
  - (c) All of the management and staff of 909612 involved in 2001 were severed so no one is available to answer auditor questions or help reconstruct supporting information related to this period;
  - (d) 911150 has been inactive for a number of years. The company was also relatively immaterial to the Parent for consolidated audit purposes and audit procedures were not completed to the extent needed to satisfy a “stand alone audit”;

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- (e) Parent has confirmed that although 911150 may have basic source documents relating to this period, it does not have all the detailed supporting analysis; and
  - (f) All of the management and staff of 909612 and 911150 involved in 2001 are no longer with the companies so no one is available to answer auditor questions or help reconstruct supporting information related to this period.
- 4.20 Pursuant to Section 14.2 of NI 51-102F5, because the Acquisition will be a “significant acquisition” for Kereco, Ketch is required to include certain annual and interim financial statement disclosure in the Information Circular in respect of the Acquisition, including annual financial statements for each of the three most recently completed financial years for the Assets;
- 4.21 Pursuant to Canadian Securities Administrators (“CSA”) Staff Notice 42-303 (the “Staff Notice”), Ketch may submit an application to the provincial and territorial securities regulatory authorities requesting relief from certain requirements of the prospectus rules that are not consistent with NI 51-102;
- 4.22 Pursuant to the Staff Notice, the CSA have indicated that they are prepared to recommend that the relief be granted on the condition that the issuer provides the financial statements specified in Item 8.5 of NI 51-102;
- 4.23 Ketch proposes to include in the Information Circular audited operating statements for the two years ended December 31, 2003 and 2002 and unaudited operating statements for the nine months ended September 30, 2004 and 2003 in respect of the Acquisition in accordance with Section 8.5 of NI 51-102 and in accordance with Section 3.20(6)(a) of Companion Policy 41-501CP to Ontario Securities Commission Rule 41-501.
- 4.24 As of the date of the Application, Parent is not, to the best of its knowledge and belief, in default of securities legislation in any of the Jurisdictions.

### **Decision**

5. Each of the Decision Makers is satisfied that the Decision Maker has the jurisdiction to make the Decision;

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6. The Decision of the Decision Makers under the Legislation for the purposes of the Information Circular is that:
  - 6.1 the requirement contained in the Legislation to include in the Information Circular annual statements of income, retained earnings and cash flows in respect of 909612 for the financial years ended December 31, 2003, 2002 and 2001 and an auditor's report thereon and a balance sheet in respect of 909612 as at December 31, 2003 and 2002 and an auditor's report thereon shall not apply to Ketch, provided that Ketch shall include in the Information Circular: (i) annual statements of income, retained earnings and cash flows in respect of 909612 for the financial years ended December 31, 2003 and 2002 and an auditor's report thereon; (ii) a balance sheet in respect of 909612 as at December 31, 2003 and 2002 and an auditor's report thereon; and (iii) interim statements of income, retained earnings and cash flows in respect of each of 909612 for the nine months ended September 30, 2004 and 2003; and an interim balance sheet in respect of each of 909612 as at September 30, 2004;
  - 6.2 the requirement contained in the Legislation to include in the Information Circular annual statements of income, retained earnings and cash flows in respect of 911150 for the financial years ended December 31, 2003, 2002 and 2001 and an auditor's report thereon and a balance sheet in respect of 911150 as at December 31, 2003 and 2002 and an auditor's report thereon shall not apply to Ketch, provided that Ketch shall include in the Information Circular: (i) annual statements of income, retained earnings and cash flows in respect of 911150 for the financial years ended December 31, 2003 and 2002 and an auditor's report thereon; (ii) a balance sheet in respect of 911150 as at December 31, 2003 and 2002 and an auditor's report thereon; and (iii) interim statements of income, retained earnings and cash flows in respect of each of 911150 for the nine months ended September 30, 2004 and 2003; and an interim balance sheet in respect of each of 911150 as at September 30, 2004; and
  - 6.3 the requirement contained in the Legislation to include in the Information Circular audited operating statements relating to the Assets to be acquired by Kereco pursuant to the Acquisition for three year period ending December 31, 2003 and unaudited operating statements relating to the properties to be acquired by Kereco pursuant to the Acquisition for the nine months ended September 30, 2004 and 2003 shall not apply to Ketch provided that Ketch shall include in the Information Circular: (i) audited operating statements relating to the

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Assets to be acquired by Kereco pursuant to the Acquisition for the two years ended December 31, 2003 and 2002; and (ii) unaudited operating statements relating to the Assets to be acquired by Kereco pursuant to the Acquisition for the nine months ended September 30, 2004 and 2003.

DATED at Calgary, Alberta on this 14<sup>th</sup> day of December, 2004.

Agnes Lau, CA  
Deputy Director, Capital Markets