

2005 BCSECCOM 126

January 31, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – National Instrument 51-102 – *Continuous disclosure obligations* - An issuer wants relief from the requirement to deliver its financial statements by the filing deadline - The issuer is an SEC issuer as defined in NI 51-102; the issuer must file its financial statements with the Commission when it files them with the SEC; the issuer prepares and files its financial statements with the SEC before it would otherwise be required to file them with the Commission; the issuer will deliver the financial statements by the later of the day it would be required to file the financial statements with the Commission if it did not file the financial statements with the SEC, and 10 days after receiving the request for the financial statements

Applicable British Columbia Provisions

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

National Instrument 51-102 – *Continuous disclosure obligations*, ss. 4.6 and 13.1

In the Matter of
the Securities Legislation
of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Quebec, 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 Agrium Inc. (the “Filer”)

MRRS Decision Document

Background

The local 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 (the “Jurisdictions”) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the “Legislation”) for an exemption from the requirement to deliver its financial statements and management’s discussion and analysis (“MD&A”) to any securityholder that requests a copy by the date the Filer files the financial statements and MD&A with the SEC (the “Requested Relief”).

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Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Alberta Securities Commission is the principal regulator for this application, and
- (b) this MRRS Decision Document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* and in National Instrument 51-102 *Continuous Disclosure Obligations* have the same meaning in this decision unless they are defined in this MRRS Decision Document.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is a leading global producer and marketer of agricultural nutrients and industrial products and a major retail supplier of agricultural products and services in both North America and Argentina.
2. The Filer is incorporated under the laws of Canada with its head office located in Calgary, Alberta.
3. The Filer is a “reporting issuer” or has equivalent status in each of the provinces of Canada within the meaning of the securities laws in such jurisdictions and is a SEC issuer.
4. The common shares of the Filer are listed on the Toronto Stock Exchange and the New York Stock Exchange.
5. The Filer files interim financial statements and annual financial statements (collectively, the “Financial Statements”) and related MD&A with: i) the securities regulatory authorities in each of the Jurisdictions (the “Commissions”) in accordance with the Legislation, and ii) the SEC, in accordance with the requirements of the Securities Exchange Act of 1934, as amended.
6. The Filer files one set of financial statements in both Canada and the United States of America prepared in accordance with Canadian generally accepted accounting principles (“GAAP”) and audited in accordance with Canadian generally accepted auditing standards. The notes to the annual financial statements include a summary of differences between Canadian and United States of America GAAP.

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7. The Filer is required to deliver to securityholders of the Filer who have requested financial statements and MD&A under the Legislation (“Requesting Securityholders”) copies of the requested Financial Statements and MD&A. The Legislation requires that copies of the requested Financial Statements and MD&A must be sent to a Requesting Securityholder by the later of: (i) the “filing deadline” for the Financial Statements and MD&A requested (the “Delivery Deadline”), and (ii) 10 calendar days after the Filer receives the request.
8. The “filing deadline” for the Filer is determined pursuant to provisions in the Legislation which state that the Financial Statements and MD&A must be filed:
 - (a) in the case of the Filer's annual financial statements and related MD&A, on or before the earlier of:
 - (i) the 90th day after the end of its most recently completed financial year; and
 - (ii) the date of filing of the Filer's annual financial statements with the SEC; or
 - (b) in the case of the Filer's interim financial statements and related MD&A, on or before the earlier of:
 - (i) the 45th day after the end of the interim period; and
 - (ii) the date of filing of the Filer's interim financial statements with the SEC.
9. The Filer files its annual financial statements and interim financial statements and related MD&A with the Commissions in accordance with the Legislation, concurrent with the filing of such materials with the SEC and, in the ordinary course, these filings are made prior to the “filing deadline” otherwise applicable pursuant to the Legislation if such materials were not also filed with the SEC, as outlined above. Accordingly, the Delivery Deadline for Financial Statements and related MD&A is generally determined, pursuant to the Legislation, to be the date upon which the Filer files the Financial Statements with the SEC.
10. Because the Delivery Deadline under the Legislation is effectively triggered for the Filer by the filing of Financial Statements and related MD&A with the

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SEC, the Filer must delay filing such materials with the Commissions and the SEC, even though they are available for filing, in order to be able to satisfy the delivery obligations under the Legislation.

Decision

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 under the Legislation is that the Requested Relief is granted, provided that the Filer delivers the financial statements and related MD&A to a Requesting Securityholder:

- (a) in the case of its annual financial statements and MD&A relating to its annual financial statements, by the later of:
 - (i) 90 days, or 120 days if the Filer is a venture issuer, after its financial year end; and
 - (ii) 10 calendar days after the Filer receives the request; and
- (b) in the case of its interim financial statements and MD&A relating to its interim financial statements, by the later of:
 - (i) 45 days, or 60 days if the Filer is a venture issuer, after the end of the interim period; and
 - (ii) 10 calendar days after the Filer receives the request.

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