

# 2005 BCSECCOM 551

August 15, 2005

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-102, s. 13.1 - Continuous Disclosure Obligations - An exchangeable share issuer wants an exemption from having to file continuous disclosure documents to permit it to rely on the continuous disclosure documents of its parent issuer - The issuer is an exchangeable share issuer that complies with all of the conditions for continuous disclosure relief in section 13.3 of National Instrument 51-102 Continuous Disclosure Obligations except that its parent issuer is not an SEC issuer; the parent issuer is a Canadian reporting issuer that will send copies of all of its documents to the securityholders of the exchangeable share issuer and explain the reasons the information sent to them relates to the parent, rather than the exchangeable share issuer; the exchangeable share issuer will remain a subsidiary of the parent issuer, and will not issue any securities other than exchangeable shares or debt instruments to certain parties

National Instrument 51-101, s. 8.1 - Standards of Disclosure for Oil and Gas Activities - A reporting issuer wants relief from the requirements contained in Part 2 Annual Filing Requirements and in Part 3 Responsibilities of Reporting Issuers and Directors - The issuer is a wholly owned subsidiary of a trust; the issuer and the trust are both reporting issuers; the issuer is exempt from continuous disclosure obligations on the basis that the trust's disclosure record will be filed and delivered in place of the issuer's disclosure record; the trust is subject to NI 51-101 and will provide all of the disclosure required in Parts 2 and 3 of NI 51-101

## **Applicable British Columbia Provisions**

National Instrument 51-102, Parts 4-12, s. 13.1

National Instrument 51-101, Parts 2 and 3, section 8.1

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Ontario,  
Quebec, New Brunswick, Newfoundland and Labrador,  
Yukon, Northwest Territories and Nunavut (the Jurisdictions)

and

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

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and

In the Matter of  
Fairborne Energy Ltd. (the Filer)

## MRRS Decision Document

### **Background**

1. The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation), as applicable, that:
  - 1.1 except in Québec, the Filer be exempted from Part 2 (Annual Filing Requirements) and Part 3 (Responsibilities of Reporting Issuers and Directors) of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (NI 51-101) (the NI 51-101 Relief);
  - 1.2 the Filer be exempted from National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) and any comparable continuous disclosure requirements under the securities legislation of such Jurisdictions that have not yet been repealed or otherwise rendered ineffective as a consequence of the adoption of NI 51-102, including continuous disclosure requirements under the securities legislation of those Jurisdictions which have not adopted or implemented NI 51-102 (collectively, the Continuous Disclosure Requirements) (collectively, the Continuous Disclosure Relief); and
  - 1.3 except in British Columbia, the Filer be exempted from the requirements contained in Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (MI 52-109) (the MI 52-109 Relief).
2. Under the Mutual Reliance Review System for Exemptive Relief Applications (the MRRS):
  - 2.1 the Alberta Securities Commission is the principal regulator for this application; and
  - 2.2 this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

3. Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

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### **Representations**

4. The decision is based on the following facts represented by the Filer:

#### **Fairborne Energy Ltd.**

- 4.1 The Filer was amalgamated under the *Business Corporations Act* (Alberta) (the ABCA) on June 1, 2005.
- 4.2 Prior to the amalgamation, the Filer had been a reporting issuer in British Columbia, Alberta, Ontario, Québec and New Brunswick and the common shares of the Filer (Fairborne Shares) had been listed and posted for trading on the Toronto Stock Exchange (the TSX).
- 4.3 The Fairborne Shares were delisted from the TSX on June 6, 2005.
- 4.4 The head office and registered office of the Filer is located in Calgary, Alberta.
- 4.5 The authorized share capital of the Filer includes common shares and exchangeable shares (Exchangeable Shares). As at June 15, 2005, 100 common shares of the Filer were issued and outstanding, all of which were owned by the Trust, and approximately 7,000,000 Exchangeable Shares were issued and outstanding.
- 4.6 The common shares of the Filer are not listed or quoted on any marketplace. The Exchangeable Shares are listed and posted for trading on the TSX.
- 4.7 The Filer is currently a reporting issuer in British Columbia, Alberta, Ontario, Québec and New Brunswick. The Filer is not in default of the securities legislation of such jurisdictions.

#### **Fairborne Energy Trust**

- 4.8 Fairborne Energy Trust (the Trust) was established pursuant to a trust indenture dated April 20, 2005, as amended, under the laws of Alberta.
- 4.9 The head office of the Trust is located in Calgary, Alberta.
- 4.10 The Trust owns all of the issued and outstanding securities of the Filer, other than the Exchangeable Shares.

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- 4.11 The holders (Unitholders) of units of the Trust (Trust Units) are the sole beneficiaries of the Trust. Computershare Trust Company of Canada (the Trustee) is the trustee of the Trust. The Filer is the administrator of the Trust.
- 4.12 The Trust Units were listed and posted for trading on the TSX on June 6, 2005.
- 4.13 The Trust became a reporting issuer in each of British Columbia, Alberta, Ontario, Québec and New Brunswick on June 1, 2005 concurrent with the completion of the amalgamation.

### **The Arrangement**

- 4.14 Pursuant to an arrangement (Arrangement) involving Fairborne Energy Ltd. (Fairborne), the Trust, Fairquest Energy Limited (Fairquest), Fairborne ExchangeCo Ltd. (ExchangeCo), Fairborne Acquisition Corp. (AcquisitionCo) and the securityholders of the Filer, among other things:
  - 4.14.1 certain oil and gas assets of the Filer were conveyed to Fairquest;
  - 4.14.2 shareholders (Shareholders) of the Filer, other than non-resident and tax-exempt Shareholders, received in exchange for each common share of the Filer, either:
    - 4.14.2.1 0.333 common share of Fairquest (Fairquest Common Share) and one (1) Trust Unit; or
    - 4.14.2.2 0.333 Fairquest Common Share and one (1) Exchangeable Share.
  - 4.14.3 non-resident and tax-exempt Shareholders received, in exchange for each Share, one (1) Trust Unit and 0.333 Fairquest Common Share; and
  - 4.14.4 Fairborne and AcquisitionCo were amalgamated and continued as one corporation, the Filer.
- 4.15 Upon completion of the Arrangement:

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- 4.15.1 Shareholders and placees under a private placement completed by Fairquest prior to the completion of the Arrangement owned all of the issued and outstanding securities of Fairquest;
- 4.15.2 certain Shareholders owned all of the Exchangeable Shares;
- 4.15.3 the Trust owned all of the issued and outstanding common shares of the Filer; and
- 4.15.4 the Trust owned all of the issued and outstanding notes of the Filer.

### **The Exchangeable Shares**

- 4.16 The Exchangeable Shares are, to the extent possible, the economic equivalent of the Trust Units.
- 4.17 The Exchangeable Shares have voting attributes equivalent to those of the Trust Units.
- 4.18 Holders of Exchangeable Shares will receive all disclosure materials that the Trust is required to send to Unitholders under the Legislation.
- 4.19 The exchange rights attaching to the Exchangeable Shares are governed by a voting and exchange trust agreement among the Trust, the Filer, ExchangeCo and the Trustee.
- 4.20 The Exchangeable Shares are also subject to a support agreement among the Trust, the Filer and ExchangeCo, pursuant to which the Trust and ExchangeCo will take certain actions and make certain payments and will deliver or cause to be delivered Trust Units in satisfaction of the obligations of the Filer.
- 4.21 The provisions of the Exchangeable Shares, together with the Support Agreement and the Voting and Exchange Trust Agreement, result in the Exchangeable Shares providing the holders thereof with a security having economic, ownership and voting rights which are, as nearly as practicable, equivalent to those of the Trust Units.

### **British Columbia and Québec**

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4.22 The NI 51-101 Relief is not required in Québec as Québec has not adopted NI 51-101.

4.23 The MI 52-109 Relief is not required in British Columbia as British Columbia has not adopted MI 52-109.

### Decision

5. 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.

6. The decision of the Decision Makers under the Legislation is that:

6.1 the NI 51-101 Relief is granted for so long as:

6.1.1 the Trust files with each Decision Maker copies of all documents required to be filed by it pursuant to NI 51-101 (the NI 51-101 Documents) and concurrently with the filing of the NI 51-101 Documents, the Trust files in electronic form and under the *System for Electronic Documents Analysis and Retrieval* (SEDAR) profile of the Filer either:

6.1.1.1 the NI 51-101 Documents, or

6.1.1.2 a notice that indicates:

6.1.1.2.1 that the Filer has been granted an exemption from the requirements of Part 2 (Annual Filing Requirements) and Part 3 (Responsibilities of Reporting Issuers and the Directors) of NI 51-101,

6.1.1.2.2 that the Trust has filed the NI 51-101 Documents, and

6.1.1.2.3 where a copy of the NI 51-101 Documents can be found for viewing on SEDAR by electronic means.

6.1.2 the Filer disseminates, or causes the Trust to disseminate on the Filer's behalf, a news release announcing the filing by the Trust of the information set out in Section 6.1.1 above and

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indicating where a copy of the filed information can be found for viewing on SEDAR by electronic means;

- 6.1.3 the Filer is exempt from or otherwise not subject to the Continuous Disclosure Requirements;
  - 6.1.4 if disclosure to which NI 51-101 applies is made by the Filer separately from the Trust, the disclosure includes a statement to the effect that the Filer is relying on an exemption from requirements to file information annually under NI 51-101 separately from the Trust, and indicates where disclosure under NI 51-101 filed by the Trust (or by the Filer, if applicable) can be found for viewing on SEDAR by electronic means; and
  - 6.1.5 if the Trust files a material change report to which section 6.1 of NI 51-101 applies, the Filer files the same material change report.
- 6.2 the Continuous Disclosure Relief is granted for so long as:
- 6.2.1 the Trust is a reporting issuer in at least one of the jurisdictions listed in Appendix "B" of Multilateral Instrument 45-102 *Resale of Securities* and is an electronic filer under SEDAR;
  - 6.2.2 the Trust sends concurrently to all holders of Exchangeable Shares resident in the Jurisdictions all disclosure material furnished to holders of Trust Units under the Continuous Disclosure Requirements;
  - 6.2.3 the Trust files with each Decision Maker copies of all documents required to be filed by it pursuant to NI 51-102;
  - 6.2.4 concurrently with the filing of the documents required to be filed by it pursuant to the Continuous Disclosure Requirements and the MI 52-109 Relief (the Trust Documents), the Trust files in electronic format under the SEDAR profile of the Filer either,
    - 6.2.4.1 the Trust Documents, or
    - 6.2.4.2 a notice that indicates

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- 6.2.4.2.1 that the Filer has been granted an exemption from the Continuous Disclosure Requirements and the requirements of MI 52-109,
    - 6.2.4.2.2 that the Trust has filed the Trust Documents, and
    - 6.2.4.2.3 where a copy of the Trust Documents can be found for viewing on SEDAR by electronic means;
  - 6.2.5 the Trust is in compliance with the requirements in the securities legislation of the Jurisdictions and of any marketplace on which the securities of the Trust are listed or quoted in respect of making public disclosure of material information on a timely basis;
  - 6.2.6 the Filer issues a news release and files a material change report in accordance with Part 7 of NI 51-102 for all material changes in respect of the affairs of the Filer that are not also material changes in the affairs of the Trust;
  - 6.2.7 the Trust includes in all mailings of proxy solicitation materials to holders of Exchangeable Shares a clear and concise statement that explains the reason the mailed material relates solely to the Trust, indicates that Exchangeable Shares are the economic equivalent to the Trust Units and describes any rights associated with the Exchangeable Shares;
  - 6.2.8 the Trust remains a direct or indirect beneficial owner of all of the issued and outstanding voting securities of the Filer; and
  - 6.2.9 the Filer does not issue any securities other than Exchangeable Shares, securities issued to the Trust or its affiliates or debt securities issued to banks, loan corporations, trust corporations, treasury branches, credit unions, insurance companies or other financial institutions.
- 6.3 the MI 52-109 Relief is granted for so long as:



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- 6.3.1 the Filer is not required to, and does not, file its own interim filings and annual filings (as those terms are defined under MI 52-109);
  - 6.3.2 the Trust files in electronic format under the SEDAR profile of the Filer the:
    - 6.3.2.1 interim financial statements of the Trust required under section 4.3 of NI 51-102;
    - 6.3.2.2 annual financial statements of the Trust required under section 4.2 of NI 51-102;
    - 6.3.2.3 certification of interim filings of the Trust required under Part 3 of MI 52-109; and
    - 6.3.2.4 certification of annual filings of the Trust required under Part 2 of MI 52-109
- at the same time as such documents are required to be filed on its own behalf under the Legislation; and
- 6.3.3 the Filer is exempt from or otherwise not subject to the Continuous Disclosure Requirements.

Glenda A. Campbell, Q.C., Vice-Chair  
Alberta Securities Commission

Stephen R. Murison, Vice-Chair  
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