

# 2005 BCSECCOM 452

June 21, 2005

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Securities Rules s. 162(3) - Exemption from the Valuation Requirements - An issuer wants relief from the requirement to obtain a formal valuation in connection with its insider bid for the outstanding common shares of a target company - Certain securityholders who are at arm's length to the offeror have already agreed to tender their shares to the insider bid; the offeror will offer consideration under the bid that is at least equal to the highest amount it has agreed to pay to the selling securityholders; the selling securityholders had full knowledge and access to information concerning the target issuer; the offeror did not know any material information in respect of the target that had not been generally disclosed when it entered into the agreements with the selling securityholders; the offeror has not acquired any material information in respect of the target since the date of the agreements with the selling securityholders that has not been generally disclosed; the offeror can rely on exemptions from the requirement to obtain a valuation and disclose prior valuations in OSC Rule 61-501 or Québec Policy Q-27

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 162(2) and 162(3)

In the Matter of  
the Securities Legislation of  
Alberta and British Columbia (Jurisdictions)

and

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

and

In the Matter of  
Nations Energy Company Ltd. (Nations)  
and 1153298 Alberta Ltd.  
(the Offeror and, collectively with Nations, 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

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Legislation) that the Filer, as an insider, be exempted from the requirement to obtain a valuation (the Valuation Requirement) of the common shares (the Tartan Shares) of Tartan Energy Inc. (Tartan), in connection with the proposed offer (the Offer) by the Offeror to purchase all of the outstanding Tartan Shares not currently owned by Nations or its affiliates (the Requested Relief).

2. Under the Mutual Reliance Review System for Exemptive Relief Applications:
  - 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.

### **Representations**

4. This decision is based on the following facts represented by the Filer:
  - 4.1 Nations is a private corporation engaged in the exploration for and development of oil and gas internationally with its head office located in Calgary, Alberta. The Offeror is a wholly-owned subsidiary of Nations incorporated under the laws of Alberta for the purpose of making the Offer.
  - 4.2 Tartan is a Calgary-based oil and gas exploration, development and production company with assets primarily in California.
  - 4.3 Under the Offer Nations would pay \$0.63 in cash (the Bid Price) for each Tartan Share tendered. The closing price of the Tartan Shares on the TSX Venture Exchange immediately preceding the announcement by Nations of its intention to make the Offer, on May 12, 2005, was \$0.41 per Tartan Share.
  - 4.4 Nations owns or controls 20,046,167 Tartan Shares, representing approximately 18% of the issued and outstanding Tartan Shares. As a result, the Filer is an insider of Tartan under the Legislation.

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- 4.5 While neither the Filer nor its affiliates and associates currently has any board or management representation in Tartan, nor has knowledge of any material information concerning Tartan or its securities that has not been generally disclosed, Nations' chief financial officer was a director of Tartan and a member of its audit committee from June, 2003 until his resignation effective May 12, 2005.
- 4.6 The Filer negotiated the Bid Price and entered into lock-up agreements (Agreements) with existing shareholders of Tartan who are at arm's length from the Filer and who own in the aggregate over 24% of the outstanding Tartan Shares. These shareholders have full knowledge about Tartan and its securities and obtained the bulk of their Tartan Shares in the sale to Tartan of what are now Tartan's oil and gas properties.
- 4.7 Based on the facts represented in section 4.6, the Filer in making the Offer in Ontario is able to rely, and intends to rely, on an automatic exemption, under subparagraph 2.4(1)(3) of Ontario Securities Commission Rule 61-501 *Insider Bids, Issuer Bids, Business Combinations and Related Party Transactions*, from a requirement comparable to the Valuation Requirement.
- 4.8 The Bid Price will be at least equal in value to and in the same form as the highest consideration agreed to with each party to the Agreements.
- 4.9 The Filer anticipates mailing a take-over bid circular to holders of Tartan Shares on or before June 24, 2005.

### 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 the Requested Relief is granted provided that the Filer complies with the other requirements in the Legislation applicable to formal take-over bids made by insiders.

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

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Stephen R. Murison, Vice-Chair  
Alberta Securities Commission