

2004 BCSECCOM 492

Headnote

Mutual Reliance Review System for Exemptive Relief Application – relief from continuous disclosure requirements for an exchangeable share issuer whose securities are exchangeable into units of an income trust

Applicable British Columbia Provisions

Securities Act, R.S.B.C.1996, c. 418, ss. 85(1), 91, 117 and 119

Securities Rules, B.C. Reg. 194/97, ss. 144, 145, 149 and 184

National Instrument 51-102 – *Continuous Disclosure Obligations*, s. 13.1

IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA, BRITISH COLUMBIA, MANITOBA, ONTARIO, QUÉBEC, NEW BRUNSWICK, NOVA SCOTIA, NEWFOUNDLAND AND LABRADOR, YUKON AND NUNAVUT

AND

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

AND

IN THE MATTER OF ZARGON OIL & GAS LTD. AND ZARGON ENERGY TRUST

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (collectively, the “Decision Makers”) in each of Alberta, British Columbia, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Yukon and Nunavut (collectively, the “Jurisdictions”) has received an application from Zargon Oil & Gas Ltd. (“Zargon”) and Zargon Energy Trust (the “Trust”) in connection with a plan of arrangement (the “Arrangement”) under Section 193 of the *Business Corporations Act* (Alberta) (the “ABCA”) involving Zargon’s predecessors (being Zargon Oil & Gas Ltd. (“Pre-Amalgamation Zargon”), Zargon AcquisitionCo Inc. (“AcquisitionCo”) and Zargon Resources Ltd. (“ZRL”)) and the Trust for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that Zargon be granted an exemption from National Instrument 51-102 Continuous Disclosure Obligations (“NI 51-102”), in its entirety, in each of the Jurisdictions, and in Québec by a revision of general order No. 2004-PDG-0020 dated March 26, 2004 that will provide the same result as an exemption order, and further be granted an exemption from any comparable continuous disclosure requirements under the Legislation of the Jurisdictions

2004 BCSECCOM 492

(other than Ontario) that have not yet been repealed or otherwise rendered ineffective as a consequence of the adoption of NI 51-102 (collectively, the “Continuous Disclosure Requirements”);

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”) the Alberta 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;

AND WHEREAS Zargon and the Trust have represented to the Decision Makers that:

1. Pre-Amalgamation Zargon was a corporation incorporated and subsisting pursuant to the provisions of the ABCA;
2. the registered, head and principal office of Pre-Amalgamation Zargon was located at Suite 700, 333 – 5th Avenue S.W., Calgary, Alberta, T2P 3B6;
3. Pre-Amalgamation Zargon was actively engaged in the exploration for, and the acquisition, development and production of, oil and natural gas in the Provinces of Alberta, British Columbia and Saskatchewan and in Montana and North Dakota in the United States;
4. the authorized capital of Pre-Amalgamation Zargon included an unlimited number of common shares (“Common Shares”);
5. the Common Shares were listed on the Toronto Stock Exchange (the “TSX”) until they were delisted at the close of business on July 20, 2004;
6. Pre-Amalgamation Zargon was a reporting issuer in the Provinces of British Columbia, Alberta, Manitoba, Ontario, Québec and Nova Scotia for more than 12 months;
7. Pre-Amalgamation Zargon had filed all the information that it had been required to file as a reporting issuer in each of the Provinces of British Columbia, Alberta, Manitoba, Ontario, Québec and Nova Scotia and was not in default of the securities legislation in any of these jurisdictions;
8. the Trust is an open-end unincorporated investment trust governed by the laws of the Province of Alberta and created pursuant to a trust indenture dated June 17, 2004 between Zargon and Valiant Trust Company, as trustee;

2004 BCSECCOM 492

9. the Trust was established for the purpose of, among other things:
 - (a) participating in the Arrangement;
 - (b) investing in securities of AcquisitionCo and Zargon ExchangeCo Inc. (“ExchangeCo”) or any other affiliate of the Trust and acquiring (directly or indirectly) certain securities of AcquisitionCo pursuant to the Arrangement, which investments are for the purpose of funding the acquisition, development, exploitation and disposition of all types of petroleum and natural gas and energy related assets, including without limitation, facilities of any kind, oil sands interests, electricity or power generating assets and pipeline, gathering, processing and transportation assets (collectively, “Energy Assets”);
 - (c) acquiring or investing in the securities of any other entity, including without limitation bodies corporate, partnerships or trusts, and borrowing funds or otherwise obtaining credit, including granting guarantees, for that purpose, for the purpose of directly or indirectly acquiring Energy Assets;
 - (d) acquiring direct royalties and net profits interests; and
 - (e) making loans or other advances to Zargon or any other affiliate of the Trust;
10. the head and principal office of the Trust is located at Suite 700, 333 – 5th Avenue S.W., Calgary, Alberta, T2P 3B6;
11. the Trust is authorized to issue an unlimited number of trust units (“Trust Units”) and an unlimited number of special voting rights (“Special Voting Rights”), of which 14,864,531 Trust Units and one (1) Special Voting Right were outstanding on July 15, 2004 on completion of the Arrangement;
12. the Trust Units are listed and posted for trading on the TSX. The Trust Units issuable from time to time in exchange for the series A exchangeable shares of Zargon (“Exchangeable Shares”) will also be listed on the TSX;
13. the Trust is a reporting issuer in the Provinces of British Columbia, Alberta, Ontario, Québec, Nova Scotia and Newfoundland and Labrador and is subject to the Continuous Disclosure Requirements in such Jurisdictions. The Trust has made application to be deemed a reporting issuer in the Provinces of Saskatchewan and New Brunswick and, when the applicable orders are

2004 BCSECCOM 492

received, the Trust will be subject to the Continuous Disclosure Requirements in these additional Jurisdictions;

14. AcquisitionCo was a wholly-owned subsidiary of the Trust incorporated pursuant to the ABCA. AcquisitionCo was incorporated to participate in the Arrangement by, among other things, acquiring the Common Shares of Pre-Amalgamation Zargon;
15. the head and principal office of AcquisitionCo was located at Suite 700, 333 – 5th Avenue S.W., Calgary, Alberta, T2P 3B6 and its registered office was located at 1400, 350 – 7th Avenue S.W., Calgary, Alberta, T2P 3N9;
16. the authorized capital of AcquisitionCo consisted of an unlimited number of common shares, an unlimited number of exchangeable shares, issuable in series, and 3,660,000 Exchangeable Shares;
17. none of the securities of AcquisitionCo were listed or quoted on any market place;
18. AcquisitionCo was not a reporting issuer in any of the Jurisdictions;
19. ZRL was a wholly-owned subsidiary of Zargon that was incorporated and subsisting pursuant to the provisions of the ABCA;
20. the registered, head and principal office of ZRL was located at Suite 700, 333 – 5th Avenue S.W., Calgary, Alberta, T2P 3B6;
21. ZRL participated in the Arrangement by, among other things, conveying certain undeveloped land interests owned by ZRL to Zargon Energy Ltd.;
22. the authorized capital of ZRL included an unlimited number of common shares;
23. the common shares of ZRL were not listed or quoted on any marketplace;
24. ZRL was not a reporting issuer in any of the Jurisdictions;
25. the Arrangement closed on July 15, 2004 after receipt of: (i) the approval of 99.9% of the votes cast by the shareholders and the optionholders of Pre-Amalgamation Zargon (present in person or represented by proxy), voting together as a single class, at the meeting (the “Meeting”) of Pre-Amalgamation Zargon’s securityholders at which the Arrangement was considered; and (ii) the approval of the Court of Queen’s Bench of Alberta;

2004 BCSECCOM 492

26. the information circular and proxy statement dated June 18, 2004 (the “Information Circular”) prepared by Pre-Amalgamation Zargon contains prospectus-level disclosure concerning the respective business and affairs of Pre-Amalgamation Zargon, the Trust and Zargon and a detailed description of the Arrangement, and was mailed to Pre-Amalgamation Zargon’s securityholders in connection with the Meeting. The Information Circular was prepared in conformity with the provisions of the ABCA and applicable securities laws and policies;
27. at the time the Arrangement became effective on July 15, 2004, a series of transactions occurred that resulted in, among other things:
 - (a) subject to certain exceptions and adjustments, shareholders of Pre-Amalgamation Zargon receiving, for each Common Share:
 - (i) one (1) Trust Unit; or
 - (ii) one (1) Exchangeable Share; and
 - (b) Pre-Amalgamation Zargon, AcquisitionCo and ZRL amalgamating pursuant to the provisions of the ABCA and continuing as one corporation, Zargon;
28. the registered, head and principal office of Zargon is located at Suite 700, 333 – 5th Avenue S.W., Calgary, Alberta, T2P 3B6;
29. Zargon is engaged in the exploration for, and the acquisition, development and production of, oil and natural gas in the Provinces of Alberta, British Columbia and Saskatchewan and in Montana and North Dakota in the United States;
30. the authorized capital of Zargon consists of an unlimited number of common shares, an unlimited number of exchangeable shares, issuable in series, and 3,660,000 Exchangeable Shares. On July 15, 2004 when the Arrangement was completed, 100 common shares of Zargon were issued and outstanding (all of which are owned by the Trust) and 3,660,000 Exchangeable Shares were issued and outstanding;
31. the Exchangeable Shares are listed on the TSX;
32. all of the common shares of Zargon will be owned beneficially (directly or indirectly) by the Trust, for as long as any outstanding Exchangeable Shares

2004 BCSECCOM 492

are owned by any person other than the Trust or any of the Trust's subsidiaries and other affiliates. The common shares of Zargon are not listed on any stock exchange;

33. Zargon is a reporting issuer under the Legislation of British Columbia, Alberta, Manitoba, Ontario, Québec and Nova Scotia, and is subject to the Continuous Disclosure Requirements in such Jurisdictions;
34. Zargon has filed all the information that it has been required to file as a reporting issuer in each of the Provinces of British Columbia, Alberta, Manitoba, Ontario, Québec and Nova Scotia, and is subject to the Continuous Disclosure Requirements in such Jurisdictions;
35. the Exchangeable Shares provide a holder with a security having economic and voting rights which are, as nearly as practicable, equivalent to those of the Trust Units;
36. under the terms of the Exchangeable Shares and certain rights granted in connection with the Arrangement, holders of Exchangeable Shares are able to exchange them at their option for Trust Units;
37. under the terms of the Exchangeable Shares and certain rights granted in connection with the Arrangement, the Trust, ExchangeCo or Zargon will redeem, retract or otherwise acquire Exchangeable Shares in exchange for Trust Units in certain circumstances;
38. in order to ensure that the Exchangeable Shares remain the voting and economic equivalent of the Trust Units prior to their exchange, on the effective date of the Arrangement:
 - (a) a voting and exchange trust agreement was entered into among the Trust, AcquisitionCo, ExchangeCo and Valiant Trust Company (the "Voting and Exchange Agreement Trustee") which, among other things, (i) grants to the Voting and Exchange Agreement Trustee, for the benefit of holders of Exchangeable Shares, the right to require the Trust or ExchangeCo to exchange the Exchangeable Shares for Trust Units, and (ii) triggers automatically the exchange of the Exchangeable Shares for Trust Units upon the occurrence of certain specified events;
 - (b) the Trust deposited a Special Voting Unit with the Voting and Exchange Agreement Trustee which effectively provides the holders of Exchangeable Shares with voting rights equivalent to those attached to the Trust Units; and

2004 BCSECCOM 492

- (c) a support agreement was entered into among the Trust, AcquisitionCo, ExchangeCo and the Voting and Exchange Agreement Trustee which, among other things, restricts the Trust from issuing or distributing to the holders of all or substantially all of the outstanding Trust Units:
 - (i) additional Trust Units or securities convertible into Trust Units;
 - (ii) rights, options or warrants for the purchase of Trust Units; or
 - (iii) units or securities of the Trust other than Trust Units, evidences of indebtedness of the Trust or other assets of the Trust;

unless the same or an equivalent distribution is made to holders of Exchangeable Shares, an equivalent change is made to the Exchangeable Shares, or the approval of holders of Exchangeable Shares has been obtained;

- 39. the Information Circular discloses that application will be made to relieve Zargon from the Continuous Disclosure Requirements;
- 40. the Trust will concurrently send to holders of Exchangeable Shares resident in the Jurisdictions all disclosure material it sends to holders of Trust Units pursuant to the Legislation; and
- 41. Zargon and its insiders will comply with the insider reporting requirement and the requirement to file an insider profile under National Instrument 55-102;

AND WHEREAS under the System, 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 under the Legislation is that the Continuous Disclosure Requirements of the Jurisdictions shall not apply to Zargon for so long as:

- (a) the Trust is a reporting issuer in at least one of the jurisdictions listed in Appendix B of Multilateral Instrument 45-102 and is an electronic filer under National Instrument 13-101;

2004 BCSECCOM 492

- (b) the Trust sends to all holders of Exchangeable Shares resident in the Jurisdictions all disclosure material furnished to holders of Trust Units under the Continuous Disclosure Requirements;
- (c) the Trust complies with the requirements in the Legislation 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, and immediately issues and files any news release that discloses a material change in its affairs;
- (d) Zargon 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 Zargon that are not also material changes in the affairs of the Trust;
- (e) 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 the Exchangeable Shares are the economic equivalent to the Trust Units, and describes the voting rights associated with the Exchangeable Shares;
- (f) the Trust remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities of Zargon; and
- (g) Zargon does not issue any securities, other than the 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.

DATED at Calgary, Alberta on this 16th day of August, 2004.

Agnes Lau, CA
Deputy Director, Capital Markets