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Headnote

Mutual Reliance Review System for Exemptive Relief Applications - issuer participating in plan of arrangement - issuer granted relief from continuous disclosure requirements, subject to conditions – granted relief from all of the requirements of NI 51-101, subject to conditions

Applicable British Columbia Provisions

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

National Instrument 51-102 *Continuous Disclosure Obligations*

National Instrument 55-101 *Standards of Disclosure for Oil and Gas Issuers*

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

AND

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

AND

IN THE MATTER OF STORM ENERGY LTD., HARVEST ENERGY TRUST, HARVEST OPERATIONS CORP., ALTERNA TECHNOLOGIES GROUP INC. AND ROCK ENERGY INC.

MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (collectively, the “Decision Makers”) in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Newfoundland & Labrador and Yukon Territory (the “Jurisdictions”) has received an application from Storm Energy Ltd. (“Storm”), Harvest Energy Trust (“Harvest”), Harvest Operations Corp. (“Harvest Operations”), Alterna Technologies Group Inc. (“Alterna”) and Rock Energy Inc. (“Rock”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that:
 - 1.1 in Manitoba, Québec, New Brunswick and the Yukon Territory (the “Registration and Prospectus Jurisdictions”), the dealer registration requirement and the prospectus requirement (the “Registration and Prospectus Requirements”) shall not apply to any

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of the trades made in connection with the proposed plan of arrangement (the “Arrangement”) pursuant to Section 193 of the *Business Corporations Act* (Alberta) (the “ABCA”), involving Storm, Harvest, Harvest Operations, Alterna, Rock and the shareholders of Storm (the “Shareholders”);

- 1.2 the requirements contained in National Instrument 51-102 – Continuous Disclosure Obligations (“NI 51-102”) and in Québec by a revision of the general order that will provide the same result as an exemption order, and any comparable continuous disclosure requirements under the Legislation of the Jurisdictions that has not yet been repealed or otherwise rendered ineffective as a consequence of the adoption of NI 51-102 (the “Continuous Disclosure Requirements”) shall not apply to the continuing corporation following the amalgamation of Storm and Harvest Operations under the Arrangement (“New Harvest Operations”);
 - 1.3 other than in Québec, the requirements contained in 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”) shall not apply to New Harvest Operations; and
 - 1.4 other than in British Columbia and Québec, the requirements contained in Multilateral Instrument 52-109 – Certification of Disclosure in Issuers’ Annual and Interim Filings (MI 52-109”) shall not apply to New Harvest Operations.
2. AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Manitoba Securities Commission is the principal regulator for this application.
 3. AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions.
 4. AND WHEREAS Storm, Harvest, Alterna, Rock and Harvest Operations have represented to the Decision Makers that:

STORM

- 4.1 Storm is a corporation incorporated pursuant to the ABCA on July 10, 2002;

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- 4.2 the head and principal office of Storm is located at Suite 3300, 205 - 5th Ave. S.W., Calgary, Alberta, T2P 2V7 and the registered office is located at Suite 3300, 421 - 7th Ave S.W., Calgary, Alberta, T2P 4K9;
- 4.3 Storm is engaged in the exploration for, and the acquisition, development and production of, oil and natural gas, primarily in the provinces of Alberta, Saskatchewan and British Columbia;
- 4.4 the authorized capital of Storm currently consists of an unlimited number of common shares ("Storm Shares") and an unlimited number of first preferred shares, second preferred shares and third preferred shares, each issuable in series;
- 4.5 as at April 18, 2004, 29,892,302 Storm Shares were issued and outstanding, no preferred shares were issued and outstanding and options to purchase 2,684,824 Storm Shares were outstanding;
- 4.6 the Storm Shares are listed and posted for trading on the Toronto Stock Exchange ("TSX").
- 4.7 Storm is, and has been for more than four months, a reporting issuer or the equivalent thereof in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Québec;
- 4.8 Storm 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, Saskatchewan, Manitoba, Ontario and Québec and is not in default of the Legislation in any of these jurisdictions;

Alterna

- 4.9 Alterna was incorporated under the ABCA in 1996 and continued under the *Canada Business Corporations Act* in 1998;
- 4.10 the registered office of Alterna is located at 3700, 400 – 3rd Avenue S.W., Calgary, Alberta, T2P 4H2;
- 4.11 Alterna was previously engaged in the development of treasury management software. From 1998 to 2003, Alterna incurred substantial losses in the operation of its business. In December 2003, Alterna sold substantially all of its intellectual property assets to a third party. Alterna currently has no employees and its

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business activities consist solely of settling outstanding accounts receivable and accounts payable;

- 4.12 Alterna is a privately held corporation, is not a reporting issuer in any jurisdiction and its securities are not listed on any stock exchange;
- 4.13 pursuant to the Arrangement, Alterna will acquire certain natural gas assets from Storm and upon completion of the Arrangement, Alterna will be engaged in the exploration for, and acquisition, development and production of, oil and natural gas reserves, primarily in western Canada;
- 4.14 Alterna has made application to list the common shares of Alterna ("Alterna Shares") issuable under the Arrangement on the TSX. Listing will be subject to Alterna fulfilling all of the requirements of the TSX;

Rock

- 4.15 Rock was incorporated pursuant to the *Company Act* (British Columbia) on February 15, 1988 under the name "Prime Equities Inc.". On October 25, 1991, the name of the corporation was changed to "Prime Equities International Corporation". On August 11, 1998, the name of the corporation was changed to "medEra Life Science Corporation". On January 4, 2000, the corporation was continued pursuant to the *Canada Business Corporations Act* and its name was changed to "Medbroadcast Corporation";
- 4.16 in October, 2003, Medbroadcast Corporation announced its plans to reorganize its business into a junior oil and gas company by leasing its website and related technology to a third party and acquiring Rock Energy Ltd., a private oil and gas company. On January 14, 2004, Medbroadcast Corporation acquired all of the shares of Rock Energy Ltd. and reconstituted its board of directors. On February 18, 2004, Medbroadcast Corporation was continued as an Alberta corporation and its name was changed to "Rock Energy Inc.";
- 4.17 in December, 2002, Storm transferred oil and gas properties to Rock Energy Ltd. in exchange for 1,602,640 common shares of Rock Energy Ltd. ("Rock Shares"). Following the acquisition of

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Rock Energy Ltd. by Medbroadcast Corporation, Storm held approximately 18% of the Rock Shares;

- 4.18 Rock is, and has been for more than four months, a reporting issuer in the provinces of British Columbia, Alberta, Saskatchewan, Ontario, Québec and Nova Scotia;
- 4.19 the Rock Shares are listed and posted for trading on the TSX Venture Exchange;

Harvest

- 4.20 Harvest is an open-end, unincorporated trust governed by the laws of the Province of Alberta and created pursuant to an amended and restated trust indenture (“Trust Indenture”) dated September 27, 2002 between Harvest and Valiant Trust Company, as trustee;
- 4.21 the head and principal office of Harvest is located at 1900, 330 - 5th Avenue S.W., Calgary, Alberta, T2P 0L4;
- 4.22 Harvest is authorized to issue an unlimited number of trust units (“Trust Units”) and an unlimited number of special voting rights (“Special Voting Rights”). As at May 12, 2004, approximately 17,310,495 Trust Units were issued and outstanding and no Special Voting Rights were outstanding;
- 4.23 the Trust Units are listed and posted for trading on the TSX;
- 4.24 Harvest has agreed under an arrangement agreement dated April 18, 2004 among the Trust, Harvest Operations, Storm and Alterna, that it will make application to list the Trust Units issuable under the Arrangement, including the Trust Units issuable from time to time in exchange for the exchangeable shares of New Harvest Operations (the “Exchangeable Shares”), on the TSX. Listing will be subject to Harvest Operations fulfilling all of the requirements of the TSX;
- 4.25 Harvest is, and has been for at least four months, a reporting issuer in all of the provinces and territories of Canada. Harvest is not in default of the Legislation in any of the Jurisdictions;

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Harvest Operations

- 4.26 Harvest Operations is a wholly-owned operating subsidiary of Harvest and was incorporated pursuant to the ABCA;
- 4.27 The head and principal office of Harvest Operations is located at 1900, 330 - 5th Avenue S.W., Calgary, Alberta, T2P 0L4;

The Arrangement

- 4.28 the Arrangement requires approval by not less than two-thirds of the votes cast by Shareholders, either in person or by proxy, at a meeting (the "Meeting") of the Shareholders to be held on June 28, 2004 to consider the Arrangement, and after the Meeting approval of the Court of Queen's Bench of Alberta;
- 4.29 an information circular and proxy statement (the "Information Circular") was delivered to Shareholders in respect of the Meeting which contained, among other things, prospectus level disclosure of the business and affairs of each of Storm and Harvest, the particulars of the Arrangement as well as a fairness opinion of an independent financial advisor;
- 4.30 the following steps will occur in the following order as part of the Arrangement effective as of the date of the certificate giving effect to the Arrangement (the "Effective Date"):
 - 4.30.1 Storm shall distribute to Shareholders one (1) unsecured subordinate promissory note ("Warrant Note") having a principal amount of \$0.02 as a return of capital for each Storm Share held;
 - 4.30.2 each Shareholder may elect or be deemed to have elected to and thereupon will assign, transfer and exchange one (1) Warrant Note to Alterna in consideration of Alterna issuing one (1) common share purchase warrant of Alterna ("Alterna Warrant"), entitling the holder to acquire one Alterna Share at a price equal to the principal amount of an unsecured subordinate promissory note ("Alterna Note") having a principal amount equal to the lesser of (1) \$2.00, and (2) the weighted average trading price of the Storm Shares for the five trading days immediately preceding the

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Effective Date less the sum of (i) the principal amount of a Cash Note (as defined below), (ii) the principal amount of a Warrant Note, and (iii) the principal amount of a Rock Note (as defined below), payable in cash or by the delivery of an Alterna Note, to such Storm Shareholder for each Storm Share held;

4.30.3 subject to certain limitations, each Storm Share, other than Storm Shares held by tax exempt Shareholders and non-resident Shareholders, will be transferred to Harvest Operations in accordance with the election or deemed election of the holder of such Storm Share in exchange for:

- a) one unsecured subordinate promissory note having a principal amount of \$4.15 (“Cash Note”); or
- b) one unsecured subordinate promissory note (“Trust Unit Note”) having a principal amount equal to the weighted average trading price of the Storm Shares for the five trading days immediately preceding the Effective Date less the principal amount of the Warrant Note, the Alterna Note and the unsecured subordinate promissory note (“Rock Note”) having a principal amount of \$0.23 and repayable by the issuance of 0.053 of a Rock Share; or
- c) 0.281 of an Exchangeable Share (together with the Ancillary Rights (as defined below)); and
- d) one (1) Alterna Note and one (1) Rock Note;

4.30.4 subject to certain limitations, each Storm Share held by tax exempt Shareholders and non-resident Shareholders, will be transferred to Harvest Operations in accordance with the election or deemed election of the holder of such Storm Share in exchange for:

- a) one Cash Note; or
- b) one Trust Unit Note; and
- c) one (1) Alterna Note and one (1) Rock Note;

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- 4.30.5 each Trust Unit Note shall be transferred by the holder thereof to Harvest in exchange for 0.281 of a Trust Unit;
- 4.30.6 Harvest Operations and Storm shall be amalgamated and continued as one corporation (New Harvest Operations), in accordance with the following:
- a) the articles of New Harvest Operations shall be the same as the articles of Harvest Operations except that the authorized capital of New Harvest Operations shall consist of an unlimited number of common shares with the same rights, privileges and restrictions as the common shares of Harvest Operations, an unlimited number of exchangeable shares, issuable in series, the first series of which shall be the Exchangeable Shares and an unlimited number of first preferred shares with the same rights, privileges and restrictions as the first preferred shares of Harvest Operations;
 - b) the name of New Harvest Operations shall be "Harvest Operations Corp." or such other name as determined by Harvest prior to the Effective Time;
 - c) the shares of Storm, all of which are owned by Harvest Operations, shall be cancelled without any repayment of capital;
 - d) for greater certainty, the outstanding Exchangeable Shares, Trust Unit Notes, Cash Notes, Alterna Notes, Warrant Notes and the Rock Notes shall survive and continue to be obligations of New Harvest Operations without amendment;
 - e) the property of each of the amalgamating corporations shall continue to be the property of New Harvest Operations;
 - f) New Harvest Operations shall continue to be liable for the obligations of each of the amalgamating corporations;

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- g) any existing cause of action, claim or liability to prosecution of either of the amalgamating corporations shall be unaffected;
- h) any civil, criminal or administrative action or proceeding pending by or against either of the amalgamating corporations may be continued to be prosecuted by or against New Harvest Operations;
- i) a conviction against, or ruling, order or judgment in favour of or against, either of the amalgamating corporations may be enforced by or against New Harvest Operations;
- j) the Articles of Amalgamation of New Harvest Operations shall be deemed to be the Articles of Incorporation of New Harvest Operations and the Certificate of Amalgamation of New Harvest Operations shall be deemed to be the Certificate of Incorporation of New Harvest Operations;
- k) the by-laws of New Harvest Operations shall be the by-laws of Harvest Operations;
- l) the first directors of New Harvest Operations shall be the directors of Harvest Operations;
- m) the first officers of New Harvest Operations shall be the officers of Harvest Operations; and
- n) the registered office of New Harvest Operations shall be the registered office of Harvest Operations;

4.30.7 each holder of an Alterna Warrant may elect or be deemed to have elected to exercise the Alterna Warrants and thereupon will assign, transfer and exchange one (1) Alterna Note to Alterna for each Alterna Warrant so exercised and Alterna will issue one (1) Alterna Share to such holder for each Alterna Warrant exercised;

4.30.8 the transactions contemplated by the conveyance agreements (the "Conveyance Agreements") pursuant to which Storm will transfer certain oil and gas assets to

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Alternas will be completed and Alternas will deliver the purchase consideration in Warrant Notes and Alternas Notes and an unsecured subordinated promissory note ("Closing Note") having a principal amount equal to the difference between the purchase consideration under the Conveyance Agreements and the principal amount of the Warrant Notes and Alternas Notes delivered under this Section 4.29.8, if required, to New Harvest Operations and/or subsidiaries or partnerships of New Harvest Operations, as the case may be, and upon such delivery such Warrant Notes and Alternas Notes shall be cancelled;

4.30.9 New Harvest Operations shall settle the Cash Notes by making a payment of cash;

4.30.10 New Harvest Operations shall settle the Rock Notes by delivering Rock Shares;

4.30.11 New Harvest Operations shall settle the remaining Warrant Notes, conditional upon the settling of the Closing Note, by delivering to the note trustee a payment of cash within 60 days of the Effective Date;

4.30.12 New Harvest Operations shall settle the remaining Alternas Notes, conditional upon the settling of the Closing Note, by delivering to the note trustee a payment of cash within 60 days of the Effective Date; and

4.30.13 Alternas shall settle the Closing Note by delivering to New Harvest Operations a payment of cash within 60 days of the Effective Date;

(All of the trades described above being referred to collectively as the "Trades");

4.31 subject to the limitations set forth below, an aggregate maximum of \$75,000,000 in cash, 2,000,000 Exchangeable Shares and 8,000,000 Trust Units are issuable pursuant to the Arrangement. As a result, Shareholders may elect to receive up to 60% of the consideration from Harvest in cash or up to 95% of the consideration in Trust Units or Exchangeable Shares. In the event that all Shareholders elect cash, the consideration payable for each Storm Share will be comprised of \$2.51 cash and 0.111 of a Trust

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Unit. A minimum of 40% of the consideration for the Storm Shares shall be paid in Trust Units or Exchangeable Shares. No Exchangeable Shares will be issued to non-resident Shareholders or tax-exempt Shareholders;

- 4.32 New Harvest Operations will become a reporting issuer or the equivalent under the Legislation of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, Newfoundland and Labrador, Prince Edward Island and the Yukon Territory and will be subject to the Continuous Disclosure Requirements in such Jurisdictions;
- 4.33 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;
- 4.34 under the terms of the Exchangeable Shares and certain rights to be granted in connection with the Arrangement (the “Ancillary Rights”), holders of Exchangeable Shares will be able to exchange them at their option for Trust Units;
- 4.35 in order to ensure that the Exchangeable Shares remain the voting and economic equivalent of the Trust Units prior to their exchange, redemption, retraction or other acquisition, the Arrangement provides for:
 - 4.35.1 a voting and exchange trust agreement to be entered into among Harvest, New Harvest Operations, Harvest ExchangeCo Ltd. (“ExchangeCo”) and Valiant Trust Company (the “Voting and Exchange Agreement Trustee”) which will, among other things, (i) grant to the Voting and Exchange Agreement Trustee, for the benefit of holders of Exchangeable Shares, the right to require Harvest or ExchangeCo to exchange the Exchangeable Shares for Trust Units, and (ii) trigger automatically the exchange of the Exchangeable Shares for Trust Units upon the occurrence of certain specified events;
 - 4.35.2 the deposit by Harvest of a Special Voting Right with the Voting and Exchange Agreement Trustee which will effectively provide the holders of Exchangeable Shares with voting rights equivalent to those attached to the Trust Units; and

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- 4.35.3 a support agreement to be entered into among Harvest, New Harvest Operations, ExchangeCo and the Voting and Exchange Agreement Trustee which will, among other things, restrict Harvest from issuing additional trust units or rights to subscribe therefor or other property or assets to all or substantially all of the holders of Trust Units unless the same or an equivalent distribution is made to holders of Exchangeable Shares, an equivalent change to the Exchangeable Shares (or the rights of the holders thereof) is made simultaneously or approval of holders of Exchangeable Shares is obtained;
- 4.36 There are no exemptions from the Registration Requirement or the Prospectus Requirement available under the Legislation of the Registration and Prospectus Jurisdictions for certain of the Trades;
- 4.37 Harvest 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
- 4.38 New Harvest Operations and its insiders will comply with the insider reporting requirement and the requirement to file an insider profile under National Instrument 55-102;
- 5. AND WHEREAS under the MRRS, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”).
- 6. 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.
- 7. THE DECISION of the Decision Makers pursuant to the Legislation is that:
 - 7.1 In the Registration and Prospectus Jurisdictions,
 - 7.1.1 the Registration and Prospectus Requirements shall not apply to the Trades except that the first trade in securities acquired in a Trade shall be deemed to be a distribution or primary distribution to the public;

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- 7.1.2 the Prospectus Requirement shall not apply to the first trade in Trust Units, Exchangeable Shares (together with the Ancillary Rights), Alterna Shares or Rock Shares acquired by Shareholders under the Arrangement or the first trade of Trust Units acquired on the exercise of all rights, automatic or otherwise, under such Exchangeable Shares, provided that:
 - 7.1.2.1. except in Québec, the conditions in subsections (3) of section 2.6 of Multilateral Instrument 45-102 – Resale of Securities (“MI 45-102”) are satisfied, and, for the purposes of determining the period of time that Alterna has been a reporting issuer under section 2.6 of MI 45-102, the period of time that Storm or Harvest was a reporting issuer in at least one of the jurisdictions listed in Appendix B of MI 45-102 immediately before the Arrangement may be included; and
 - 7.1.2.2. in Québec, the conditions provided under sections 60 and 62 of the *Securities Act* (Québec) are satisfied.
- 7.2 The Continuous Disclosure Requirements shall not apply to New Harvest Operations for so long as:
 - 7.2.1 Harvest is a reporting issuer in Québec and at least one of the jurisdictions listed in Appendix B of MI 45-102 and is an electronic filer under National Instrument 13-101;
 - 7.2.2 Harvest 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;
 - 7.2.3 Harvest files with each Decision Maker copies of all documents required to be filed by it pursuant to NI 51-102;
 - 7.2.4 Harvest is in compliance with the requirements of any marketplace on which the securities of Harvest are listed or quoted in respect of making public disclosure of material information on a timely basis, and immediately issues and

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files any news release that discloses a material change in its affairs;

- 7.2.5 New Harvest Operations 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 New Harvest Operations that are not also material changes in the affairs of Harvest;
 - 7.2.6 Harvest 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 Harvest, indicates the Exchangeable Shares are the economic equivalent to the Trust Units, and describes the voting rights associated with the Exchangeable Shares;
 - 7.2.7 Harvest remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities of New Harvest Operations; and
 - 7.2.8 New Harvest Operations does not issue any securities, other than Exchangeable Shares, securities issued to its affiliates, or debt securities issued to banks, loan corporations, trust corporations, treasury branches, credit unions, insurance companies or other financial institutions.
- 7.3 Other than in Québec, the requirements under Part 2 (Annual Filing Requirements) and Part 3 (Responsibilities of Reporting Issuers and Directors) of NI 51-101 shall not apply to New Harvest Operations for so long as:
- 7.3.1 Harvest files with each Decision Maker copies of all documents required to be filed by it pursuant to NI 51-101; and
 - 7.3.2 New Harvest Operations is exempt from or otherwise not subject to the Continuous Disclosure Requirements.
- 7.4 Other than in British Columbia and Québec, the requirements under MI 52-109 Requirements shall not apply to New Harvest Operations for so long as:

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7.4.1 New Harvest Operations is not required to, and does not, file its own interim filing and annual filings (as those terms are defined under 52-109); and

7.4.2 Harvest files in electronic format under the SEDAR profile of New Harvest Operations the:

- i. interim filings,
- ii. annual filings,
- iii. interim certificates, and
- iv. annual certificates

of Harvest, at the same time as such documents are required to be filed under the Legislation by Harvest.

7.4.3 New Harvest Operations is exempt from or otherwise not subject to the Continuous Disclosure Requirements.

DATED this 30th day of June, 2004

Douglas R. Brown
Director – Legal and Enforcement