

# 2003 BCSECCOM 536

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Application – relief from the requirement to file expert's consent with the Executive Director when the use of a report, appraisal or statement by the expert is included in, or accompanying, a take-over bid circular

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C.1996, c. 418, s. 114(2)(c)

*Securities Rules*, B.C. Reg. 194/97, s. 171

BC Policy 41-601 *Prospectus Filing Requirements*

## **IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN AND ONTARIO**

**AND**

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

**AND**

## **IN THE MATTER OF DUVERNAY OIL CORP.**

## **MRRS DECISION DOCUMENT**

1. WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan and Ontario (the "Jurisdictions") has received an application from Duvernay Oil Corp. ("Duvernay") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that Duvernay be exempt from the requirement in the Legislation to include a consent (the "Consent Requirement") of Segue Energy Corporation's ("Segue") former auditors, Arthur Andersen LLP ("Arthur Andersen") to the incorporation by reference of the auditors' reports of Arthur Andersen LLP on the financial statements of Segue for the fiscal year ended March 31, 2002 in a take-over bid circular dated July 7, 2003 (the "Circular") in connection with a proposed take-over bid (the "Bid") by Duvernay for all of the outstanding common shares of Segue;
2. AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Alberta Securities Commission is the principal regulator for this application;

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3. AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions;
4. AND WHEREAS Duvernay has represented to the Decision Makers that:
  - 4.1 Duvernay is incorporated under the laws of the Province of Alberta and Duvernay's head office is located in Calgary, Alberta;
  - 4.2 neither Duvernay nor Segue is a reporting issuer in any jurisdiction;
  - 4.3 on June 20, 2003, Duvernay and Segue entered into a pre-acquisition agreement under which Duvernay agreed to purchase all of the issued and outstanding shares (the "Shares") of Segue on a basis of share consideration of 0.178571 of a Duvernay Class A Share for each Segue Share;
  - 4.4 under the terms of the pre-acquisition agreement, Duvernay is required to mail the Circular to all holders of the Shares on or before July 15, 2003, or at such other time that is agreed to by Duvernay and Segue;
  - 4.5 the proposed acquisition of the Shares constitutes a "significant probable acquisition" by Duvernay within the meaning of Legislation and accordingly, Duvernay is required to include or incorporate by reference in the Circular, among other things:
    - 4.5.1 the audited financial statements of Segue and the notes thereto as at and for the fiscal year ended March 31, 2003, together with the report of the auditors thereon (the "Segue 2003 Audited Financial Statements"); and
    - 4.5.2 the audited financial statements of Segue and the notes thereto as at and for the fiscal year ended March 31, 2002, together with the report of the auditors thereon (the "Segue 2002 Audited Financial Statements");
  - 4.6 the audit report in respect of the Segue 2003 Audited Financial Statements was delivered by Deloitte & Touche LLP;

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- 4.7 the consent of Deloitte & Touche LLP regarding the Segue 2003 Audited Financial Statements, as required by the Legislation, has been filed together with the Circular;
- 4.8 the audit report in respect of Segue's 2002 Audited Financial Statements was delivered by Arthur Andersen;
- 4.9 on June 3, 2002 Arthur Andersen ceased practising public accounting and as a result, Arthur Andersen will no longer consent to the use of previously issued auditors' reports for the purposes of securities filings;
- 4.10 the inability of Duvernay to obtain a consent letter from Arthur Andersen to the inclusion of its auditor's report on Segue's 2002 Audited Financial Statements is an exceptional situation that is outside of the control of Segue;
- 4.11 the Canadian Securities Administrators (the "CSA") issued CSA Staff Notices 43-304, 62-302, and 81-308 Prospectus Filing Matters – Arthur Anderson LLP Consent (the "Andersen Notice") to provide guidance to issuers with respect to the inclusion in, among other things, securities exchange take-over bid circulars of financial statements previously audited by Arthur Andersen;
- 4.12 the Andersen Notice states that CSA staff will consider applications from issuers to waive the requirement to obtain the consent of Arthur Andersen for audit reports relating to financial statements incorporated by reference in a prospectus, provided that the prospectus includes certain prominent disclosure; and
- 4.13 in the absence of a consent from Arthur Andersen, Duvernay has included on the cover page of the Circular the disclosure set forth in Appendix A attached hereto and included a cross-reference to such disclosure in the relevant paragraph of the list of documents incorporated by reference in the Circular;
- 5. AND WHEREAS under the System, 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;

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7. THE DECISION of the Decision Makers under the Legislation is that Duvernay is exempt from the Consent Requirement in connection with the Bid.

DATED this 24<sup>th</sup> day of July, 2003.

Glenda A. Campbell, Q.C., Vice-Chair

Stephen R. Murison, Vice-Chair

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### **APPENDIX A**

#### **“Note with Respect to Arthur Andersen LLP”**

Arthur Andersen LLP is no longer engaged in the practice of public accounting in Canada. Accordingly, Duvernay is unable to obtain the consent of Arthur Andersen LLP with respect to the incorporation by reference in the Circular of the auditors' report of Arthur Andersen LLP on the consolidated financial statements of Segue Energy Corporation for the year ended March 31, 2002. Because Arthur Andersen LLP has not provided this consent, Shareholders of Segue will not have the statutory rights of action for damages against Arthur Andersen LLP prescribed by applicable securities legislation. Generally, in accordance with applicable securities legislation, holders of securities may only exercise a statutory right of action against a person or company that has prepared a report, opinion or statement that is included in a take-over bid circular if that person or company has filed a consent in respect of such report, opinion or statement and such right of action may only be exercised in respect of the report opinion or statement that has been made by such person or company. In addition, Arthur Andersen LLP may not have sufficient assets available to satisfy any judgments against it.