

2003 BCSECCOM 94

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief from the requirement contained in the definition of qualifying issuer in MI 45-102 to have a current AIF filed on SEDAR, in connection with a statutory arrangement

Applicable British Columbia Provisions

Multilateral Instrument 45-102 - *Resale of Securities*, ss. 1.1 and 4.1

**IN THE MATTER OF THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA,
ONTARIO, QUÉBEC, NOVA SCOTIA, NEW BRUNSWICK,
PRINCE EDWARD ISLAND AND NEWFOUNDLAND AND LABRADOR**

AND

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

AND

**IN THE MATTER OF
ACCLAIM ENERGY TRUST, ACCLAIM ENERGY INC.,
ELK POINT RESOURCES INC. AND BURMIS ENERGY INC.**

MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador (the “Jurisdictions”) has received an application (the “Application”) from Acclaim Energy Trust (“Acclaim”), Elk Point Resources Inc. (“Elk Point”) and Burmis Energy Inc. (“Burmis”) (collectively, the “Filers”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that:
 - 1.1 the registration and prospectus requirements of the Legislation in the Provinces of Manitoba, New Brunswick, Newfoundland and Labrador and Québec shall not apply to certain trades made by Acclaim in connection with a proposed plan of arrangement (the “Arrangement”) under the Canada Business Corporations Act (the “CBCA”) involving Acclaim, Acclaim Energy Inc. (“AEI”), 3967336 Canada Inc. (“AcquisitionCo”), Elk Point, Burmis and the holders (“Elk Point Shareholders”) of Common Shares of Elk Point (“Common Shares”) and

2003 BCSECCOM 94

holders (“Elk Point Optionholders”) of options (“Options”) to purchase Common Shares;

- 1.2 (i) the registration and prospectus requirements of the Legislation of Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Prince Edward Island and Newfoundland and Labrador shall not apply to certain trades made by Burmis in connection with or subsequent to the Arrangement; and (ii) would allow the immediate resale of common shares of Burmis (“Burmis Shares”) issued in connection with the Arrangement,
- 1.3 would deem or declare Burmis to be a reporting issuer at the time of the Arrangement becoming effective for the purposes of the Legislation in the Jurisdictions where such concept exists; and
- 1.4 the requirement of Burmis to have a current AIF filed on SEDAR in order to be a Qualifying Issuer under Multilateral Instrument 45-102 (“MI 45-102”) would not apply;
2. AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Alberta Securities Commission is the Principal Regulator for the Application;
3. AND WHEREAS unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or Québec Commission Notice 14-101;
4. AND WHEREAS the Filers have represented to the Decision Makers that:

Background

- 4.1 on November 27, 2002, Elk Point and Acclaim jointly announced that they had entered into an arrangement agreement (the “Arrangement Agreement”) in respect of a transaction (the “Transaction”) to be effected pursuant to the Arrangement under section 192 of the Canada Business Corporations Act (the “CBCA”). While the mechanics of the Transaction are more precisely described below, the effect of the Arrangement will be to provide Elk Point Shareholders (other than dissenting shareholders) with, for each Common Share, at the holder’s election: (i) 0.95 of a trust unit of Acclaim (“Trust Unit”), (ii) \$3.70 cash, or (iii) a combination thereof, such consideration to be prorated in the event that Elk Point Shareholders elect to receive in aggregate greater than \$15 million cash or 26.3 million Trust Units of Acclaim,

2003 BCSECCOM 94

plus one half of one share of Burmis. Burmis will acquire Elk Point's U.S. and certain minor Canadian properties prior to closing;

- 4.2 an information circular (the "Information Circular") was mailed to the Elk Point Shareholders and Elk Point Optionholders (collectively, the "Elk Point Securityholders") on or about December 17, 2002;
- 4.3 the Transaction has been the subject of a separate MRRS application, dated December 2, 2002, under which Acclaim, Elk Point and Burmis requested relief from the requirements of subsection 152(1) of the ASA and of section 13.2 of National Instrument 44-101. The earlier application was made separately because the relief requested thereunder related to the contents of the Information Circular, and the timing of such request necessitated making the application on an expedited basis;

Acclaim

- 4.4 Acclaim is an open-ended trust settled under the laws of Alberta and is headquartered in Calgary, Alberta;
- 4.5 Acclaim's business is the acquisition of interests in crude oil and natural gas rights and the exploration, development, production, marketing and sale of crude oil and natural gas;
- 4.6 the authorized capital of Acclaim consists of an unlimited number of Trust Units and an unlimited number of special voting units ("Special Voting Units"), of which, as at November 27, 2002, 97,293,159 Trust Units and one Special Voting Unit (representing 29,171,824 votes) were issued and outstanding;
- 4.7 Acclaim is, and has been for a period of time in excess of 12 months, a reporting issuer (where such concept exists) under the securities legislation of the Jurisdictions. To the best of its knowledge, information and belief, Acclaim is not in default of the requirements under the Legislation or the regulations made thereunder (the "Regulations");
- 4.8 the Trust Units are listed and posted for trading on the Toronto Stock Exchange (the "TSX") under the trading symbol "AE.UN";

Elk Point

2003 BCSECCOM 94

- 4.9 Elk Point is a corporation incorporated under the CBCA and is headquartered in Calgary, Alberta;
- 4.10 Elk Point's business is the exploration for, development of, production and marketing of petroleum and natural gas in the Western Canadian Sedimentary Basin, in the Powder River Basin of the U.S.A. and in the San Joaquin Basin of the U.S.A.;
- 4.11 the authorized capital of Elk Point consists of an unlimited number of Common Shares, of which, as at November 27, 2002, 29,335,164 Common Shares were issued and outstanding. Also, as of November 27, 2002, 2,395,901 Common Shares were issuable in connection with the exercise of outstanding Options;
- 4.12 Elk Point is, and has been for a period of time in excess of 12 months, a reporting issuer (where such concept exists) under the securities legislation of the Jurisdictions. To the best of its knowledge, information and belief, Elk Point is not in default of the requirements under the Legislation or the Regulations;
- 4.13 the Common Shares are listed and posted for trading on the TSX under the trading symbol "ELK";

Burmis

- 4.14 Burmis is a corporation incorporated under the Business Corporations Act (Alberta) (the "ABCA") and is headquartered in Calgary, Alberta. Burmis was incorporated on November 25, 2002 as 1018743 Alberta Ltd. and changed its name to Burmis Energy Inc. on December 4, 2002;
- 4.15 Burmis has not conducted any business to date, but has executed the Arrangement Agreement;
- 4.16 the authorized capital of Burmis consists of an unlimited number of Burmis Shares. As of the date hereof, there is issued and outstanding 100 Burmis Shares, which are owned by Elk Point;
- 4.17 Burmis is not a reporting issuer in any jurisdiction;
- 4.18 after giving effect to the Arrangement, all of the shares of Elk Point's U.S. subsidiary Bellevue Resources Inc. and certain minor Canadian properties (collectively, the "Retained Assets") will be transferred by Elk Point to Burmis;

2003 BCSECCOM 94

- 4.19 Burmis applied to the TSX on or about December 17, 2002 to list the Burmis Shares on the TSX upon the completion of the Arrangement;

The Arrangement

- 4.20 prior to the Meeting, Elk Point will apply under section 192 of the CBCA for an interim order (the "Interim Order") of the Court of Queen's Bench of Alberta (the "Court") which order will specify, among other things, certain procedures and requirements to be followed in connection with the calling and holding of the Meeting and the completion of the Arrangement;
- 4.21 the Interim Order will provide that with respect to matters to be brought before the Meeting pertaining to matters of business affecting Burmis, each Elk Point Shareholder shall be entitled to one vote on a ballot at the Meeting for each Common Share held, and such resolutions will be effective resolutions of the securityholders of Burmis as if passed at a meeting of the securityholders of Burmis entitled to vote on such matters;
- 4.22 the Meeting of the Elk Point Securityholders is anticipated to be held on or about January 28, 2003 at which Elk Point will seek the requisite Elk Point Securityholder approval (which, pursuant to the Interim Order, is expected to be 66 2/3% of the votes attached to the Elk Point Common Shares and the Elk Point Options, voting as one class, represented at the Meeting) for the special resolution approving the Arrangement;
- 4.23 in connection with the Meeting and pursuant to the Interim Order, Elk Point mailed on or about December 17, 2002 to each Elk Point Securityholder (i) a notice of special meeting, (ii) a form of proxy, and (iii) the Information Circular. A letter of transmittal and election form by which Elk Point Shareholders will be entitled to elect the consideration to be received in exchange for their Elk Point Common Shares as described in paragraph 4.27.3 below. The Information Circular was prepared in accordance with OSC Rule 54-501, except with respect to any relief granted therefrom, and contains disclosure of the Transaction and the business and affairs of each of Acclaim, Elk Point and Burmis;
- 4.24 for the Arrangement to become effective, a number of transactions and trades, which are outlined below, must take place. Such transactions and trades are set out in the Plan of Arrangement which is appended to the

2003 BCSECCOM 94

Information Circular as an exhibit to the Arrangement Agreement. No one transaction or trade will be effective unless all are effective;

The Trades

- 4.25 under the terms of a Retained Assets Agreement of Purchase and Sale, dated as of November 27, 2002, (the “Burmis Conveyance Agreement”), Elk Point has agreed to transfer the Retained Assets to Burmis concurrently with the effective time of the Arrangement. Elk Point will then combine the remaining business of Elk Point with Acclaim pursuant to the Arrangement Agreement;
- 4.26 in connection with the Arrangement, Elk Point has agreed to arrange for current holders of Options to be permitted in their discretion to exercise (conditional on closing of the Arrangement) all or any portion their Options by notice and direction in writing to Elk Point in form and substance satisfactory to Acclaim, acting reasonably, received by Elk Point not later than the deadline for electing the form of consideration to be received by Elk Point Shareholders in the Arrangement (as described below). Options that are not exercised by such deadline will be dealt with in the Arrangement as described in paragraph 4.27.2 below;
- 4.27 the Arrangement provides for the following transactions to occur on the effective date:
 - 4.27.1 the Retained Assets shall be transferred by Elk Point to Burmis, and Burmis shall issue Burmis Shares to Elk Point in consideration therefor in accordance with the terms and conditions of the Burmis Conveyance Agreement. The number of Burmis shares to be issued to Elk Point shall be the difference between the number of Elk Point shares outstanding immediately prior to the effective time of the Arrangement and the number of Burmis Shares held by Elk Point immediately prior to the effective time;
 - 4.27.2 each unexercised Option (other than Options held by Elk Point Optionholders who exercise dissent rights) shall be exchanged by the holder thereof with Elk Point for a cash payment per Option in an amount equal to \$0.05. Each Elk Point Optionholder shall transfer all unexercised Options to Elk Point. All such unexercised Options shall be cancelled and terminated;

2003 BCSECCOM 94

- 4.27.3 each issued and outstanding Common Share shall be transferred to AcquisitionCo, which is a wholly-owned subsidiary of Acclaim, and each holder thereof shall be entitled to received from Acclaim (in the case of the Trust Units issuable pursuant to paragraphs 4.27.3.2.1 and 4.27.3.2.3 below) and AcquisitionCo (in the case of cash payable pursuant to clause 4.27.3.2.2 and 4.27.3.2.3 below), subject to the limits set forth in paragraph 4.28 below and adjustment as described in paragraph 4.29 below, consideration comprised of:
- 4.27.3.1 one half of a Burmis Share for each Common Share held; and
 - 4.27.3.2 in accordance with the election or deemed election of the holder of such Common Share:
 - 4.27.3.2.1 0.95 of a Trust Unit for each Common Share held (the “Trust Unit Consideration”);
 - 4.27.3.2.2 \$3.70 cash for each Common Share held (the “Cash Consideration”); or
 - 4.27.3.2.3 the Trust Unit Consideration for an elected portion of the Common Shares held and the Cash Consideration for the balance of the Common Shares held (the “Combined Consideration”);
- 4.27.4 AcquisitionCo shall issue one unsecured subordinated demand note to Acclaim for each Trust Unit issued in accordance with paragraph 4.27.3.2 above;
- 4.27.5 Elk Point and AcquisitionCo shall be amalgamated and continue as one corporation (“AmalgamationCo”);
- 4.27.6 AmalgamationCo will deliver the Burmis Shares referred to in paragraph 4.27.3.1 above to former Elk Point Shareholders. Upon the delivery of such Burmis Shares, AmalgamationCo will cease to be a holder of Burmis Shares and the former Elk Point Shareholders will be added to the share register of Burmis;
- 4.27.7 any holder of Common Shares who does not duly elect the form of consideration in accordance with the terms of the

2003 BCSECCOM 94

Arrangement and any holders of Common Shares who exercise their right of dissent, shall be deemed to have elected to receive the Trust Unit Consideration for such Common Shares;

- 4.27.8 the number of Trust Units issuable for each Common Share shall be subject to adjustment to reflect the effect of any split, reverse split, distribution of Trust Unit, reorganization, recapitalization or other similar change with respect to Trust Units occurring after November 27, 2002 and prior to the effective time of the Arrangement;
- 4.28 the aggregate amount of cash available to pay the Cash Consideration is limited to \$15,000,000 (the "Cash Limit"). The aggregate number of Trust Units that may be issued in connection with the election above is limited to 26,293,160 (the "Trust Unit Limit"). If the aggregate cash elected exceeds the Cash Limit, the amount of Cash Consideration paid to the holders so electing shall be pro rated among all such holders who made an election to receive Cash Consideration or the Combined Consideration. If the aggregate number of Trust Units elected exceeds the Trust Unit Limit, the amount of Trust Unit Consideration issued to the holders so electing shall be pro rated among the holders who made an election to receive the Trust Unit Consideration or the Combined Consideration;
- 4.29 no fractional Trust Units or Burmis Shares shall be issued and in lieu of any fractional Trust Unit or Burmis Share, each registered Shareholder or Optionholder will receive the next lowest number of Trust Units or Burmis Shares, as the case may be;
- 4.30 the end result of the trades described above is that (a) each holder of a Common Share will receive one half of a Burmis Share and either (i) 0.95 of a Trust Unit (ii) \$3.70 cash or (iii) a combination of Trust Units and cash; (b) the Retained Assets will be transferred to Burmis and Burmis will be owned by the existing Elk Point Shareholders of Elk Point and (c) Elk Point will be amalgamated with a wholly owned subsidiary of Acclaim;
- 4.31 at the Meeting, Elk Point Shareholders will also vote on two ordinary resolutions approving further issuances of up to a specified number of Burmis Shares following the completion of the Arrangement. If this resolution is approved, Burmis intends to issue a number of Burmis Shares by way of one or more private placements exempt from the prospectus and registration requirements of the Legislation including a

2003 BCSECCOM 94

private placement which Burmis intends to complete shortly after the completion of the Arrangement;

General

- 4.32 the Information Circular in connection with the Arrangement provided to all holders of Common Shares and Options, and filed in all of the Jurisdictions contains (or, to the extent permitted, incorporates by reference) prospectus-level disclosure in respect of Acclaim, Elk Point and Burmis, including the following financial information:
 - 4.32.1 Pro forma consolidated balance sheet as at December 1, 2002 and unaudited pro forma consolidated income statements for the nine-month period ended September 30, 2002 and the year ended December 31, 2001;
 - 4.32.2 Audited balance sheets of Bellevue Resources, Inc. as at December 31, 2001 and 2000 and the statement of earnings (loss) and deficit and cash flows for each of the years in the three-year period ended December 31, 2001;
 - 4.32.3 Audited statements of revenue and operating expenses of the other properties to be transferred to Burmis for each of the years in the three-year period ended December 31, 2001;
 - 4.32.4 Audited balance sheet of Burmis as at December 1, 2002.
- 4.33 the assets that will make up the business of Burmis have been the subject of continuous disclosure on an ongoing basis for more than 12 months, in accordance with Elk Point's responsibilities as a reporting issuer;
- 4.34 the Arrangement will require the approval of the holders of Common Shares and Options voting as ordered in the Interim Order of the Court and the Court. In considering whether to approve the arrangement, the Court will consider whether the Arrangement is fair to such Elk Point Shareholders and Optionholders;
- 4.35 the Board of Directors of Elk Point has (i) received a fairness opinion from CIBC World Markets Inc. to the effect that the consideration received by the Elk Point Shareholders under the Arrangement is fair, from a financial point of view, to Elk Point Shareholders, (ii) approved

2003 BCSECCOM 94

the Arrangement and (iii) recommended that Elk Point Securityholders vote in favour of the Arrangement;

- 4.36 Holders of Common Shares and Options will have the right to dissent from the Arrangement under Section 190 of the CBCA, and the Information Circular discloses full particulars of this right in accordance with applicable law;
 - 4.37 exemptions from registration and prospectus requirements of the Legislation of Manitoba, Québec, New Brunswick and Newfoundland and Labrador in respect of trades made in securities of Acclaim may not be available. Exemptions from registration and prospectus requirements of the Legislation in respect of trades made in securities of Burmis in connection with the Arrangement and exemptions from prospectus requirements of the Legislation in respect of first trades in Trust Units and Burmis Shares following the Arrangement may not be otherwise available in certain Jurisdictions.
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;
 7. THE DECISION of the Decision Makers under the Legislation is that:
 - 7.1 all trades made in securities of Acclaim in connection with the Arrangement shall not be subject to the registration and prospectus requirements of the Legislation of each of Manitoba, Québec, New Brunswick and Newfoundland and Labrador;
 - 7.2 all trades made in securities of Burmis in connection with the Arrangement shall not be subject to the registration and prospectus requirements of the Legislation of Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Prince Edward Island and Newfoundland and Labrador;
 - 7.3 except in British Columbia, Québec and Nova Scotia, the first trade in a Jurisdiction of Burmis Shares acquired by former holders of Common Shares in connection with the Arrangement shall be a distribution or primary distribution to the public under the Legislation of such Jurisdiction, except that where:

2003 BCSECCOM 94

- 7.3.1 Burmis is a reporting issuer in a jurisdiction listed in Appendix B to MI 45-102 preceding the trade;
- 7.3.2 the seller is in a special relationship with Burmis, as defined in the Legislation, the seller has reasonable grounds to believe that Burmis is not in default of any requirement of the Legislation; and
- 7.3.3 no unusual effort is made to prepare the market or to create a demand for the securities and no extraordinary commission or consideration is paid in respect of the first trades;

then such a first trade shall be a distribution or a primary distribution to the public only if it is from the holdings of any person, company or combination of persons or companies holding a sufficient number of securities of Burmis, as the case may be, to affect materially the control of Burmis, but any holding of any person, company or combination of persons or companies holding more than 20% of the outstanding voting securities of Burmis shall, in the absence of evidence to the contrary, be deemed to affect materially the control of Burmis;

7.4 in Québec the alienation of:

- 7.4.1 Burmis Shares acquired by former holders of Common Shares in connection with the Arrangement shall be distributions under the legislation of Québec except where:
 - 7.4.1.1 Burmis is a reporting issuer in Québec immediately preceding the trade;
 - 7.4.1.2 no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade;
 - 7.4.1.3 no extraordinary commission or consideration is paid to a person or company in respect of the trade;
 - 7.4.1.4 if the selling shareholder is an insider or officer of Burmis, the selling securityholder has no reasonable grounds to believe that Burmis is in default of any requirement of securities legislation; and

2003 BCSECCOM 94

- 7.4.1.5 the trade does not constitute a secondary distribution with solicitation as contemplated by Policy Statement Q-12 of the Commission de valeurs mobilières du Québec; and
- 7.4.2 Trust Units acquired by former holders of Common Shares in connection with the Arrangement shall be distributions under the legislation of Québec except where:
 - 7.4.2.1 Acclaim is a reporting issuer in Québec immediately preceding the trade;
 - 7.4.2.2 no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade;
 - 7.4.2.3 no extraordinary commission or consideration is paid to a person or company in respect of the trade;
 - 7.4.2.4 if the selling shareholder is an insider or officer of Acclaim, the selling securityholder has no reasonable grounds to believe that Acclaim is in default of any requirement of securities legislation; and
 - 7.4.2.5 the trade does not constitute a secondary distribution with solicitation as contemplated by Policy Statement Q-12 of the Commission de valeurs mobilières du Québec; and
- 7.5 Upon the effectiveness of the Arrangement:
 - 7.5.1 in British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland and Labrador, the requirement contained in the Legislation to have a Current AIF filed on SEDAR in order to be a Qualifying Issuer under MI 45-102 shall not apply to Burmis provided that:
 - 7.5.1.1 Burmis files a notice on SEDAR advising that the Information Circular has been filed as an alternate form of annual information form and identifying the SEDAR Project Number under which the Information Circular was filed; and

2003 BCSECCOM 94

- 7.5.1.2 Burmis files a Form 45-102F2 on or before the tenth day after the distribution day of any securities certifying that it is a Qualifying Issuer except for the requirement to have a current AIF;

such order to expire 140 days after Burmis' financial year ended December 31, 2003;

- 7.5.2 in Québec, the Information Circular shall be deemed to be the annual information form required by section 159 of the Regulation adopted under the Securities Act (Québec), for the purposes of Burmis qualifying for the shortened hold period contemplated by the Québec equivalent to MI 45-102, namely decision no. 2002-C-0422 of the Commission des valeurs mobilières du Québec; and

- 7.6 Burmis shall be deemed or declared a reporting issuer at the time of the Arrangement becoming effective for the purposes of the Legislation of the Jurisdictions other than Saskatchewan, Manitoba, New Brunswick and Prince Edward Island.

DATED this 27th day of January, 2003.

Glenda A. Campbell, Q.C., Vice-Chair
Eric T. Spink, Vice-Chair