

# 2005 BCSECCOM 254

March 24, 2005

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-102, s. 13.1 - Continuous Disclosure Obligations - An issuer wants relief from the requirement to include prospectus-level disclosure in an information circular to be circulated in connection with an arrangement, reorganization, acquisition or amalgamation - Alternate financial information will be provided about the issuer that is consistent with the financial information required in the continuous disclosure context for significant acquisitions; information will be provided about the parties to the transaction sufficient for shareholders to assess the transaction as a whole

## Applicable British Columbia Provisions

National Instrument 51-102, s. 13.1  
Form 51-102F2, Part 14.2

In the Matter of  
the Securities Legislation  
of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Quebec, New  
Brunswick and Nova Scotia

and

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

and

In the Matter of Argo Energy Ltd. and Lightning Energy Ltd.

## MRRS Decision Document

## Background

1. The local securities regulatory authority or regulator (the “Decision Maker”) in each of Alberta, British Columbia, Ontario, New Brunswick and Québec (the “Joint Jurisdictions”) and in each of Saskatchewan, Manitoba, and Nova Scotia (the “Lightning Jurisdictions”), has received an application from Argo Energy Ltd. (“Argo”) and Lightning Energy Ltd. (“Lightning”) (collectively, the “Filers”) for a decision under the securities legislation of the Joint Jurisdictions and the Lightning Jurisdictions, as applicable, (the “Legislation”) that Argo and Lightning in the Joint

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Jurisdictions and Lightning in the Lightning Jurisdictions be exempted, subject to certain conditions:

- 1.1 from the requirements to provide audited statements of income, retained earnings and cash flow and a full proforma income statement and a balance sheet in respect to certain acquisitions made by Argo and Lightning within the last three financial years, each of which would be considered to be “significant acquisitions” to Argo and Lightning respectively, as required by the Legislation; and
- 1.2 in Quebec by a revision of the general order that will provide the same result as an exemption order, which (i) requires Argo and Lightning to include three years of audited financial statement in an information circular in respect of a business for which securities are being distributed in connection with a restructuring transaction; and (ii) requires Lightning to include three years of audited financial statements in an information circular in respect of a business being acquired in connection with a restructuring transaction

(collectively the “Disclosure Requirements”)

2. Under Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Alberta Securities Commission is the principle regulator of this application.
3. Under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”).

### **Interpretation**

4. Unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 – Definitions.

### **Representations**

5. Argo has represented to the Decision Maker that:
  - 5.1 Argo and Lightning entered into an arrangement agreement dated February 2, 2005 (the “Arrangement Agreement”) as amended and restated on March 18, 2005 providing for the merger of Argo and Lightning pursuant to which the two corporations have agreed to combine under a plan of arrangement (the “Arrangement”) whereby they will be reorganizing their businesses to create

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Sequoia Oil and Gas Trust, a new oil and gas trust (the “Trust”) and White Fire Energy Ltd. a public exploration-focused oil and gas producer (“White Fire”). Under the Arrangement, Argo securityholders will receive for each Argo common share held, 0.17125 of one unit of the Trust and 0.17125 of one common share of White Fire and Lightning securityholders will receive for each Lightning common share held, 0.25 of one unit of the Trust and 0.25 of one common share of White Fire.

- 5.2 Lightning and Argo are currently preparing a joint information circular (the “Information Circular”) to be distributed to their respective securityholders. Argo and Lightning have each set an annual and special meeting of their respective shareholders, each to be held on or about April 21, 2005 (the “Shareholders' Meetings”) at which the securityholders will be given the opportunity to vote on the Arrangement, among other things.
- 5.3 Argo was incorporated on February 23, 1995 as “Pegaz Energy Inc.” pursuant to the *Canada Business Corporations Act*. Argo subsequently changed its name and amended its share capital. Its authorized share capital currently consists of an unlimited number of common shares, Class B common shares and preferred shares, issuable in series. On June 17, 2004 Argo was continued as a corporation organized and existing under the *Business Corporations Act* (Alberta). Argo's principal business address is Suite 1200, 500-4<sup>th</sup> Avenue S.W., Calgary, Alberta, T2P 2V6. Argo's registered office is the same address.
- 5.4 Argo is a reporting issuer in Alberta, British Columbia, Ontario, New Brunswick, and Quebec. Its common shares have been listed for trading on the TSX since August 3, 2004.
- 5.5 On December 5, 2003 Argo acquired (the “Share Acquisition”) all of the issued and outstanding common shares of Advantage Energy Corporation (“Advantage”), which constituted a “significant acquisitions” in accordance with Ontario Securities Commission (“OSC”) Rule 41-501 (“OSC Rule 41-501”).
- 5.6 At the time of the Share Acquisition, the only asset of any material value in Advantage was the right to purchase certain oil and gas properties (the “Gift/Little Horse Assets”) from a third party vendor.

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- 5.7 On December 5, 2003, Argo also acquired the Gift/Little Horse Assets (the “Asset Acquisition”), which also constituted a “significant acquisition” in accordance with OSC Rule 41-501.
- 5.8 On July 30, 2004, Argo acquired all of the outstanding securities of Energy North Inc. (the “Energy North Acquisition”), which also constituted a “significant acquisition” in accordance with OSC Rule 41-501.
- 5.9 Lightning was incorporated under the *Business Corporations Act* (Alberta) on December 4, 2001. Lightning’s registered office is located at 1400, 350 – 7th Avenue SW, Calgary, Alberta T2P 3N9. The authorized capital of Lightning consists of an unlimited number of common shares.
- 5.10 Lightning is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, Nova Scotia, New Brunswick and Ontario and its common shares have been listed for trading on the TSX since June 3, 2004.
- 5.11 On August 31, 2004, Lightning acquired all of the issued and outstanding common shares of Archean Oil & Gas Ltd. (“AOGL”), which constituted a significant acquisition under OSC Rule 41-501.
- 5.12 Pursuant to the Arrangement, White Fire will acquire certain assets (the “White Fire Assets”) which will constitute a significant acquisition in accordance with OSC Rule 41-501.
- 5.13 Argo proposes to include in the Information Circular the audited operating statements for the five-month period ended April 30, 2004 and for the eight-month period ended November 30, 2003; information with respect to reserve estimates and estimates of future net revenues and production volumes; and production volumes the 12-month period commencing April 1, 2003 and ending March 31, 2004 for the Gift/Little Horse Assets in respect to both the Share Acquisition and the Asset Acquisition (as referred in and in accordance with Part 3, section 3.3(2) of OSC Rule 41-501 Companion Policy).
- 5.14 Argo proposes to include in the Information Circular two years of audited financial statements for the Energy North Acquisition for the periods ended December 31, 2002 and 2003 in accordance with the Canadian Securities Administration Staff Notice 42-303 (“CSA

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Staff Notice 42-303”) Prospectus Requirements. These financial statements are those specified in Section 8.5 of NI 51-102 in connection with a Business Acquisition Report.

- 5.15 Lightning proposes to include in the Information Circular two fiscal years of audited financial statements of AOGL, in accordance with CSA Staff Notice 42-303. These financial statements are those specified in Section 8.5 of NI 51-102 in connection with a Business Acquisition Report.
- 5.16 White Fire proposes to include in the Information Circular two years of audited operating statements (as referred in and in accordance with Part 3, section 3.3(2) of OSC Rule 41-501 Companion Policy) in respect of the probable acquisition by White Fire of the White Fire Assets. These financial statements are those specified in Section 8.5 of NI 51-102 in connection with a Business Acquisition Report and Section 3.3(2) of the Companion Policy to OSC Rule 41-501.
- 5.17 White Fire proposes to include information with respect to reserve estimates of future net revenue and production volumes, actual production volumes for the two year period with respect to the White Fire Assets and other relevant material information relating to the White Fire Assets. (the proposed inclusions above in section 5.13, 5.14, 5.15, 5.16 and 5.17 are collectively referred to as the “Alternative Financial Disclosure”).
- 5.18 The Trust and White Fire propose to include in the Information Circular pro forma disclosure as required under OSC Rule 41-501.

### **Decision**

- 6. 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 in the Joint Jurisdictions and the Decision of the Decision Makers under the Legislation in the Lightning Jurisdictions for the purposes of the Information Circular is that the requirement contained in the Legislation which requires Argo or Lightning in the Joint Jurisdictions as applicable, and Lightning in the Lightning Jurisdictions, respectively to include financial statement disclosure in an information circular prepared in connection with a plan of arrangement, including audited statements of

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income, retained earnings and cash flow and a full proforma income statement and a balance sheet in respect to the Share Acquisition, the Asset Acquisition, the Energy North Acquisition, by Argo and the acquisition of AOGL by Lightning and the White Fire Assets by White Fire for a three year period as required by the Disclosure Requirements, shall not apply to either Argo or Lightning in the Joint Jurisdictions and to Lightning in the Lightning Jurisdictions provided that the Alternative Financial Disclosure for Argo and Lightning as applicable is included in the Information Circular.

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ALBERTA SECURITIES COMMISSION