

2004 BCSECCOM 324

Headnote

Mutual Reliance Review System for Exemptive Relief Application – relief from the requirement to include prospectus-level disclosure about two issuers in an information circular sent in connection with an arrangement – one issuer whose securities will be distributed is a reporting issuer that is not participating in the arrangement – other issuer does not have certain financial statements available because the information was lost; alternate financial statements will be provided instead

Applicable British Columbia Provisions

Securities Act, R.S.B.C.1996, c. 418, ss. 117 and 119

National Instrument 51-102 - *Continuous Disclosure Obligations*, ss. 9.1 and 13.1

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, ALTERNA TECHNOLOGIES GROUP INC. AND ROCK ENERGY INC.

MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Newfoundland & Labrador and Yukon Territory (the “Participating Jurisdictions”) has received an application from Storm Energy Ltd. (“Storm”) in connection with a proposed plan of arrangement (the “Arrangement”) involving Storm, Harvest Energy Trust (“Harvest”), Harvest Operations Corp. (“Harvest Operations”), Alterna Technologies Group Inc. (“Alterna”), Rock Energy Inc. (“Rock”) and the shareholders of Storm (the “Shareholders”), which is to be effected pursuant to section 193 of the *Business Corporations Act* (Alberta) (the “ABCA”), which application (a) requests relief from the requirements in the securities legislation of the Participating Jurisdictions (the “Legislation”) that

2004 BCSECCOM 324

Storm include in the information circular and proxy statement sent to the Shareholders in connection with the Arrangement (the “Information Circular”) prospectus level disclosure in respect of Rock, and (b) requests relief from requirements in the Legislation that Storm include in the Information Circular certain financial statements in respect of Alterna.

2. AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “MRRS”), the Alberta 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 or in Québec Securities Commission Notice 14-101.
4. AND WHEREAS Storm has represented to the Decision Makers that:
 - 4.1 Through the series of steps occurring in connection with the Arrangement, (i) Storm will transfer certain of its assets, including oil and gas exploration prospects, to Alterna, (ii) Harvest Operations will acquire all of the issued and outstanding common shares of Storm (the “Storm Shares”), such that Storm will become a wholly-owned subsidiary of Harvest Operations, (iii) Harvest Operations and Storm will amalgamate and continue as a new corporation (“New Harvest Operations”), and (iv) Storm will distribute to its current Shareholders, in specie, all of the common shares of Rock (“Rock Shares”) held by Storm.
 - 4.2 The Arrangement will result, through a series of transactions, in Shareholders ultimately receiving for each Storm Share held (i) either one common share of Alterna or cash in the amount of \$1.90, (ii) either 0.281 of a Trust Unit, 0.281 of an Exchangeable Share or cash in the amount of \$4.15, and (iii) 0.053 of a Rock Share.
 - 4.3 Following the completion of the Arrangement, former holders of Storm Shares will own approximately 95% of the outstanding Alterna Shares and approximately 18% of the outstanding Rock Shares.
 - 4.4 A meeting (the “Meeting”) of the Shareholders to vote upon the Arrangement will be held on or about June 28, 2004 and it is anticipated that, subject to receiving the required approval at the Meeting, the Arrangement will be made effective on or about June 29, 2004.
 - 4.5 The Information Circular in respect of the Arrangement will be mailed to by Storm to the Shareholders on or about June 7, 2004.

2004 BCSECCOM 324

- 4.6 Storm is a corporation incorporated pursuant to the ABCA on July 10, 2002. 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.
- 4.7 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.
- 4.8 The authorized capital of Storm currently consists of an unlimited number of Storm Shares and an unlimited number of first preferred shares, second preferred shares and third preferred shares, each issuable in series. As at April 18, 2004, 29,892,302 Storm Shares were issued and outstanding. Storm also has reserved a total of 2,684,824 Storm Shares for issuance pursuant to the outstanding stock options.
- 4.9 The Storm Shares are listed and posted for trading on the Toronto Stock Exchange ("TSX").
- 4.10 Storm is a reporting issuer or the equivalent thereof in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Québec. 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, Manitoba, Ontario and Québec and is not in default of the Legislation in any of these jurisdictions.
- 4.11 The closing price of the Storm Shares on the TSX on May 7, 2004 was \$6.55.
- 4.12 Alterna was incorporated under the ABCA in 1996 and continued under the Canada Business Corporations Act in 1998. The registered office of Alterna is located at 3700, 400 – 3rd Avenue S.W., Calgary, Alberta, T2P 4H2.
- 4.13 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's software development business was sold to a third party. Alterna currently has no employees and its business activities consist solely of settling outstanding accounts receivable and accounts payable.

2004 BCSECCOM 324

- 4.14 Alterna is a privately held corporation, is not a reporting issuer in any jurisdiction and its securities are not listed on any stock exchange.
- 4.15 The financial year end of Alterna is October 31.
- 4.16 To the best of Storm's knowledge, information and belief, Alterna incurred no material expenditures and had no material income or loss for the period January 1, 2004 to March 31, 2004.
- 4.17 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".
- 4.18 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."
- 4.19 In December, 2002, Storm transferred oil and gas properties to Rock Energy Ltd. in exchange for 1,990,000 common shares of Rock Energy Ltd. Following the acquisition of Rock Energy Ltd. by Medbroadcast Corporation, Storm held approximately 16% of the Rock Shares.
- 4.20 Rock is a reporting issuer in the provinces of British Columbia, Alberta, Saskatchewan, Ontario, Québec and Nova Scotia and has been for at least four months.
- 4.21 The Rock Shares are listed and posted for trading on the TSX Venture Exchange. The closing price of the Rock Shares on the TSX Venture Exchange on May 7, 2004 was \$4.35.
- 4.22 Harvest is an open-end, unincorporated trust governed by the laws of the Province of Alberta and created pursuant to a trust indenture dated

2004 BCSECCOM 324

September 27, 2002 between Harvest and Valiant Trust Company, as trustee.

- 4.23 The head and principal office of Harvest is located at 1900, 330 - 5th Avenue S.W., Calgary, Alberta, T2P 0L4.
- 4.24 Harvest is a reporting issuer in all of the provinces and territories of Canada and has been for at least four months. To the best of Storm's knowledge, information and belief, Harvest is not in default of the Legislation in any of the Participating Jurisdictions.
- 4.25 The Trust Units are listed and posted for trading on the TSX.
- 4.26 Harvest Operations is a wholly-owned operating subsidiary of Harvest Energy Trust.
- 4.27 The head and principal office of Harvest Operations is located at 1900, 330 - 5th Avenue S.W., Calgary, Alberta, T2P 0L4.
- 4.28 From its formation in 1996 until December 2003, Alterna's business involved the development of treasury management software. In December 2003, Alterna sold its software business to a third party and terminated its employees.
- 4.29 Alterna has audited annual financial statements for fiscal years ending on and prior to October 31, 2002. However, it is Storm's understanding that, as a result of the destruction of certain of Alterna's accounting data and the departure of certain key employees, it is not possible to prepare financial statements in respect of Alterna for the year ended October 31, 2003 or the three months ended January 31, 2004.
- 4.30 Mark A. Butler, Corporate Secretary of Alterna, has represented in a letter to the Alberta Securities Commission dated April 27, 2003 that:
 - 4.30.1 upon the sale of its software business, all of the data from Alterna's computer system, including accounting records, was transferred to a server at the site of the purchaser of the business;
 - 4.30.2 subsequent to such transfer, the purchaser's server experienced a power surge and accounting data relating to Alterna was lost; and

2004 BCSECCOM 324

4.30.3 the manual accounting records kept subsequent to the date of the data loss will support the audit of a balance sheet as at March 31, 2004.

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 the requirement contained in the Legislation to include in the Information Circular:
 - 7.1.1 annual statements of income, retained earnings and cash flows in respect of Alterna for the financial years ended October 31, 2003, 2002 and 2001 and an auditor’s report thereon;
 - 7.1.2 a balance sheet in respect of Alterna as at October 31, 2003 and 2002 and an auditor’s report thereon;
 - 7.1.3 interim statements of income, retained earnings and cash flows in respect of Alterna for the three months ended January 31, 2003 and 2002; and
 - 7.1.4 an interim balance sheet in respect of Alterna as at January 31, 2004;
 - shall not apply to Storm, provided that Storm shall include in the Information Circular an audited balance sheet in respect of Alterna as at March 31, 2004; and
 - 7.2 the requirement contained in the Legislation to include in the Information Circular disclosure in respect of Rock Energy Inc. prescribed by the prospectus form requirements set forth in the Legislation shall not apply to Storm provided that Storm shall incorporate by reference into the Information Circular the audited balance sheet of Rock Energy Ltd. as at June 30, 2003 and December 31, 2002, the audited statements of income and retained earnings of Rock Energy Ltd. for the six months ended June 30, 2003 and the audited statements of cash flows of Rock Energy

2004 BCSECCOM 324

Ltd. for the period from incorporation on November 21, 2002 to
December 31, 2002 and for the six-month period ended June 30, 2003.

DATED this 8th day of June, 2004.

Mavis Legg, CA
Manager Securities Analysis