

# 2006 BCSECCOM 386

June 21, 2006

## Headnote

Multilateral Instrument 11-101 Principal Regulator System - National Instrument 51-102, s. 13.1 - Continuous Disclosure Obligations - Information circular - 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 disclosure will be provided about the issuer that is consistent with the 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; the alternate disclosure complies with National Instrument 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency and will comply with the applicable prospectus requirements except that the time frame for reporting is shortened from 3 years to 2 years

## Applicable British Columbia Provisions

National Instrument 51-102, Continuous Disclosure Obligations, ss. 9.1, 13.1  
Form 51-102F5, section 14.2

In the Matter of  
the Securities Act (the Act) of British Columbia  
(the Jurisdiction)

and

National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102)

In the Matter of  
Multilateral Instrument 11-101 *Principal Regulator System* (MI 11-101)

and

In the Matter of  
Valkyries Petroleum Corp.  
(the Filer)

## Decision

## Background

- ¶ 1 The British Columbia Securities Commission (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the

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Jurisdiction (the Legislation) for an exemption from the requirement to include, in a proxy solicitation and information circular (the Circular) to be sent to the Filer's security holders in connection with a plan of arrangement annual consolidated financial statements for the financial year ended December 31, 2003 for each of the Filer and Lundin Petroleum AB (the Requested Relief).

### **Application of Principal Regulator System**

¶ 2 Under MI 11-101:

- (a) the Decision Maker is the principal regulator for the Filer; and
- (b) the Filer is relying on the exemption in Part 3 of MI 11-101 in Alberta.

### **Interpretation**

¶ 3 Defined terms contained in National Instrument 14-101 – Definitions have the same meaning in this decision unless they are defined in this decision.

### **Representations**

¶ 4 This decision is based on the following facts represented by the Filer:

1. the Filer is a corporation incorporated under the laws of Canada; the Filer's head office is located in Vancouver, British Columbia;
2. the common shares of the Filer (Valkyries Shares) are listed and posted for trading on the TSX Venture Exchange;
3. the Filer is a reporting issuer in the provinces of British Columbia and Alberta;
4. approximately 5.45% of the Valkyries Shares are held by Canadian shareholders;
5. to its knowledge, the Filer is not in default of any of its obligations as a reporting issuer under the applicable securities legislation in any province in which it is a reporting issuer;
6. in fiscal 2005, the Filer identified certain assets that were required to be accounted for as assets held for sale; in accordance with Canadian generally accepted accounting principles, the Filer classified the assets as assets held for sale and reflected the results of operations for these assets as discontinued operations for the financial year ended December 31, 2005 and restated its December 31, 2004 financial statements to re-classify the assets as assets held for sale and reflect the results of operations for these assets as discontinued operations in fiscal 2004;

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7. the Filer was not previously required under the Legislation to prepare and present restated financial statements for the year ended December 31, 2003; accordingly, the Filer has not prepared restated financial statements for the year ended December 31, 2003;
8. Lundin Petroleum AB (Lundin Petroleum) was incorporated under the laws of Sweden; Lundin Petroleum's head office is in Stockholm, Sweden;
9. Lundin Petroleum's common shares (Lundin Shares) are listed on the O-list, Attract 40 at the Stockholm Stock Exchange;
10. Lundin Petroleum is not a reporting issuer in any jurisdiction in Canada;
11. to the Filer's knowledge, Lundin Petroleum is not in default of any of its obligations under applicable securities laws in Sweden;
12. Lundin Petroleum's auditors are PricewaterhouseCoopers AB, Gothenburg, Sweden;
13. Lundin Petroleum's audited consolidated financial statements for the years ended December 31, 2003 and 2004 have been prepared in accordance with Swedish generally accepted accounting principles (Swedish GAAP);
14. Lundin Petroleum's audited annual consolidated financial statements for the year ended December 31, 2005 (the 2005 Financial Statements) have been prepared in accordance with international financial reporting standards (IFRS) with an adoption date under IAS 1 of January 1, 2005;
15. the 2005 Financial Statements have been prepared in full compliance with IFRS, including one year of comparative figures for the financial year ended December 31, 2004 prepared in line with IFRS 1, which provides first time adopters of IFRS with exemptions from full retrospective application of IFRS;
16. because Lundin Petroleum adopted January 1, 2005 as the effective date for its transition from Swedish GAAP to IFRS as the basis of preparation of its financial statements, it cannot now adopt an earlier transition date; therefore Lundin Petroleum cannot prepare financial statements for the period ended December 31, 2003 under IFRS;
17. the Filer, Lundin Petroleum and 6565654 Canada Inc., a wholly owned subsidiary of Lundin Petroleum (Lundin Subco), entered into a business combination agreement (the Business Combination Agreement) effective as of

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May 26, 2006, under which Lundin Petroleum may indirectly acquire, through Lundin Subco, all of the issued and outstanding Valkyries Shares in exchange for Lundin Shares on the basis of one Lundin Share for each Valkyries Share (the Arrangement);

18. following the Arrangement, the Filer will be an indirect, wholly owned subsidiary of Lundin Petroleum;
19. the Filer is preparing the Circular for a special meeting of its securityholders that is expected to be held on July 25, 2006;
20. under section 14.2 of Form 51-102F5 of National Instrument 51-102, and because the Arrangement will involve the exchange of Valkyries Shares for Lundin Shares, the Circular must contain prospectus level disclosure of the business and affairs of each of the Filer and Lundin Petroleum and the particulars of the Arrangement, as well as a fairness opinion of an independent financial advisor; in addition, the Filer is required to include certain annual and interim financial statement disclosure, including audited annual consolidated financial statements for each of the three most recently completed financial years of Lundin Petroleum (the Lundin Disclosure) and the audited annual consolidated financial statements for each of the three most recently completed financial years of the Filer (the Valkyries Disclosure);
21. since Lundin Petroleum is not a reporting issuer in any jurisdiction in Canada, the prospectus level disclosure relating to Lundin Petroleum will be in accordance with Ontario Securities Commission Rule 41-501 *General Prospectus Requirements and Forms*;
22. under subsection 2.1(2)(b) of National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Foreign Currency* (NI 52-107), NI 52-107 applies to financial statements included in a document required to be filed under NI 51-102 (which includes information circulars); subsection 3.1(2) of NI 52-107 requires that the Lundin Disclosure be prepared using the same accounting principles for all three financial years;
23. in order for the Filer to meet the requirements in NI 51-102 for the Valkyries Disclosure, the Filer would have to restate its financial statements for the year ended December 31, 2003 and have an audit firm conduct an audit on the restated statements;

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24. the Filer will include in the Circular:

(a) Lundin Petroleum's audited consolidated financial statements for the two years ended December 31, 2005 and 2004 prepared in accordance with IFRS, and

(b) the Filer's audited consolidated financial statements for the two years ended December 31, 2005 and 2004

(collectively, the Alternative Financial Disclosure).

### **Decision**

- ¶ 5 The Decision Maker being satisfied that it has jurisdiction to make this decision, and that to do so would not be prejudicial to the public interest, the Requested Relief is granted provided that the Circular includes the Alternative Financial Disclosure.

Martin Eady, CA  
Director, Corporate Finance  
British Columbia Securities Commission