

# 2004 BCSECCOM 433

## Headnote

Mutual Reliance Review System for Exemptive Relief Application – relief granted from the requirement to provide audited financial statements in an information circular for a significant acquisition involving oil and gas properties on the condition that acceptable alternative disclosure be provided

## 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. 13.1

Form 51-102F5, Part 14.2

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

AND

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

AND

## IN THE MATTER OF ARGO ENERGY LTD. AND ENERGY NORTH INC.

## MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Alberta, British Columbia and Ontario (the “Jurisdictions”) has received an application from Argo Energy Ltd. (“Argo”) and Energy North Inc. (“Energy North”) (Argo and Energy North are sometimes collectively referred to as the “Filers”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that Energy North be exempted, subject to certain conditions, 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 within the last three financial years, each of which would be considered to be “significant acquisitions” to Argo, to its shareholders in connection with a proposed plan of arrangement (the “Plan of Arrangement”) under Section 193 of the *Business Corporations Act* (Alberta) (“ABCA”) pursuant to an Arrangement Agreement between Argo and Energy North (the “Arrangement Agreement”) dated May 9, 2004, as amended.

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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;
3. AND WHEREAS unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions* or in Québec, Commission Notice 14-101;
4. AND WHEREAS the Filers have represented to the Commission that:
  - 4.1 Argo was incorporated on February 23, 1995 as “Pegaz Energy Inc.” pursuant to the *Canada Business Corporations Act*. Subsequently, Argo changed its name, amended its share capital and continued from the *Canada Business Corporations Act* to the *Business Corporations Act* (Alberta). Argo’s principal business address is Suite 750, 330 – 5<sup>th</sup> Avenue S.W., Calgary, Alberta, T2P 0L4. Argo’s registered office is the same address.
  - 4.2 Argo is a reporting issuer in Alberta, British Columbia and Québec and its shares have been listed on the TSX Venture Exchange (and its predecessors) since September 28, 2001.
  - 4.3 Argo is not in default under the Legislation.
  - 4.4 Energy North was incorporated under the ABCA on February 3, 1994. Its authorized capital consists of an unlimited number of common shares and an unlimited number of preferred shares, issuable in series.
  - 4.5 Energy North is a reporting issuer in British Columbia, Alberta and Ontario and its common shares have been listed for trading on the Toronto Stock Exchange since January 17, 2001. The common shares were previously listed for trading on the TSX Venture Exchange from June 3, 1994 until February 9, 2001.
  - 4.6 Energy North is not in default under the Legislation.
  - 4.7 Under the Plan of Arrangement:
    - 4.7.1 Energy North shareholders will receive, for each Energy North share, 0.3084 of one common share of Argo; and
    - 4.7.2 holders of options (the “Options”) to purchase Energy North shares which are outstanding prior to the effective time of the Plan

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of Arrangement will receive a number of common shares of Argo determined on the basis of a formula that provides them with the economic equivalent of their options determined in accordance with the terms of the option agreements.

- 4.8 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 acquisition” in accordance with Ontario Securities Commission (“OSC”) Rule 41-501 (“OSC Rule 41-501”).
- 4.9 At the time of the Share Acquisition, the only asset of any meaningful value in Advantage was the right to purchase certain oil and gas properties (the “Gift/Little Horse Assets”) from a third party vendor.
- 4.10 On December 5, 2003, Argo also acquired (the “Asset Acquisition”) the Gift/Little Horse Assets, which also constituted a “significant acquisition” in accordance with OSC Rule 41-501.
- 4.11 Energy North is preparing an Information Circular (the “Information Circular”) for its meeting (the “Meeting”) to be held on or about July 28, 2004 where its shareholders and holders of Options will be given the opportunity to vote as a single class on the Plan of Arrangement.
- 4.12 The Plan of Arrangement requires the approval of at least 66 2/3% of the shareholders of Energy North and holders of Options present in person or by proxy at the Meeting.
- 4.13 The Information Circular will contain the following operating statements in accordance with the suggested alternative disclosure under Section 3.3 of the Companion Policy to OSC Rule 41-501 *General Prospectus Requirements* (the “Alternative Operating Information Disclosure”) in respect to both the Share Acquisition and the Asset Acquisition:
  - 4.13.1 audited Operating Statements of Revenue and Operating Expenses in respect of the Gift/Little Horse Assets for the five month period ended April 30, 2004 and for the eight month period ended November 30, 2003;
  - 4.13.2 unaudited pro forma income statement for Argo for the year ended December 31, 2003 combining the Gift/Little Horse Assets as if such acquisition had occurred on January 1, 2003;

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- 4.13.3 unaudited pro forma earnings per share based upon the statement referred to in section 4.13.2;
  - 4.13.4 information with respect to reserve estimates and estimates of future net revenues and production volumes in respect of the Gift/Little Horse Assets; and
  - 4.13.5 production volumes for the Gift/Little Horse Assets for the 12-month period commencing April 1, 2003 and ending March 31, 2004.
- 4.14 Without the relief granted by this decision, Energy North would be required to include in the Information Circular full financial statement disclosure in respect of the Share Acquisition and the Asset Acquisition, including audited statements of income, retained earnings and cash flow for a three-year period (the "Prescribed Financial Disclosure").
- 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 Energy North be exempted from the requirements of the Prescribed Financial Disclosure provided that Energy North includes the Alternative Operating Information Disclosure in the Information Circular.

DATED at Calgary, Alberta on this 14<sup>th</sup> day of July, 2004.

Mavis Legg, CA  
Manager, Securities Analysis