

# 2005 BCSECCOM 221

March 17, 2005

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 91 Financial Statements & Report - Exemption from the filing and delivery requirements for financial statements, annual reports, and quarterly reports - NI 51-102 – Continuous disclosure obligations - An issuer wants relief from the requirement to file and deliver comparative annual financial statements for a particular year (the statements) and to include the statements in any document requiring prospectus level disclosure about the issuer filed prior to the date on which the issuer has sufficient information to prepare the statements for that particular year - The issuer received a prior order exempting it from the requirement to include the comparative annual financial statements in an information circular because certain financial information required to prepare the statements was destroyed - The relief extends the relief granted in the prior order to continuous disclosure and prospectus requirements - The comparative information is not relevant to an assessment of the performance of the issuer

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, s. 91

National Instrument 51-102 *Continuous Disclosure Obligations*, s 13.1

In the Matter of  
the Securities Legislation  
of Alberta, British Columbia, Ontario and Québec

and

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

and

In the Matter of Storm Exploration Inc.

## MRRS Decision Document

1. WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Alberta, British Columbia, Ontario and Québec (the “Participating Jurisdictions”) has received an application from Storm Exploration Inc. (“Storm”), which application:

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- 1.1.1 requests relief from the requirements in the securities legislation of Alberta, British Columbia and Ontario requiring Storm to:
  - 1.1.1.1 file with the applicable securities regulatory authorities and regulators and deliver to its shareholders
    - (i) an income statement, a statement of retained earnings and a cash flow statement for the year ended October 31, 2003, and
    - (ii) a balance sheet as at October 31, 2003 (collectively, the “Comparative Financial Statements”); and
  - 1.1.1.2 include the Comparative Financial Statements in any prospectus of Storm, or other document requiring prospectus level disclosure in respect of Storm, filed with the securities regulators or regulatory authorities on or before March 31, 2006; and
- 1.1.2 in Quebec, requests a revision to the general order that will provide the same result as the exemption order set forth above.
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 Storm was incorporated as Alterna Technologies Group Inc. (“Alterna”) under the *Business Corporations Act* (Alberta) in 1996 and continued under the *Canada Business Corporations Act* in 1998.
  - 4.2 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. At the time of the Arrangement (as defined below), Alterna had no employees and its

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business activities consisted solely of settling outstanding accounts receivable and accounts payable.

- 4.3 Pursuant to a plan of arrangement (the “Arrangement”) involving Storm Energy Ltd. (“Old Storm”), Harvest Energy Trust, Alterna, Harvest Operations Corp. (“Harvest Operations”) and the shareholders of Old Storm (the “Shareholders”), which was completed on June 30, 2004,: (a) Old Storm transferred certain of its assets, including oil and gas exploration prospects (the “Storm Assets”), to Alterna; (b) Harvest Operations acquired all of the issued and outstanding common shares of Old Storm; (c) Shareholders ultimately received for each common share of Old Storm held (i) either one common share of Alterna or cash in the amount of \$2.00, (ii) either 0.281 of a Trust Unit of Harvest Energy Trust, 0.281 of an Exchangeable Share of Harvest Operations Corp. or cash in the amount of \$4.15, and (iii) 0.053 of a share of Rock Energy Inc; and (d) Alterna changed its name to Storm Exploration Inc.
- 4.4 The head office of Storm is located at 3300, 205 – 5<sup>th</sup> Avenue S.W., Calgary, Alberta, T2P 2V7.
- 4.5 Storm is currently a reporting issuer in British Columbia, Alberta, Ontario and Québec and its common shares are listed and posted for trading on the Toronto Stock Exchange under the trading symbol “SEO”.
- 4.6 Prior to 2004, the financial year end of Storm was October 31. Following the completion of the Arrangement, Storm changed its year end to December 31.
- 4.7 Storm is a reporting issuer or the equivalent thereof in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Quebec. 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 Quebec and is not in default of the Legislation in any of these jurisdictions.
- 4.8 As a result of the destruction of certain of Alterna’s accounting data and the departure of certain key employees, it is not possible for Storm to prepare audited financial statements for the year ended October 31, 2003.
- 4.9 In connection with the Arrangement, Mr. Mark A. Butler, previously the Chief Operating Officer of Alterna and currently a director of Storm, submitted a letter, dated April 27, 2004, to the Alberta Securities Commission stating that:

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- 4.9.1 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;
- 4.9.2 subsequent to such transfer, the purchaser's server experienced a power surge and accounting data relating to Alterna was lost; and
- 4.9.3 as a result of the loss of data, it was not possible to generate audited annual financial statements of Alterna for the year ended October 31, 2003.
- 4.10 In a subsequent letter from Mr. Butler to the Alberta Securities Commission, dated February 25, 2005, Mr. Butler states that, subsequent to April 27, 2004, efforts have been made to recover the financial records of Alterna but that the completeness, accuracy, measurability and verifiability of the recovered information cannot be established.
- 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 securities legislation of the Participating Jurisdictions (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 requirements contained in the Legislation to:
    - 7.1.1 file with the applicable securities regulatory authorities and regulators and deliver to its shareholders:
      - 7.1.1.1 an income statement, a statement of retained earnings and a cash flow statement for the year ended October 31, 2003; and
      - 7.1.1.2 a balance sheet as at October 31, 2003 (collectively, the "Comparative Financial Statements"); and

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7.1.2 include the Comparative Financial Statements in any prospectus of Storm, or other document requiring prospectus level disclosure in respect of Storm, filed with the securities regulators or regulatory authorities on or before March 31, 2006;

shall not apply to Storm, provided that Storm shall include in the notes to its audited financial statements for the year ended December 31, 2004 an audited statement of revenues and operating expenses for the year ended December 31, 2003 in respect of the Storm Assets.

Mavis Legg, CA  
Manager, Securities Analysis