

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief under subsection 144(1) of the Act from the registration and prospectus requirements under sections 75 and 110 of the Act with respect to trades made in connection with an arrangement and first trades of securities issued in connection thereto;

Applicable Alberta Statutory Provisions

Securities Act, R.S.A., 2000, c.S-4, sections 75, 110 and 144(1)

IN THE MATTER OF THE SECURITIES LEGISLATION OF
ALBERTA, SASKATCHEWAN, MANITOBA,
ONTARIO, QUÉBEC, NOVA SCOTIA, NEW BRUNSWICK,
PRINCE EDWARD ISLAND AND NEWFOUNDLAND

AND

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

AND

IN THE MATTER OF
ACCLAIM ENERGY TRUST, ACCLAIM ENERGY INC., KETCH ENERGY LTD.
AND KETCH RESOURCES LTD.

MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland (the "Jurisdictions") has received an application (the "Application") from Acclaim Energy Trust ("Acclaim"), Ketch Energy Ltd. ("Ketch") and Ketch Resources Ltd. ("ExploreCo") (collectively, the "Filers") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that:
 - 1.1 the registration and prospectus requirements of the Legislation (the "Maritime Legislation") in the Provinces of New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland (the "Maritime Jurisdictions") shall not apply to certain trades made by Acclaim in connection with a proposed plan of arrangement (the "Arrangement") under the Business Corporations Act (Alberta) (the "ABCA") involving Acclaim, Acclaim Energy Inc. ("AEI"), Ketch, ExploreCo and the securityholders of Ketch; and
 - 1.2 (i) the registration and prospectus requirements of the Legislation shall not apply to certain trades made by ExploreCo in connection with or subsequent to the Arrangement; and (ii) ExploreCo be deemed or declared a reporting issuer at the time

of the Arrangement becoming effective for the purposes of the Legislation, other than Manitoba, Newfoundland, New Brunswick and Prince Edward Island;

2. AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Alberta Securities Commission is the Principal Regulator for the Application;
3. AND WHEREAS the Filers have represented to the Decision Makers that:

Acclaim Energy Trust

- 3.1 Acclaim is an open-ended trust settled under the laws of Alberta and is headquartered in Calgary, Alberta;
- 3.2 Acclaim's business is the acquisition of interests in crude oil and natural gas rights and the exploration, development, production, marketing and sale of crude oil and natural gas;
- 3.3 the authorized capital of Acclaim consists of an unlimited number of trust units ("Trust Units") and an unlimited number of special voting units ("Special Voting Units"), of which, as at July 18, 2002, 32,252,809 Trust Units and one Special Voting Unit (representing 29,171,184 votes) were issued and outstanding;
- 3.4 Acclaim is, and has been for a period of time in excess of 12 months, a reporting issuer (where such concept exists) under the securities legislation of the Jurisdictions. To the best of its knowledge, information and belief, Acclaim is not in default of the requirements under the Legislation or the regulations made thereunder (the "Regulations");
- 3.5 the Trust Units are listed and posted for trading on the Toronto Stock Exchange (the "TSX") under the trading symbol "AE.UN";

Ketch Energy Ltd.

- 3.6 Ketch is a corporation continued under the ABCA and is headquartered in Calgary, Alberta;
- 3.7 Ketch's business is the acquisition of interests in petroleum and natural gas rights and the exploration for and the development, production, marketing and sale of, petroleum and natural gas;
- 3.8 the authorized capital of Ketch consists of 100,000,000 common shares ("Common Shares"), of which, as at June 30, 2002, 46,744,285 Common Shares were issued and outstanding. Also as of June 30, 2002, 3,338,000 Common Shares were reserved for issuance in connection with the exercise of outstanding options to acquire Common Shares ("Options");

- 3.9 Ketch is, and has been for a period of time in excess of 12 months, a reporting issuer (where such concept exists) under the securities legislation of the provinces of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario and Québec. To the best of its knowledge, information and belief, Ketch is not in default of the requirements under the Legislation or the Regulations;
- 3.10 the Common Shares are listed and posted for trading on the TSX under the trading symbol "KCH";

Ketch Resources Ltd.

- 3.11 ExploreCo is a corporation incorporated under the ABCA and is headquartered in Calgary, Alberta;
- 3.12 ExploreCo has not conducted any business to date, but has executed the Arrangement Agreement;
- 3.13 the authorized capital of ExploreCo consists of an unlimited number of common shares ("ExploreCo Shares"). As of the date hereof, there is issued and outstanding 1 ExploreCo Share, and it is owned by Ketch;
- 3.14 ExploreCo is not a reporting issuer in any jurisdiction;
- 3.15 ExploreCo has applied to list the ExploreCo Shares on the TSX;

The Arrangement

- 3.16 on July 18, 2002, Ketch and Acclaim jointly announced that they had entered into an arrangement agreement (the "Arrangement Agreement") in respect of the Arrangement to be effected under the ABCA. The information circular (the "Information Circular") in respect of the Arrangement in connection with a special meeting (the "Meeting") of the holders of Common Shares ("Shareholders") and the holders of Options ("Optionholders") to be held on September 26, 2002 was mailed to the holders of Common Shares and Options (collectively, the "Ketch Securityholders") on August 23, 2002;
- 3.17 Under the terms of the Arrangement Agreement, Ketch has agreed to transfer certain of its exploration and production assets to ExploreCo ("ExploreCo Assets") and then combine the remaining business of Ketch with Acclaim;
- 3.18 The Arrangement provides for the following transactions to occur on the effective date:
 - 3.18.1 Ketch shall distribute to Shareholders as a return of capital one ExploreCo Share for each three Common Shares held;

- 3.18.2 each issued and outstanding Common Share shall be transferred to 984486 Alberta Ltd. ("AcquisitionCo"), a wholly-owned subsidiary of Acclaim, in exchange for 1.15 Trust Units for each Common Share held;
- 3.18.3 AcquisitionCo shall issue 1 unsecured, subordinated, demand note ("Note") to Acclaim for each Trust Unit issued above;
- 3.18.4 all unexercised Options will be cancelled and the holders thereof shall be entitled to receive Trust Units for each such Option. The number of Trust Units received will be based upon the 95% of the amount by which the weighted average trading price of the Common Shares exceeds the exercise price of such Option, multiplied by the number of Common Shares to which such Option relates divided by the weighted average trading price of the Trust Units; and
- 3.18.5 AcquisitionCo shall contemporaneously with the cancellation of Options and the issuance of Trust Units referred to above, issue and deliver to Acclaim such number of Notes as is equal to the product of 1.15 and the number of Trust Units required to be delivered by Acclaim above in consideration for the cancellation of the Options;
- 3.19 no fractional Trust Units or ExploreCo Shares shall be issued and in lieu of any fractional Trust Unit or ExploreCo Share, each registered Shareholder or Optionholder will receive the next lowest number of Trust Units or ExploreCo Shares, as the case may be;
- 3.20 it is a condition to completion of the Arrangement that AEI shall have acquired all of the issued and outstanding shares of Acclaim Energy Management Inc ("ManagementCo") not later than the effective time of the Arrangement in exchange for the issuance of not more than 1,000,000 AEI preferred shares ("AEI Preferred Shares"), subject to adjustment for any working capital deficiency and tax liabilities accrued to the date of purchase. In addition, at the effective time, AEI shall issue an aggregate of not more than 762,594 AEI Preferred Shares to the shareholders of ManagementCo in exchange for non-competition covenants from such shareholders. Each AEI Preferred Share will be convertible, after receipt of all necessary regulatory approvals, into exchangeable shares in the capital of AEI which shall be exchangeable on a one for one basis for Acclaim Trust Units, subject to adjustment for distributions;
- 3.21 in connection with the Arrangement, Ketch intends to accelerate the vesting of all outstanding Options and will agree with any holder of Options that, in lieu of such person exercising their Options, Ketch will pay to that person with respect to 50% of such person's Options the difference between the exercise price of the Options and \$6.25 in exchange for the termination of such Options, provided such holder also agrees to exercise or surrender their remaining Options to Ketch for cancellation for no consideration effective at the effective time of the Arrangement;

- 3.22 it is also a condition to the Arrangement that all outstanding warrants to acquire Ketch Shares shall have been exercised, cancelled or otherwise terminated;

The Order

- 3.23 the Information Circular in connection with the Arrangement provided to all holders of Common Shares and Options, and filed in all of the Jurisdictions contains (or, to the extent permitted, has incorporated by reference) prospectus-level disclosure in respect of Acclaim, Ketch and ExploreCo;
- 3.24 the ExploreCo Assets have been the subject of continuous disclosure on an ongoing basis for more than 12 months, in accordance with Ketch's responsibilities as a reporting issuer;
- 3.25 holders of Common Shares and Options will have the right to dissent from the Arrangement under Section 191 of the ABCA, and the Information Circular discloses full particulars of this right in accordance with applicable law;
- 3.26 exemptions from registration and prospectus requirements of the Maritime Legislation in respect of trades made in securities of Acclaim are not available. Exemptions from registration and prospectus requirements of the Legislation in respect of trades made in securities of ExploreCo in connection with the Arrangement and exemptions from prospectus requirements of the Legislation in respect of first trades in Trust Units and ExploreCo Shares following the Arrangement are not otherwise available in all Jurisdictions;
- 3.27 ExploreCo will not be a reporting issuer within the definitions of all of the applicable Jurisdictions at the time of the Arrangement becoming effective;
4. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");
5. 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;
6. THE DECISION of the Decision Makers under the Legislation and the Maritime Legislation is that:
- 6.1 all trades made in securities of Acclaim in connection with the Arrangement shall not be subject to the registration and prospectus requirements of the Maritime Legislation;
- 6.2 all trades made in securities of ExploreCo in connection with the Arrangement shall not be subject to the registration and prospectus requirements of the Legislation;
- 6.3 except in Québec, the first trade in a Jurisdiction of ExploreCo Shares acquired by former holders of Common Shares or Options in connection with the Arrangement

shall be a distribution or a primary distribution to the public under the Legislation of such Jurisdiction except that where:

- 6.3.1 ExploreCo is a reporting issuer in a jurisdiction listed in Appendix B to Multilateral Instrument 45-102 preceding the trade;
- 6.3.2 the seller is in a special relationship with ExploreCo, as defined in the Legislation, the seller has reasonable grounds to believe that ExploreCo is not in default of any requirement of the Legislation; and
- 6.3.3 no unusual effort is made to prepare the market or to create a demand for the securities and no extraordinary commission or consideration is paid in respect of the first trades;

then such a first trade shall be a distribution or a primary distribution to the public only if it is from the holdings of any person, company or combination of persons or companies, as the case may be, holding a sufficient number of securities of ExploreCo, to affect materially the control of ExploreCo, but any holding of any person, company or combination of persons or companies holding more than 20% of the outstanding voting securities of ExploreCo shall, in the absence of evidence to the contrary, be deemed to affect materially the control of ExploreCo;

- 6.4 in Québec the alienation of ExploreCo Shares acquired by former holders of Common Shares or Options in connection with the Arrangement shall be a distribution under the legislation of Québec except that where:

- 6.4.1 ExploreCo is a reporting issuer in Québec immediately preceding the trade;
- 6.4.2 no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade;
- 6.4.3 no extraordinary commission or consideration is paid to a person or company in respect of the trade; and
- 6.4.4 if the selling shareholder is an insider or officer of ExploreCo, the selling securityholder has no reasonable grounds to believe that ExploreCo is in default of any requirement of securities legislation; and

- 6.5 ExploreCo shall be deemed or declared a reporting issuer at the time of the Arrangement becoming effective for the purposes of the Legislation of the Jurisdictions, other than Manitoba, Newfoundland, New Brunswick and Prince Edward Island.

DATED this 30th day of September, 2002.

“original signed by”

Glenda A. Campbell, Q.C., Vice-Chair

“original signed by”

Eric T. Spink, Vice-Chair