

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from registration and prospectus requirements to permit trades to facilitate the acquisition by a trust of all of the issued shares of a related corporation where part of the consideration for the purchase is exchangeable shares.

Applicable Alberta Statutory Provisions

Securities Act, R.S.A., 2000, c.S-4, ss. 86(1)(e), 86(1)(m)(iii), 86(1)(n), 86(1)(q), 86(1)(u), 86(1)(ff), 131(1)(d), 131(1)(f)(iii), 131(1)(g), 131(1)(j), 131(1)(o), 131(1)(bb), and 144(1)

IN THE MATTER OF
THE SECURITIES LEGISLATION
OF ALBERTA AND SASKATCHEWAN

AND

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

AND

IN THE MATTER OF
ARC ENERGY TRUST, 980445 ALBERTA LTD.
AND 908563 ALBERTA LTD.

MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in Alberta and Saskatchewan (the “Jurisdictions”) have received an application from ARC Energy Trust (the “Trust”), 980445 Alberta Ltd. (“Acquisitionco”) and 908563 Alberta Ltd. (“ARC Subco”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirements contained in the Legislation to be registered to trade in a security (the “Registration Requirements”) and to file and receive receipts for a preliminary prospectus and a prospectus (the “Prospectus Requirements”) will not apply to any trade of securities to be made in connection with the purchase of all of the outstanding shares of ARC Resources Management Ltd. (“ARC Management”) (the “Internalization Transaction”);
2. AND WHEREAS under the Mutual Reliance Review Systems For Exemptive Relief Applications (the “System”), the Alberta Securities Commission is the Principal Regulator for this application;
3. AND WHEREAS the Trust, Acquisitionco and ARC Subco represented to the Decision Makers that:

- 3.1 the Trust is an open-end investment trust created on May 7, 1996 under the laws of Alberta;
- 3.2 the Trust is authorized to issue an unlimited number of units (the "Trust Units");
- 3.3 as at July 24, 2002, there were 121,447,834 Trust Units outstanding and there were outstanding rights to acquire 3,160,499 Trust Units under the Trust Unit Incentive Rights Plan of the Trust and 763,289 exchangeable shares of ARC Resources which, as at July 24, 2002, entitled the holders to acquire an aggregate 961,882 Trust Units;
- 3.4 the Trust was initially created for the purposes of issuing Trust Units to the public and investing the funds so raised to purchase a royalty in certain oil and natural gas properties from ARC Resources Ltd. ("ARC Resources");
- 3.5 all Trust Units share equally in all distributions from the Trust and all Trust Units carry equal voting rights at meetings of holders of Trust Units;
- 3.6 the Trust Units are currently traded on the Toronto Stock Exchange (the "TSX");
- 3.7 the Trust is a reporting issuer or the equivalent under securities legislation in all provinces of Canada and is not in default of any of the requirements of such legislation;
- 3.8 management of the Trust is not aware of any holder of Trust Units which owns in excess of 10% of the outstanding Trust Units;
- 3.9 Acquisitionco was incorporated as 980445 Alberta Ltd. on March 22, 2002, under the the laws of Alberta;
- 3.10 all of the issued and outstanding common shares of Acquisitionco are held by the Trust;
- 3.11 the authorized capital of Acquisitionco presently consists of an unlimited number of common shares;
- 3.12 before completion of the Internalization Transaction, Acquisitionco will amend its articles to allow it to issue an unlimited number of exchangeable shares (the "Exchangeable Shares");
- 3.13 Acquisitionco was incorporated solely for the purposes of acquiring all of the outstanding shares of ARC Management, including issuing Exchangeable Shares to holders of shares of ARC Management who elect to receive Exchangeable Shares as part of the consideration for their shares of ARC Management;
- 3.14 the Exchangeable Shares will not be listed and posted for trading on the TSX or any other stock exchange;
- 3.15 ARC Management was incorporated on June 8, 2000 under the laws of Alberta;

- 3.16 the authorized share capital of ARC Management consists of an unlimited number of common shares, issuable in series, an unlimited number of class A preferred shares and an unlimited number of class B preferred shares. As of July 24, 2002, only 42,476,580 common shares (the "ARC Management Shares") were issued and outstanding;
- 3.17 on June 9, 2000, ARC Management was assigned all of the interest of ARC Financial Corporation in the management agreement dated July 11, 1996 (the "Management Agreement") between Montreal Trust Company of Canada in its capacity as trustee of the Trust (now Computershare Trust Company of Canada), ARC Resources and ARC Financial Corporation, as amended;
- 3.18 since June 9, 2000, the sole business of ARC Management has been the provision of management services to the Trust and ARC Resources under the Management Agreement;
- 3.19 42,426,580 ARC Management Shares (99.9%) are held by residents of Alberta and 50,000 ARC Management Shares (0.1%) are held by residents of Saskatchewan;
- 3.20 ARC Financial Group Ltd. ("ARC Financial") was amalgamated as ARC Employee Holdings II Ltd. on September 24, 1997 under the laws of Alberta and changed its name to ARC Financial Group Ltd. on July 31, 2000;
- 3.21 ARC Financial is a holding company that holds shares in ARC Management;
- 3.22 the authorized share capital of ARC Financial consists of an unlimited number of Class A shares, issuable in series, an unlimited number of Class B shares, issuable in series and an unlimited number of preferred shares, issuable in series. As of July 24, 2002, 28,925,494 Class A shares and 25,210,367 Class B shares were issued and outstanding;
- 3.23 nine of the shareholders of ARC Financial are personal or family holding companies controlled by directors of ARC Financial Corporation or officers of ARC Resources, (each a "Personal Holding Company");
- 3.24 ARC Subco was incorporated as 908563 Alberta Ltd. on November 30, 2000 under the laws of Alberta;
- 3.25 all of the issued and outstanding shares of ARC Subco are owned by the Trust;
- 3.26 ARC Subco was originally incorporated for the purposes of facilitating the acquisition of exchangeable shares of ARC Resources under various call rights of the Trust and ARC Subco in respect of such exchangeable shares on a tax-effective basis;
- 3.27 ARC Subco will also facilitate the acquisition of the Exchangeable Shares under various call rights of the Trust and ARC Subco under the Exchangeable Shares on a tax effective basis;
- 3.28 ARC Resources was incorporated on January 22, 1996 under the laws of Alberta;

- 3.29 the authorized share capital of ARC Resources consists of an unlimited number of common shares, 50,000,000 exchangeable shares and an unlimited number of second preferred shares, of which, as of July 24, 2002, 100 common shares and 763,289 exchangeable shares are outstanding;
- 3.30 all of the common shares of ARC Resources are held by the Trust. The business of ARC Resources is the acquisition, development, exploitation, and disposition of oil and natural gas properties and the granting of a 99% royalty on certain oil and natural gas properties to the Trust;
- 3.31 Acquisitionco, ARC Management, the shareholders of ARC Management ("ARC Management Shareholders"), ARC Resources and the Trust have entered into a share purchase agreement dated July 9, 2002 (the "Share Purchase Agreement") to effect the Internalization Transaction;
- 3.32 the purpose of the Internalization Transaction is to internalize the management functions of the Trust, retain the current management group on a long term basis and enhance alignment of the interests of the management group with the interests of holders of Trust Units with a view to the long term growth of the Trust;
- 3.33 under the Internalization Transaction, Acquisitionco has agreed to acquire all of the outstanding common shares of ARC Management Shares from the ARC Management shareholders in consideration for a cash amount and, at the option of each such ARC Management shareholder, for each ARC Management Share:
 - 3.33.1 0.08428 Trust Units; or
 - 3.33.2 0.08428 Exchangeable Shares; or
 - 3.33.3 a combination of Trust Units and Exchangeable Shares which aggregates 0.08428 of such securities;
- 3.34 under the Share Purchase Agreement Acquisitionco agreed to purchase all of the ARC Management Shares for \$4,247,658 in cash plus, at the election of ARC Management Shareholders, subject to adjustment for rounding, either an aggregate of 3.58 million Trust Units or Exchangeable Shares or any combination thereof, at a price of approximately \$12.78 per security;
- 3.35 ARC Management will have, at the closing date, an obligation to pay over the next five years, in cash, retention bonuses (the "Retention Bonuses") to the senior officers of ARC Management (who are also the senior officers of ARC Resources) totalling the amount of \$5 million;
- 3.36 valuing the Trust Units on the basis of 10 day weighted average trading price of the Trust Units on the TSX as at July 9, 2002 of \$12.78 per Trust Unit, the purchase price for the ARC Management Shares (including the obligation to pay Retention Bonuses) is \$55 million;

- 3.37 under the terms of the Exchangeable Shares and certain rights to be granted in connection with the Internalization Transaction, the Trust, ARC Subco or Acquisitionco will be able to redeem, retract or acquire Exchangeable Shares in exchange for Trust Units in certain circumstances;
- 3.38 on the date of completion of the transactions contemplated by the Share Purchase Agreement (the "Closing Date"), Acquisitionco, ARC Subco, the Trust and Computershare Trust Company of Canada (the "Exchangeable Shares Trustee") will enter into a Support Agreement (the "Support Agreement") and Acquisitionco, the Trust, ARC Subco and the Exchangeable Shares Trustee will enter into a Voting and Exchange Trust Agreement (the "Voting and Exchange Trust Agreement");
- 3.39 the rights, privileges, restrictions and conditions attached to the Exchangeable Shares ("Exchangeable Share Provisions"), together with the Support Agreement and the Voting and Exchange Trust Agreement, will result in the Exchangeable Shares providing the holders thereof with a security having economic, ownership and voting rights which are substantially equivalent to those of Trust Units;
- 3.40 the Exchangeable Shares will be exchangeable by a holder for Trust Units at any time at the option of such holder and will be required to be exchanged upon the occurrence of certain events;
- 3.41 contemporaneously with the Internalization Transaction, the Trust will create and issue a "Special Voting Unit" (the "Special Voting Unit") to the Exchangeable Shares Trustee for the benefit of the holders of the Exchangeable Shares and the Trustee will hold such Special Voting Unit pursuant to the Voting and Exchange Trust Agreement;
- 3.42 as the holder of the Special Voting Unit, the Exchangeable Shares Trustee will be entitled at Unitholder meetings to cast a number of votes equal to the number of Exchangeable Shares outstanding at such time not owned by the Trust or ARC Subco;
- 3.43 the Share Purchase Agreement states that it is a condition of proceeding with the Internalization Transaction that certain of the holders of ARC Management Shares enter into escrow agreements (the "Escrow Agreements"), which will result in an aggregate of 2,017,782 Trust Units (or Exchangeable Shares or a combination thereof) being held in escrow (the "Escrow Provisions");
- 3.44 all distributions received on Trust Units (or attributable to Exchangeable Shares) held in escrow will flow through to the holders of such Trust Units (or Exchangeable Shares);
- 3.45 the distributions attributable to Exchangeable Shares will, at the request of a holder of escrowed Exchangeable Shares, be released periodically by release of such number of Exchangeable Shares that reflects the increase in the exchange ratio for the Exchangeable Shares as a result of distributions on Trust Units to which such escrowed holder is entitled at that time;

- 3.46 in the event of a change in control of Acquisitionco, ARC Resources or the Trust other than among affiliates, all Trust Units (or Exchangeable Shares) held in escrow will be released;
- 3.47 30% of the Trust Units (or Exchangeable Shares) held in escrow for holders of ARC Management Shares who are currently officers of ARC Resources or currently directors of ARC Financial Corporation will be forfeited (the "Forfeiture Provisions") if the individual ceases to be an employee, director or officer of ARC Management, ARC Resources, any other affiliate of the Trust, ARC Financial Corporation or any member of the ARC Financial group of companies in the first year after the Closing Date, such percentage declining evenly on each anniversary date of the Closing Date over a five year period. Any such Trust Units (or Exchangeable Shares) which are forfeited will be redistributed among the remaining members of this group;
- 3.48 in the event of a change of control of the Trust, the Forfeiture Provisions will be cancelled;
- 3.49 in order to facilitate the Forfeiture Provisions and the distribution by ARC Financial to its shareholders (and the distribution by a Personal Holding Company that is a shareholder of ARC Financial to its shareholders) of Trust Units and/or Exchangeable Shares, certain transfers by ARC Financial, a Personal Holding Company, or a subsidiary of ARC Financial, will be permitted within escrow;
- 3.50 approximately 68.1% of the Trust Units (or Exchangeable Shares) being received as consideration for the acquisition of the ARC Management Shares will be received directly by ARC Financial;
- 3.51 the Escrow Provisions and the Forfeiture Provisions are intended to ensure alignment between the interests of management and holders of Trust Units;
- 3.52 in order to facilitate the Forfeiture Provisions, a new corporation will be incorporated ("Holdco") which will hold all of the Exchangeable Shares of the former ARC Management Shareholders which are subject to the Forfeiture Provisions (the "Forfeiture Shares");
- 3.53 subsequent to the Closing Date, ARC Financial will transfer all of the Forfeiture Shares held by it to Holdco in exchange for Class F shares of Holdco. In addition, certain ARC Management officers will transfer additional Forfeiture Shares directly to Holdco, also in exchange for Class F shares of Holdco;
- 3.54 Holdco will distribute Forfeiture Shares out to its shareholders as they are released from escrow;
- 3.55 ARC Financial intends to distribute Exchangeable Shares that it receives from Holdco to holders of Class A shares of ARC Financial and Forfeiture Shares that it receives from time to time from Holdco to holders of Class F shares of ARC Financial;

- 3.56 a shareholder of ARC Financial that is a Personal Holding Company will distribute Exchangeable Shares and Forfeiture Shares received by it from ARC Financial from time to time to its shareholders;
- 3.57 the Trust has called a special meeting of holders of Trust Units to be held on August 28, 2002 (the "Meeting") for the purpose of approving the Internalization Transaction;
- 3.58 an Information Circular - Proxy Statement dated July 24, 2002 (the "Circular") has been prepared in connection with the Meeting and contains detailed disclosure of the Internalization Transaction including disclosure of the Retention Bonuses, Exchangeable Share Provisions, Escrow Provisions, and Forfeiture Provisions;
- 3.59 the Circular was mailed to registered holders of the Trust Units on July 30, 2002;
- 3.60 at the Meeting the Trust will seek approval of the Internalization Transaction by greater than 50% of holders of Trust Units who are present at the Meeting or are represented by proxy, other than:
 - 3.60.1 holders of Trust Units who, directly or indirectly, hold ARC Management Shares;
 - 3.60.2 ARC Financial; and
 - 3.60.3 associates or affiliates of such persons or companies;
- 3.61 the terms of the Internalization Transaction, the terms of the Exchangeable Shares, and the exercise of certain rights provided for in connection with the Internalization Transaction, the terms of the Escrow Provisions, and the terms of the Forfeiture Provisions will result in a number of trades or potential trades in ARC Management Shares, Exchangeable Shares, Trust Units, and rights to acquire Trust Units (collectively, the "Internalization Transaction Trades") for which no exemption is available under the Legislation;
4. AND WHEREAS pursuant to the System, this MRRS Decision Document evidences the decision of each of the Decision Makers (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 is that the Registration Requirements and the Prospectus Requirements will not apply to the Internalization Transaction Trades, provided that the first trade of Trust Units or Exchangeable Shares acquired pursuant to an Internalization Transaction Trade (other than a trade which is also an Internalization Transaction Trade) will be deemed to be a distribution unless the conditions in subsections (3) or (4) of section 2.6 of Multilateral Instrument 45-102 are satisfied, with the issuer of both the Trust Units and the Exchangeable Shares being deemed to be the Trust for the purposes of determining such satisfaction.

DATED this 28th day of August, 2002.

“original signed by”
James A. Millard, Q.C., Member

“original signed by”
Walter B. O’Donoghue, Q.C., Member