

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – registration and prospectus relief for trades made in connection with a series of transactions that will result in a company acquiring a number of limited partnerships. The transactions are effectively equivalent to a statutory arrangement. Relief granted to allow the trades to occur to facilitate the transactions and to give all limited partnership unit holders free-trading common shares of the company.

Applicable Alberta Statutory Provisions

Securities Act, R.S.A., 2000, c.S-4, s. 75, 86(1)(q), 86(1)(s), 110, 131(1)(j), 131(1)(l), 144(1) and 144(2)

IN THE MATTER OF
THE SECURITIES LEGISLATION
OF ALBERTA, SASKATCHEWAN, MANITOBA,
ONTARIO, QUEBEC, NEW BRUNSWICK, NOVA SCOTIA, NEWFOUNDLAND AND
LABRADOR, PRINCE EDWARD ISLAND, NORTHWEST TERRITORIES, NUNAVUT
AND THE YUKON TERRITORY

AND

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

AND

IN THE MATTER OF ENDEV ENERGY INC.

MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, Northwest Territories, Nunavut and the Yukon Territory (the "Jurisdictions") has received an application from Endev Energy Inc. ("Endev") 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 obtain a receipt for a preliminary prospectus and a prospectus (the "Prospectus Requirements") will not apply to certain trades (more specifically set out below) made in connection a series of transactions involving Endev and a number of limited partnerships (the "Partnerships") as well as the general partners (the "General Partners") of the Partnerships;
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 Endeavor has represented to the Decision Makers that:
 - 3.1 Endeavor was incorporated as 656525 Alberta Ltd. under the *Business Corporations Act* (Alberta) (the "ABCA") on May 31, 1995;
 - 3.2 Endeavor changed its name to Internet Filtering Systems Inc. on October 18, 1995 and again on February 28, 1996 to Net Shepherd Inc.;
 - 3.3 on August 1, 1996, Endeavor amalgamated with Enerstar Resources Inc. ("Enerstar") and on January 1, 1999 Endeavor amalgamated with two of its wholly-owned subsidiaries, Chronologic Systems Inc. and 708607 Alberta Ltd.;
 - 3.4 on April 8, 2002, Endeavor effected a consolidation of its share capital on the basis of one new common Share for each ten common shares formerly outstanding, and changed its name to Flock Resources Ltd.;
 - 3.5 on June 12, 2002 Endeavor changed its name from Flock Resources Ltd. to Endeavor Energy Inc.;
 - 3.6 Endeavor is authorized to issue an unlimited number of common shares (the "Common Shares") and an unlimited number of first preferred shares, of which approximately 11,020,051 Common Shares were outstanding as of June 1, 2002;
 - 3.7 the head office of Endeavor is located at Calgary, Alberta;
 - 3.8 Endeavor is, and has been for a period of time in excess of 12 months, a reporting issuer under the securities legislation of British Columbia, Alberta and Ontario;
 - 3.9 to the best of its knowledge, information and belief, Endeavor is not in default of any of the requirements under the Legislation;
 - 3.10 each of the Partnerships is a limited partnership formed under the laws of Ontario for the acquisition, development and production of petroleum and natural gas in western Canada;
 - 3.11 the head office of each Partnership is located at Toronto, Ontario;
 - 3.12 each Partnership is managed by a General Partner. The limited partners of the Partnerships (the "Limited Partners") are not entitled to participate in the management or control of the business and affairs of the Partnership;
 - 3.13 the interests of the limited partners in each Partnership is divided into an unlimited number of units ("Units"). The Partnerships have varying numbers of Units issued and outstanding. Each Partnership Unit is equal to each other Unit of the same Partnership and has the same rights and obligations attaching to it as each other Unit. There is currently no market for the Units;

- 3.14 each of the Partnerships are, and have been for a period of time in excess of 12 months, a reporting issuer under the securities legislation of all or most of the provinces and territories of Canada. To the best of the knowledge, information and belief of Endeavour, none of the Partnerships are in default of the requirements under the Legislation;
- 3.15 on April 19, 2002, Endeavour entered into various letter agreements ("the Letter Agreements") with each of the General Partners of the Partnerships, namely, NCE Energy Assets (1993) Fund, NCE Oil & Gas (1993) Fund, NCE Energy Assets (1994) Fund, NCE Oil & Gas (1994) Fund, NCE Energy Assets (1995) Fund, NCE Oil & Gas (1995) Fund, NCE Energy Assets (1996) Fund, NCE Oil & Gas (1996) Fund and NCE Oil & Gas (1997) Fund;
- 3.16 under the Letter Agreements, Endeavour agreed to:
- 3.16.1 make offers (the "Offers") to acquire all the issued and outstanding Units of each of the Partnerships;
- 3.16.2 proceed with the following transactions (the "Transactions"):
- 3.16.2.1 the acquisition of all of the assets (the "Assets") of all of the Partnerships for the issuance of an aggregate of approximately 54,015,751 Common Shares to the Partnerships;
- 3.16.2.2 the acquisition of all of the shares of the General Partners of each of the Partnerships in consideration of the issuance of approximately 3,443,651 Common Shares to extinguish existing obligations of the Partnerships to pay fees to the General Partners;
- 3.16.2.3 97.5% of the Common Shares issued to the Partnerships in exchange for the Assets will subsequently be distributed to the Limited Partners pro rata to the number of Units held by each Limited Partner; and
- 3.16.2.4 the remaining 2.5% of the Common Shares issued to the Partnerships will be distributed to certain agents (the "Agents") acting at arm's length to each of the parties to the transactions, which Agents' originally distributed the Units to the public, in order to extinguish an investor services fee ("Investor Services Fee") payable by each Partnership to the Agents;
- 3.17 on April 30, 2002, Endeavour made the Offers pursuant to a formal take-over bid circular dated April 30, 2002 (the "Take-Over Bid Circular"), which was open for acceptance until 4:30 p.m. (Calgary time) on June 18, 2002;
- 3.18 a management information circular (the "Information Circular") in connection with the annual and special meeting (the "Meeting") of the shareholders of Endeavour held on

- June 10, 2002 to approve the Transactions and the issuance of Common Shares under the Transactions, among other things, was mailed to Endeavor Shareholders on May 6, 2002;
- 3.19 the Information Circular forwarded to Endeavor shareholders in connection with the Meeting being called to consider the Transactions and the Take-Over Bid Circular (together, the "Circulars") forwarded to the holders of the Units of each Partnership contains prospectus-level disclosure regarding the businesses of Endeavor and each of the Partnerships;
 - 3.20 the Circulars also contain a valuation from Sayer Securities Limited in respect of the Transactions and a fairness opinion from Yorkton Securities Inc. concluding that the consideration to be received pursuant to the Transactions is fair, from a financial point of view, to the Limited Partners;
 - 3.21 the Board of Directors of Endeavor has unanimously approved the Transactions and has recommended that the Endeavor shareholders vote in favour of the resolution approving the Transactions;
 - 3.22 in accordance with Rule 61-501 ("Rule 61-501") of the Ontario Securities Commission and Policy Q-27 of the Quebec Securities Commission, the Transactions were approved by a majority of the votes cast by disinterested shareholders of Endeavor at the Meeting (which, in this case, excluded the votes of all "interested parties" in the Transactions, as such term is defined under Rule 61-501). The Transactions were also approved by the TSX Venture Exchange;
 - 3.23 each Transaction was approved by at least two-thirds of the votes cast by limited partners of each Partnership at each partnership meeting called to approve the Transactions. To the knowledge of Endeavor, no interested parties held any Units of the Partnerships;
 - 3.24 in accordance with Rule 61-501 of the Ontario Securities Commission and Policy Q-27 of the Quebec Securities Commission, each Transaction was approved by a majority of the votes cast by disinterested limited partners of each Partnership at each Partnership meeting;
 - 3.25 under the Offers, Endeavor has been successful in acquiring approximately 35% to 52% of the Units of each of the Partnerships;
 - 3.26 Endeavor is proceeding to take up and pay for the Units deposited under the Offers, and intends to allow, and to facilitate, the Transactions to proceed, such that Endeavor will issue Common Shares to the Partnerships in exchange for the Assets and the Partnerships will subsequently be dissolved, with the result that former limited partners of each Partnership will receive Common Shares of Endeavor pro rata to their respective interests in the Partnerships;

- 3.27 to the extent that Endev holds Units of any Partnership as a result of the completion of the Offers, and is subsequently distributed Common Shares through the dissolution of the Partnerships, such Common Shares will be cancelled. Accordingly, the aggregate "net" number of Common Shares issued in connection with the Transactions will be the same as if Endev had not proceeded with the Offers, but only proceeded with the acquisition of all the Assets of the Partnerships through the Transactions;
- 3.28 in connection with the Transactions, the following trades (the "Trades") are not exempt from the Registration Requirements and Prospectus Requirements in all Jurisdictions:
- 3.28.1 the issuance of the Common Shares to the Partnerships in exchange for the Assets;
- 3.28.2 the distribution of the Common Shares to the Limited Partners in connection with the dissolution of the Partnerships, and the first trade by Limited Partners of such Common Shares; and
- 3.28.3 the distribution of the Common Shares to the Agents in order to extinguish the obligation to pay the Investor Services Fees, and the first trade of such Common Shares;
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 is that the Registration Requirements and Prospectus Requirements will not apply to the Trades made in connection with the Transactions provided that the first trade in Endev Shares acquired under this Decision in a Jurisdiction shall be deemed to be a distribution or primary distribution to the public under the Legislation of such Jurisdiction unless the conditions in subsection (3) or (4) of section 2.6 of Multilateral Instrument 45-102 *Resale of Securities* are satisfied.

DATED this 22nd day of July, 2002.

“original signed by”
Glenda A. Campbell, Q.C., Vice-Chair

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