

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – issuers have recently closed transactions with a purchaser providing for the purchase of all of their assets, the assumption of all of their liabilities and their subsequent dissolution – completion of transactions is expected to occur within 60 days - exemption from the requirement to file and send interim financial statements for the second quarter ended June 30, 2002, subject to conditions.

## **Applicable Ontario Statutory Provisions**

*Securities Act*, R.S.O. 1990, c.S.5, as am, s. 77, 79, and 80(b)(iii),

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA,  
SASKATCHEWAN, MANITOBA, ONTARIO, QUEBEC, NOVA SCOTIA AND  
NEWFOUNDLAND AND LABRADOR**

**AND**

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

**AND**

**IN THE MATTER OF 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  
MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia and Newfoundland and Labrador (the "Jurisdictions") has received an application from 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, (collectively, the "Partnerships") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirements contained in the Legislation to file and send to securityholders the interim financial statements for the period ended June 30, 2002 (the "Second Quarter Financial Statements") shall not apply to the Partnerships;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definition or in Québec Commission Notice 14-101;

AND WHEREAS THE PARTNERSHIPS have represented to the Decision Makers that:

1. The Partnerships are limited partnerships formed under *the Limited Partnerships Act* (Ontario), each pursuant to a limited partnership

agreement, as amended and restated, between the general partner of each of the Partnerships (the "General Partners"), John F. Driscoll, as the initial limited partner, and those individuals who from time to time are admitted as limited partners of each of the Partnerships.

2. The Partnerships were established to earn income from production from oil and natural gas properties in Western Canada in which the Partnerships financed the drilling of development wells and, to a lesser extent, exploration wells.
3. The head office of each of the Partnerships is located in Toronto, Ontario.
4. NCE Energy Assets (1993) Fund is a reporting issuer or equivalent in all of the Jurisdictions except Alberta, Quebec and Nova Scotia; NCE Oil & Gas (1993) Fund is a reporting issuer or equivalent in all of the Jurisdictions except Alberta and Newfoundland and Labrador; NCE Energy Assets (1994) Fund is a reporting issuer or equivalent in all of the Jurisdictions except Alberta and Quebec; NCE Oil & Gas (1994) Fund is a reporting issuer or equivalent in all Jurisdictions except Alberta; NCE Energy Assets (1995) Fund is a reporting issuer or equivalent in all of the Jurisdictions except Alberta, Manitoba, Saskatchewan, Quebec and Nova Scotia; NCE Oil & Gas (1995) Fund is a reporting issuer or equivalent in all of the Jurisdictions except Alberta; and NCE Energy Assets (1996) Fund, NCE Oil & Gas (1996) Fund and NCE Oil & Gas (1997) Fund are reporting issuers or equivalent in all of the Jurisdictions.
5. The interests of the limited partners in each Partnership is divided into an unlimited number of limited partnership units (the "Units"). Each Unit has the same rights and obligations attaching to it as each other Unit of the same Partnership. There is currently no market for the Units.
6. On April 19, 2002, the General Partners of each of the Partnerships entered into various letter agreements with Flock Resources Ltd., now known as Endeavour Energy Inc. (the "Purchaser"), pursuant to which the Purchaser agreed to:
  - (a) concurrently make an offer to acquire all the issued and outstanding Units of each of the Partnerships, as well as, under certain conditions, to acquire all of the shares of each General Partner in exchange for common shares of the Purchaser (the "Offer"), and
  - (b) proceed with an asset acquisition, pursuant to which the Purchaser would acquire all of the assets of each of the Partnerships in exchange for common shares of the Purchaser, the assumption of all of the Partnerships' liabilities and the subsequent dissolution of each of the Partnerships (the "Partnership Transaction").

7. If the above transactions proceed as intended, the Purchaser will, directly or indirectly, acquire all of the assets and liabilities of each of the Partnerships, and all of the former limited partners of the Partnerships will become shareholders of the Purchaser. The number of common shares of the Purchaser that each limited partner will receive per Unit is identical whether the limited partner tendered to the Offer or opts to receive a pro rata share of the Purchaser's common shares held by a Partnership upon the dissolution of the Partnerships.
8. On May 1, 2002, the Purchaser made concurrent offers to purchase all of the outstanding Units of each of the Partnerships pursuant to a formal take-over bid circular dated April 30, 2002.
9. The first quarter results for the period ending March 31, 2002 for each of the Partnerships were prepared, filed and distributed to limited partners as required within sixty days of March 31, 2002.
10. On June 18, 2002 the Offer expired. In each Partnership a minimum of 43% of the total number of Units outstanding were tendered to the Offer (the "Tendered Units") by the limited partners of record. On July 4, 2002 the Purchaser took up the Tendered Units issued common shares of the Purchaser to the limited partners accordingly. As a result, the Purchaser is currently a unitholder in each of the Partnerships, holding a minimum of 43% of the total Units outstanding.
11. The limited partners of each of the Partnerships approved the Partnership Transaction at the Partnerships meetings held on June 5, 6 and 7, 2002.
12. The Partnership Transaction closed on August 13, 2002. Within 60 days of this closing date the common shares of the Purchaser received by each Partnership will be distributed to the limited partners (in proportion to the number of Units of such Partnership held by each of such limited partners), and each of the Partnerships will be dissolved. No conditions or requirements exist which would prohibit the distribution of the common shares of the Purchaser to the limited partners by each of the Partnerships as described above.
13. Given that the Partnership Transaction has been approved by the limited partners of each of the Partnerships and was completed on August 13, 2002, and that the dissolution of the Partnerships is expected to occur on or before October 13, 2002, the provision of the Second Quarter Financial Statements for the Partnerships will be of no benefit or assistance to limited partners.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers under the Legislation is that the requirements contained in the Legislation to file and send to securityholders the Second Quarter Financial Statements shall not apply to the Partnerships that are reporting issuers or the equivalent in their respective Jurisdictions, provided that:

- (a) the Partnerships undertake to advise the Decision Makers promptly of any material change in the facts noted above; and
- (b) if the Partnership Transactions have not been completed by October 13, 2002, then the Partnerships shall be required to file and send to securityholders the Second Quarter Financial Statements by no later than October 15, 2002.

DATED August 29, 2002.

“Paul M. Moore”

“Robert L. Shirriff”

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Ontario Securities Commission	Commission des valeurs mobilières de l'Ontario	P.O. Box 55, 19 <sup>th</sup> Floor 20 Queen Street West Toronto ON M5H 3S8	CP 55, 19 <sup>e</sup> étage 20, rue queen Toronto ON M5H
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Web site: [www.osc.gov.on.ca](http://www.osc.gov.on.ca)  
TDX 76  
CDS-OSC

**MEMORANDUM TO:** The Commission

**FROM:** Terry Moore  
Legal Counsel, Take-over/Issuer Bids, Mergers &  
Acquisitions

**DATE:** August 22, 2002

**RE:** 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  
(collectively, the "Partnerships")  
**MRRS for Exemptive Relief Applications**  
-\*revised\* application for relief from requirement to file  
interim financial statements

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### **Amended Application**

This application was considered by a duty panel of the Commission on August 20, 2002 and signed at that time. Since then, staff has discovered that some of the Partnerships were not reporting issuers in certain of the jurisdictions in which this application was made. Therefore, the relief granted is not necessary in certain jurisdictions. All of the Partnerships are reporting issuers in Ontario.

I have re-drafted the Decision Document so that relief is only granted by the Decision Makers to Partnerships that are reporting issuers or the equivalent in their respective Jurisdiction. I have also added a new paragraph detailing which Partnerships are reporting issuers or the equivalent in each Jurisdiction. Otherwise there are no changes from the original application and Decision Document.

Accordingly, please execute the enclosed revised Decision Document.

A copy of the original memo, the original Decision Document and a black-lined version showing changes made are also enclosed.



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Ontario Securities Commission	Commission des valeurs mobilières de l'Ontario	P.O. Box 55, 19 <sup>th</sup> Floor 20 Queen Street West Toronto ON M5H 3S8	CP 55, 19 <sup>e</sup> étage 20, rue queen Toronto ON M5H
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**FROM:** Terry Moore  
Legal Counsel, Take-over/Issuer Bids, Mergers &  
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**DATE:** August 20, 2002

**RE:** 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 (collectively, the "Partnerships")  
**MRRS for Exemptive Relief Applications**  
-application for relief from requirement to file interim financial statements

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**Application**

This is an application made under the Mutual Reliance Review System ("MRRS") for exemptive relief applications in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Newfoundland and Labrador and Nova Scotia (the "Jurisdictions"). Ontario has been selected as the principal regulator.

The Partnerships have applied for relief from the requirement to file interim financial statements for the second quarter of the financial year of the Partnerships ending June 30, 2002 on the basis that the Partnerships have recently closed transactions providing for the transfer of all of their assets and liabilities to another issuer, and because they expect to be dissolved prior to October 13, 2002.

**Recommendation**

I recommend that the relief requested be granted in the form of the attached Decision Document.

**Facts**

The facts are as set out, and defined terms have the meaning ascribed to them, in the Decision Document.

The Partnerships are reporting issuers in all of the Jurisdictions, however their Units are not traded on any stock exchange.

Pursuant to an agreement dated April 19, 2002, the Purchaser entered into an agreement with the General Partners of each of the Partnerships to concurrently make a take-over bid for each Partnership and propose the Partnership Transactions. Under the Partnership Transactions, the Purchaser would acquire all of the assets and liabilities of each Partnership in exchange for common shares of the Purchaser, then the Partnerships would be dissolved and the common shares distributed to the remaining Unitholders. The rationale for the concurrent Offer and Partnership Transaction was to give Unitholders a choice of the most tax-effective way for their Units to be exchanged for common shares of the Purchaser. The number of shares per Unit is identical whether a Unitholder receives shares under the Offer, or under the Partnership Transaction upon the dissolution of the Partnerships.

An information circular describing the proposed transactions and a take-over bid circular were mailed to Unitholders on April 30, 2002. The Partnership Transaction was approved by the limited partners of each Partnership on June 5, 6 and 7, 2002. The Offer expired on June 18, 2002 and at least 43% of the Units of each Partnership were acquired by the Purchaser. The Partnership Transaction closed on August 13, 2002. However, the Partnerships have not yet been dissolved. The limited partnership agreements of each Partnership require that within 60 days of the transfer of the Partnership Assets to the Purchaser, each of the Partnerships must be dissolved. Therefore, the Partnerships must be dissolved by October 13, 2002.

## **Discussion**

The financial year-end for all of the Partnerships is December 31. Therefore, each of the Partnerships is required to file and send to all Unitholders interim financial statements for the period ended June 30, 2002 on or before August 29, 2002. In light of the fact that the Partnership Transaction has now closed, the Partnerships seek relief from the requirements to file and send the Second Quarter Financial Statements on the basis that this information is no longer relevant to Unitholders.

Similar relief has been granted in the past:

*In the Matter of DC Diagnosticare Inc.* (February 15, 2002) 25 OSCB 1076: relief from the requirement to file annual and interim financial statements, among other things, was granted to an issuer where an offeror had acquired 93% of the common shares of the issuer pursuant to a take-over bid, and was in the midst of exercising its statutory right of compulsory acquisition under the applicable corporate statute. Staff was of the view that it would be burdensome for the issuer to incur the expense and inconvenience of preparing, filing and distributing financial statements given that the remaining shareholders would derive no benefit from such documents, in light of the fact that they were obligated to transfer their shares to the offeror.

The *DC Diagnosticare* relief was not subject to any conditions. However, similar prior decisions had required the filing of financial statements on SEDAR, but not the delivery of those statements (see, for example, *In the Matter of Eicon Technology Corp.* (November 28, 2000)). It may have been that *Eicon* had already prepared the statements and just didn't want to incur the mailing costs. It is not clear from the staff memo why this condition was not picked up in the *DC Diagnosticare* decision, but I suggest that it would be inconsistent to grant relief from the requirement to deliver statements to securityholders but not the requirement to file. If the Decision Makers accept the argument that financial statements will not provide any meaningful information to securityholders because their security's value is fixed, then filing financial statements would be as unnecessary as sending them.

*In the Matter of Ivanhoe Cambridge I Inc.* (April 16, 2002) 25 OSCB 2492: relief from the requirement to file and send interim and annual statements before May 20, 2002 and May 30, 2002, respectively, was granted where the issuer intended to redeem its only publicly-held securities (debentures) on or about June 30, 2002. Staff rationale was that the redemption value of the debentures was fixed and therefore no longer dependent on the filer's financial performance. Accordingly, the cost and administrative burden of having to prepare and deliver financial information outweighed any benefit to security holders.

In the present application, it is clear that the value of the Units has been fixed because Unitholders who opted to receive common shares of the Purchaser upon the completion of the Partnership Transactions know exactly how many of such shares they will receive. A representation has been included in the



Decision that there are no conditions or requirements, which would prohibit the distribution of the common shares of the Purchaser to the limited partners upon completion of the Partnership Transactions.

The *Ivanhoe Cambridge* decision included conditions that the debentures actually be redeemed on or about June 30, 2002, and that the issuer would apply as soon as reasonably possible after the redemption to cease to be a reporting issuer in the Jurisdictions.

The Decision Document in the present case includes a condition that the Partnerships advise the Decision Makers of any material changes in the facts contained in the Decision Document. In this way, if it becomes apparent that the Partnership Transactions will not close by October 13, the Decision Makers could immediately require the filing and sending of the Second Quarter Financial Statements. The Decision Document also contains a proviso that if the Partnership Transactions are not completed by October 13, 2002, then the Partnerships will automatically file and deliver the Second Quarter financial statements within 2 days thereafter. It is not necessary to include a condition that the Partnerships apply to cease to be reporting issuers because upon the completion of the Partnership Transactions, the Partnerships will be dissolved and will thereby automatically cease to be reporting issuers.

The *Ivanhoe Cambridge* decision included a representation that a press release would be issued notifying debentureholders that audited annual or interim financial statement would not be prepared. I don't believe that such a representation is necessary here because Unitholders have already received information documents describing the transactions, and the Partnerships have filed material change reports and press releases advising that the Partnership Transactions were approved. The *Ivanhoe Cambridge* debentureholders had not received any such notification prior to the grant of the relief.

### **Comments from Other Jurisdictions**

Staff of the BCSC asked that the Decision be conditional upon the closing of the Partnership Transaction. The Partnership Transaction closed subsequent to this comment being made, so this condition is no longer necessary. BCSC staff also asked whether there were any conditions precedent or any circumstances which could prevent the distribution of the Purchaser's shares within 60 days of the closing of the Partnership Transactions. Counsel has advised that there aren't any, and a representation to this effect has been included in the Decision. BCSC staff also provided a number of drafting comments that were incorporated in the Decision Document.

Staff of the NSSC, CVMQ and MSC provided a number of drafting comments that were incorporated into the Decision Document. NSSC staff also raised comments with respect to the closing and completion of the Partnership Transactions. Given that the Partnership Transactions have now closed, and it is expected that they will be completed by October 13, 2002, no changes were required.