

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - issuer recognized as an “exempt purchaser”.

**Applicable Alberta Statutory Provisions**

Alberta Securities Commission Rules, ss. 69(1)(a).

IN THE MATTER OF THE SECURITIES LEGISLATION  
OF ALBERTA AND BRITISH COLUMBIA

AND

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

AND

IN THE MATTER OF ARC ENERGY VENTURE FUND 3

**MRRS DECISION DOCUMENT**

1. WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Alberta and British Columbia (the “Jurisdictions”) has received an application from ARC Energy Venture Fund 3 (the “ARC Fund”) for a decision under the securities legislation (the “Legislation”) of the Jurisdictions to recognize the ARC Fund as an exempt purchaser;
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, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions;
4. AND WHEREAS it was represented by the ARC Fund to the Decision Makers that:
  - 4.1 the ARC Fund is a joint venture, being a joint investment fund created by a contract (the “Joint Investment Agreement”) among certain investors, namely ARC Equity Management (Fund 3) Ltd. (“ARC Equity”), ARC Energy Venture Fund 3 Canadian Limited Partnership (the “ARC Canadian LP”) and ARC Energy Venture Fund 3 United States Limited Partnership (the “ARC US LP”, and together with the ARC Canadian LP, the “ARC Limited Partnerships”);

- 4.2 other joint investors (the “Joint Investors”) joined the ARC Fund as parties to the Joint Investment Agreement at the ARC Fund’s closing on October 15, 2001;
- 4.3 units in the ARC Fund and in the ARC Limited Partnerships were offered for sale under a confidential offering memorandum dated October 5, 2001;
- 4.4 the ARC Fund has \$310 million of capital commitments from its investors;
- 4.5 the ARC Canadian LP is a limited partnership established under the laws of Alberta on October 5, 2001, by the filing of a certificate under the Partnership Act (Alberta) (the “Partnership Act”) and pursuant to a limited partnership agreement (the “ARC Canadian LP Agreement”) dated October 5, 2001;
- 4.6 the ARC US LP is a limited partnership established under the laws of Alberta on October 5, 2001, by the filing of a certificate under the Partnership Act and pursuant to a limited partnership agreement (the “ARC US LP Agreement”, and together with the ARC Canadian LP Agreement, the “ARC LP Agreements”) dated October 5, 2001;
- 4.7 ARC Equity is a corporation subsisting under the Business Corporations Act (Alberta). ARC Equity is the manager of the ARC Fund and is also the general partner of both of the ARC Limited Partnerships;
- 4.8 none of the ARC Fund, the ARC Limited Partnerships or ARC Equity are reporting issuers under the Legislation, or in any other Canadian jurisdiction and none has any intention of becoming a reporting issuer in the future;
- 4.9 none of the ARC Fund, the ARC Limited Partnerships or ARC Equity are in default of any of the requirements of the Legislation;
- 4.10 the principal place of business for each of the ARC Fund, the ARC Limited Partnerships and ARC Equity and the registered office of ARC Equity is in Calgary, Alberta;
- 4.11 the investment objectives of the ARC Fund are to invest in equity or other securities of various early stage companies (“Portfolio Companies”) which are active in the exploration, development or acquisition of oil and gas reserves, the production, processing, transportation or marketing of energy products, the energy service business or the energy-related technology business;
- 4.12 units in the ARC Fund are non-redeemable and are subject to restrictions on transfer as contained in the Joint Investment Agreement and units in each of the ARC Limited Partnerships are non-redeemable and are subject to restrictions on transfer as contained in the applicable ARC LP Agreement;
- 4.13 ARC Financial Corporation (“ARC Financial”), a registered portfolio manager under the Securities Act (Alberta) (the “Alberta Act”), has entered into an advisory agreement with ARC Equity to review the management, operations and

business plans of each Portfolio Company proposed for investment and to advise ARC Equity in making investments;

- 4.14 the directors of ARC Financial are identical to those of ARC Equity (other than one director of ARC Financial who is not a director of ARC Equity);
- 4.15 the officers of ARC Financial and ARC Equity are identical;
- 4.16 the investment committee members of ARC Equity are senior officers and directors of ARC Financial and each is a registered officer (advising) under the Alberta Act;
- 4.17 the ARC Fund, through the directors and officers of ARC Equity and the advisory arrangement with ARC Financial, possesses sufficient investment expertise to enable the ARC Fund to evaluate the merits of any particular investment without the need of assistance from another registrant or the requirement of a prospectus;
- 4.18 the ARC Fund has sufficient resources to engage the services of an advisor registered under the Alberta Act (in addition to ARC Financial, which is already so engaged) or under other Canadian or foreign securities laws if it deems such services to be necessary in making an investment decision;
- 4.19 ARC Equity is directly owned by 26 employees (the "Shareholder Employees") of ARC Financial, who are also shareholders of the parent companies of ARC Financial;
- 4.20 the Shareholder Employees have also invested in the ARC Canadian LP through another single purpose investment corporation, ARC Capital (Fund 3) Ltd. ("ARC Capital") (which also has one additional shareholder who was an employee until 2003);
- 4.21 of the 26 Shareholder Employees, 22 are "accredited investors" ("Accredited Investors") as defined in Multilateral Instrument 45-103 Capital Raising Exemptions ("MI 45-103"), but four are not Accredited Investors (the "Non-Accredited Investor Employees"); however, the Non-Accredited Investor Employees spend their full time and attention on the business and affairs of venture capital investing, and, in part due to their employment relationship with ARC Financial, at the time of their investment in ARC Equity and ARC Capital were able to evaluate the merits and risks of an investment in the ARC Fund (and the shareholder who is a former employee (the "Non-Accredited Investor Former Employee") also is not an Accredited Investor, but also, when employed with ARC Financial, spent her full time and attention on the business and affairs of venture capital investing, and, in part due to her employment relationship with ARC Financial, at the time of her investment in ARC Equity and ARC Capital was able to evaluate the merits and risks of an investment in the ARC Fund);
- 4.22 two of the directors and officers of ARC Equity invested as limited partners in the ARC Canadian LP through personal holding companies (the "Holding

Companies”); and while the directors and their spouses are themselves Accredited Investors, as a result of, in each case, a family trust that is not an Accredited Investor also having a shareholder position in the Holding Companies, the Holding Companies themselves are not Accredited Investors;

- 4.23 as a result of the Non-Accredited Investor Employees, the Non-Accredited Investor Former Employee and the Holding Companies not being Accredited Investors, ARC Equity, ARC Capital and the ARC Canadian LP do not meet the criteria of the definition of an Accredited Investor and therefore the ARC Fund will be unable to meet the criteria of an Accredited Investor;
  - 4.24 other than the Non-Accredited Investor Employees, the Non-Accredited Investor Former Employee and the Holding Companies, each of the other limited partners in the ARC Limited Partnerships and each of the Joint Investors is an Accredited Investor;
  - 4.25 since the ARC Fund intends to invest in securities of the Portfolio Companies, many of which may not be listed or traded on a public market, the investment activities of the ARC Fund will require the acquisition of such securities on a private placement basis for which an exemption from the registration requirements and the prospectus requirements are available;
  - 4.26 due to the structure of the ARC Fund and the uncertainty of the structure of the various potential portfolio companies, exemptions from the registration requirements and/or the prospectus requirements may not be available for a number of its potential investments in Portfolio Companies;
5. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (together, the “Decision”);
  6. 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;
  7. THE DECISION of the Decision Makers under the Legislation is that the ARC Fund is recognized as an exempt purchaser under the Legislation for the 5-year period from March 19, 2004 to and including March 19, 2009 in Alberta and for a one-year period from March 19, 2004 to and including March 19, 2005 in British Columbia.

DATED at the City of Calgary in the Province of Alberta this 23<sup>rd</sup> day of March, 2004.

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

“original signed by”  
Stephen R. Murison, Vice-Chair