

Headnote

National Policy 11-203 - relief from Item 14.2 of National Instrument 51-102F5 and permission for Filer to exclude third year financial disclosure for resulting issuer in the information circular pursuant to section 13.1 of National Instrument 51-102. - Filer completing a business combination with a private issuer who underwent a fundamental change in the nature of its business or operations and a change in all of its executive officers and directors.

Applicable Legislative Provisions

National Instrument 51-102 *Continuous Disclosure Obligations*

**Citation: Upper Lake Oil and Gas Ltd. and
Monterey Exploration Ltd., 2008 ABASC 471**

Date: 20080731

In the Matter of
the Securities Legislation of
Alberta and Ontario (the **Jurisdictions**)

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
Upper Lake Oil and Gas Ltd. (**Upper Lake**)

and

Monterey Exploration Ltd. (**Monterey**, and together with Upper Lake, the **Filers**)

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the **Legislation**) exempting the Filers from the requirement under the Legislation to provide financial statement disclosure with respect to Monterey for the year ended December 31, 2005 (the **2005 Financial Statements**) in the management information circular (the **Information Circular**) prepared by the Filers and delivered to the holders (**Upper Lake Shareholders**) of common shares (**Upper Lake Shares**) and options (**Upper Lake Options**) of Upper Lake (**Upper Lake Optionholders**) and together with the Upper Lake Shareholders, the **Upper Lake Securityholders**) in connection with the special meeting (**Special Meeting**) of Upper Lake Securityholders scheduled to be held on August 29, 2008 (collectively, the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (a) the Alberta Securities Commission is the principal regulator for the application;
- (b) the Filers have provided notice that Subsection 4.7(1) of Multilateral Instrument 11-102 Passport System (MI 11-102) is intended to be relied upon in British Columbia, Saskatchewan, Manitoba, Québec and New Brunswick; and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filers:

Upper Lake

1. Upper Lake is a corporation incorporated under the laws of the Province of Alberta. The principal office of Upper Lake is located in Calgary, Alberta.
2. Upper Lake is engaged in the exploration, development and production of oil and natural gas in western Canada.
3. Upper Lake is a reporting issuer or the equivalent under the securities legislation of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec and New Brunswick. To its knowledge, Upper Lake is not in default of securities legislation in any jurisdiction of Canada.
4. The Upper Lake Shares are listed on the Toronto Stock Exchange (the **TSX**) under the symbol "UP".
5. Upper Lake has filed an "AIF" and has "current annual financial statements" (as such terms are defined in National Instrument 44-101 Short Form Prospectus Distributions (**NI 44-101**)) for the financial year ended December 31, 2007.

Monterey

1. Monterey is a corporation continued under the laws of the Province of Alberta. The principal office of Monterey is located in Calgary Alberta.
2. Monterey is engaged in the exploration, development and production of oil and natural gas in western Canada.

3. Monterey is privately held and is not a reporting issuer in any jurisdiction. To its knowledge, Monterey is not in default of applicable securities legislation in any jurisdiction of Canada.
4. The Monterey Shares are not listed or posted for trading on any exchange or quotation and trade reporting system.
5. Monterey is the successor of 608841 New Brunswick Ltd. (**608 New Brunswick**), which is in turn, the successor of Mirant Canada Energy Marketing Investments, Inc. (**Mirant Investments**). 608 New Brunswick and Mirant Investments are referred to herein, collectively, as the "Monterey Predecessors".

Monterey Predecessors

1. Mirant Investments was incorporated under the laws of the Province of Alberta on September 18, 2001 and was subsequently continued into New Brunswick on October 7, 2003.
2. Mirant Investments was an indirect, wholly-owned subsidiary of Mirant Corporation, a corporation incorporated under the laws of the State of Delaware on April 20, 1993.
3. Mirant Canada Energy Marketing, Ltd. (**Mirant Marketing**) was the result of an amalgamation effected under the laws of the Province of Alberta on January 1, 2002 and was subsequently continued into New Brunswick on October 7, 2003. Mirant Marketing was a wholly-owned subsidiary of Mirant Investments.
4. Each of Mirant Investments and Mirant Marketing (collectively, **Mirant**) were engaged in the business of downstream natural gas marketing.

Mirant Insolvency Proceedings

1. On July 13, 2003, Mirant Corporation filed for voluntary relief under Chapter 11 of the Bankruptcy Code of the United States of America (the **Chapter 11 Relief**) and on July 14, 2003 Mirant filed for creditor protection in Canada under the Companies' Creditors Arrangement Act (**CCAA**) (collectively, the **Mirant Insolvency Proceedings**).
2. During the Mirant Insolvency Proceedings, Mirant sold or wound down all or substantially all of its operations and reached a court approved settlement agreement with its creditors and was discharged from CCAA protection in October 2004. Following such discharge, Mirant was indirectly operated by its parent company, Mirant Corporation. It was the intention of Mirant Corporation to seek out a restructuring transaction or sale in respect of Mirant in order to benefit Mirant Corporation, which was still under Chapter 11 Relief.
3. On November 23, 2005, Mirant Americas, Inc. (a wholly-owned subsidiary of **Mirant Corporation**) and Mirant Investments entered into a restructuring agreement (the **Restructuring Agreement**) whereby Mirant Investments agreed to amalgamate (the

Amalgamation) with Mirant Marketing to form 608 New Brunswick. The Amalgamation was completed on December 21, 2005.

4. At the time the Restructuring Agreement was signed, the board of directors of Mirant Investments consisted of two directors. While Mirant Investments had not appointed any officers since October of 2003, four officers were appointed by Mirant Investments on December 19, 2005 for the sole purpose of signing documentation in connection with the Restructuring Agreement. These four officers did not continue as officers following the Amalgamation and continuance into Alberta.
5. Pursuant to the Restructuring Agreement, 608 New Brunswick was, among other things, continued into Alberta on December 28, 2005 and concurrently changed its name to Monterey Exploration Ltd. On or about January 12, 2006, the current management team of Monterey was appointed and following Monterey's annual and special meeting of shareholders held on March 29, 2006, the shareholders of Monterey elected a new slate of directors such that no former directors of the Monterey Predecessors remained as directors of Monterey.
6. Prior to the Mirant Insolvency Proceedings, Mirant operated as a downstream gas marketing business, engaged in the sale of natural gas to large industrial users and local distribution companies and the provision of natural gas hedging instruments. Following Mirant's emergence from the Mirant Insolvency Proceedings in October 2004, Mirant carried on minimal operations through its parent company, Mirant Corporation, with a view to conducting a restructuring agreement or sale that would benefit Mirant Corporation, which was still under Chapter 11 Relief.
7. Following the Restructuring Agreement, Monterey carried on business (and currently carries on business) in the upstream oil and gas exploration and production business, engaged in the exploration, development and production of oil and natural gas through drilling and property acquisitions. Such operations are fundamentally different from the operations previously conducted by Mirant.

The Arrangement

1. Upper Lake entered into an arrangement agreement (the **Arrangement Agreement**) with Monterey on July 2, 2008 whereby: (i) all of the issued and outstanding Upper Lake Shares will be exchanged for Monterey Shares on the basis of 0.28 of a Monterey Share for each Upper Lake Share held; and (ii) all of the unexercised Upper Lake Options will be cancelled in exchange for that number of Monterey Shares equal to the difference by which the weighted average trading price of the Upper Lake Shares exceeds the exercise price of such Upper Lake Options, multiplied by 0.28 (collectively, the **Arrangement**).
2. The Arrangement will constitute a "restructuring transaction" for Upper Lake under the Legislation.
3. Upper Lake and Monterey are preparing the Information Circular to be mailed to the Upper Lake Securityholders in connection with the Special Meeting, which is currently

scheduled to be held on August 29, 2008. At the Special Meeting, Upper Lake Securityholders will be given an opportunity to vote on the Arrangement.

4. Pursuant to Section 14.2 of Form NI 51-102F5 Information Circular (the **Circular Form**) of National Instrument 51-102 Continuous Disclosure Obligations, Upper Lake is required to include financial statement disclosure in respect of Monterey, including audited income statements, statements of retained earnings and cash flow statements for the financial years ended December 31, 2007, December 31, 2006 and December 31, 2005 and audited balance sheets as at the end of December 31, 2007 and December 31, 2006.
5. As the business currently conducted by Monterey is fundamentally different from the business previously conducted by Mirant, and all of the executive officers and directors of Monterey have changed, any financial statements compiled in respect of Monterey for the financial year ended December 31, 2005 would not assist Upper Lake Securityholders or other potential shareholders with their assessment of Monterey's current business.
6. The Filers propose to include in the Information Circular the following financial statement disclosure in respect of Monterey:
 - (a) an unaudited income statement, a statement of retained earnings, and a cash flow statement of Monterey for the three month period ended March 31, 2008, together with a comparative income statement, statement of retained earnings, and cash flow statement of Monterey for the three month period ended March 31, 2007;
 - (b) an unaudited balance sheet of Monterey for the three month period ended March 31, 2008, together with a comparative balance sheet of Monterey for the three month period ended March 31, 2007;
 - (c) audited income statements, statements of retained earnings, and cash flow statements of Monterey for the financial years ended December 31, 2007 and December 31, 2006; and
 - (d) audited balance sheets of Monterey for the financial years ended December 31, 2007 and December 31, 2006.
7. In addition, the Information Circular will contain disclosure in accordance with the Circular Form and in respect of Monterey, in accordance with National Instrument 41-101 General Prospectus Requirements. The Circular will also include, among other things, financial statement disclosure in respect of Upper Lake in compliance with National Instrument 44-101 Short Form Prospectus Distributions and the pro forma financial statements of Upper Lake and Monterey in compliance with Form NI 41-101F1 Information Required in a Prospectus.

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted provided that the Filers include in the Information Circular:

- (a) an unaudited income statement, a statement of retained earnings, and a cash flow statement of Monterey for the three month period ended March 31, 2008, together with a comparative income statement, statement of retained earnings, and cash flow statement of Monterey for the three month period ended March 31, 2007;
- (b) an unaudited balance sheet of Monterey for the three month period ended March 31, 2008, together with a comparative balance sheet of Monterey for the three month period ended March 31, 2007;
- (c) audited income statements, statements of retained earnings, and cash flow statements of Monterey for the financial years ended December 31, 2007 and December 31, 2006; and
- (d) audited balance sheets of Monterey for the financial years ended December 31, 2007 and December 31, 2006.

“original signed by”

Agnes Lau, CA
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Alberta Securities Commission