

**ALBERTA SECURITIES COMMISSION**

**NOTICE OF HEARING**

**Citation:** Arbour Energy Inc., Re, 2005 ABASC 922

**Date:** 20051118

**Docket:** E/03135

*Securities Act, R.S.A. 2000, c. S-4 (Act)*

**To:** Arbour Energy Inc., Dennis Morice, Heinz Weis and Arthur Wigmore

**Notice:** The Alberta Securities Commission (Commission) will convene at 9:00 a.m. on Thursday, the 1<sup>st</sup> day of December 2005, to set a date for a hearing to consider whether it is in the public interest to extend its interim order granted on Wednesday, the 16<sup>th</sup> day of November 2005.:

**Location:** Alberta Securities Commission, 4<sup>th</sup> Floor, 300 – 5<sup>th</sup> Avenue SW, Calgary, Alberta.

**Procedure:**

1. You may obtain disclosure and particulars of the allegations in this Notice from Allison Neapole, c/o Alberta Securities Commission, 4<sup>th</sup> Floor, 300 - 5 Avenue SW, Calgary, Alberta, T2P 3C4, telephone 403.297.4079.
2. You may be represented by legal counsel and you or your counsel may make representations and introduce relevant evidence at the hearing.
3. If you or your counsel fail to attend on December 1, 2005, or as directed, the hearing may proceed in your absence and an order may be made against you without further notice.

*See also section 29 of the Act.*

## **Allegations**

### *Summary of Breaches*

- 1 Staff of the Commission (Staff) alleges that Arbour Energy Inc. (Arbour), Dennis Morice (Morice), Heinz Weis (Weis) and Arthur Wigmore (Wigmore) (collectively, the Respondents) engaged in an illegal distribution of Arbour securities.
- 2 Staff also alleges that the Respondents made misrepresentations to investors in offering documents.
- 3 Staff also alleges that the Respondents failed to file continuous disclosure documents as required by the Alberta securities laws, and failed to provide timely and reliable continuous disclosure to existing and prospective investors.

### *Parties*

- 4 Arbour was incorporated in Alberta on April 9, 2001. It has its head office in Calgary. Arbour is a reporting issuer in Alberta. It has never been registered with the Executive Director of the Commission (Executive Director) to trade in securities.
- 5 Morice and Weis are residents of Alberta. Wigmore is a resident of British Columbia. Morice, Weis and Wigmore are directors of Arbour. None of them has ever been registered with the Executive Director to trade in securities.

### *Circumstances*

#### **Distributions between July 14, 2004 - September 30, 2005**

- 6 Arbour issued an Offering Memorandum dated July 14, 2004 (OM 1) and an Offering Memorandum dated January 19, 2005 (OM 2). In reliance on OM 1 and OM 2, Arbour distributed preferred shares in reliance on the Offering Memorandum Exemption, Part 4 of Multilateral Instrument 45-103 (the OM Exemption), and has raised \$38,487,008.25 (\$20,535,321.95 in Alberta).
- 7 The Arbour preferred shares were securities as defined in the *Act*. The sales of the Arbour securities to investors were trades as defined in the *Act*. As a trade in securities of an issuer that had not previously been issued, the sales of the Arbour securities were also distributions as defined in the *Act*.
- 8 Neither OM 1 nor OM 2 were filed with the Commission, as was required by Part 4.7 of the OM Exemption.

9 OM 1 contained statements made with the intention of effecting a trade in the Arbour securities which the Respondents knew or ought to have known were misrepresentations, including:

9.1 OM 1 failed to accurately disclose Arbour's listing status as at July 14, 2004;

9.2 OM 1 incorporated by reference Arbour's Annual Information Form (AIF), when no such document had been filed with the System for Electronic Document Analysis and Retrieval (SEDAR);

9.3 OM 1 failed to disclose all the directors and officers of the company as at July 14, 2004.

10 In addition, OM 1 was not updated at any time between July 14, 2004 and January 19, 2005, despite the occurrence of intervening events that triggered an obligation to update, pursuant to Part 4 of the OM Exemption, and despite the fact that the Respondents continued to make distributions to investors on the basis of OM 1 and the OM Exemption.

11 OM 2 contained statements made with the intention of effecting a trade in the Arbour securities which the Respondents knew or ought to have known were misrepresentations, including:

11.1 OM 2 incorporated by reference Arbour's AIF, when no such document had been filed with SEDAR;

11.2 OM 2 disclosed the intended use of \$10,000,000 of available funds for the offering was the funding of a "loan/option re. tarsands technology" when Arbour's press release dated January 6, 2005 stated that the full amount of the loan had already been advanced as at December 31, 2004;

11.3 OM 2 contained inconsistent statements with respect to the amount to be paid for the share purchase of Canadian Oilsands Recovery Ltd.

12 In addition, OM 2 was not updated at any time between January 19, 2005 and September 26, 2005, despite the occurrence of intervening events that triggered an obligation to update, pursuant to Part 4 of the OM Exemption, and despite the fact that the Respondents continued to make distributions to investors on the basis of OM 2 and the OM Exemption.

### **Misuse of Exemptions**

13 Arbour filed Reports of Exempt Distribution (Form 45-103F4s) for its distributions between September 20, 2004 and September 30, 2005. Included in the Form 45-103F4s

were 51 Ontario investors and 2 Quebec investors, for whom Arbour relied on the OM Exemption for the distributions. The OM Exemption did not exist at any time in those jurisdictions and was not available to Arbour.

14 Arbour filed a Form 45-103F4 for distributions on August 31, 2005. Included in the Form 45-103F4 were Manitoba investors for whom Arbour relied on section 90 of the *Securities Act*, C.C.S.M. c. S50, a legislative provision that does not grant an exemption from prospectus and registration requirements.

### **Late Filings/Failure to File**

15 Arbour failed to file documents that it was obligated to file with SEDAR, pursuant to National Instrument 51-102 - Continuous Disclosure Obligations (NI 51-102). These failures to file include:

15.1 No material change reports filed with SEDAR, or filed late, contrary to Part 7 of NI 51-102;

15.2 No material contracts with SEDAR, contrary to Part 12.2 of NI 51-102;

15.3 Audited annual financial statements filed late, contrary to Part 4 of NI 51-102; and

15.4 Management's Discussion & Analysis (MD&A) filed late, contrary to Part 5 of NI 51-102.

16 In addition, Arbour failed to file OM 1 and OM 2 with the Commission, and filed its Form 45-103F4s late, contrary to Part 4 of the OM Exemption.

### **Distributions after September 30, 2005**

17 Arbour issued an Offering Memorandum dated September 26, 2005 (OM 3). In reliance on OM 3, Arbour distributed preferred shares in reliance on the Offering Memorandum Exemption, Part 2.9 of National Instrument 45-106 (the new OM Exemption), and has raised an additional \$3,141,820.30 (\$2,064,246.25 in Alberta).

18 OM 3 contained material statements that were misleading or untrue, or omitted to state necessary facts, and which the Respondents knew or ought to have known would have a significant effect on the market price or value of the Arbour securities, including:

18.1 OM 3 does not disclose the identity of the party to whom Arbour has agreed to loan \$10,000,000 as Merendon Mining Corporation Ltd. (Merendon), a material fact in part because the company was previously sanctioned by the Commission;

18.2 OM 3 does not disclose oil & gas acquisitions in Bow Island, Alberta in November 2004 and Sedalia, Alberta in January 2005;

18.3 OM 3 does not disclose the existence of the company's US subsidiary;

18.4 OM 3 does not provide sufficient disclosure about Arbour's offshore oil & gas acquisitions;

18.5 OM 3 contains contradictory information about the use of net proceeds of the offering;

18.6 OM 3 fails to incorporate by reference the most up to date MD&A for the year ending December 31, 2004;

18.7 OM 3 incorporates by reference the AIF dated September 9, 2005, which does not accurately list all of the directors and officers of Arbour;

18.8 OM 3 does not accurately list all of the directors and officers of Arbour;

18.9 The AIF does not disclose that Merendon was subject to a 2-year denial of exemptions order by the Commission, which was extant while Wigmore was a director of Merendon;

18.10 OM 3 states that 28,165,638 preferred shares of Arbour had been distributed as at August 31, 2005, whereas Arbour had only reported distributions of 25,610,317 preferred shares up to and including the same date; and

18.11 OM 3 provides insufficient disclosure of the risks associated with the oil & gas acquisitions outside of North America.

19 OM 3 and the accompanying Report of Exempt Distribution were filed late, in contravention of Part 2.9 of the new OM Exemption.

### **Previous Sanctions/Sanctions in Other Jurisdictions**

20 Arbour was subject to an interim Cease Trade Order by the Commission on May 9, 2005 for failure to file its audited annual financial statements. The order expired on May 24, 2005. Arbour was also subject to a Cease Trade Order by the British Columbia Securities Commission on May 11, 2005. The order was revoked on June 7, 2005.

### *Breaches*

21 As a result of the above, Staff alleges that:

21.1 The Respondents breached section 75(1)(a) of the *Act* by trading in securities of Arbour without being registered with the Executive Director to do so;

21.2 The Respondents breached section 110 of the *Act* by engaging in a distribution of the securities of Arbour without a receipt for a preliminary or final prospectus issued by the Executive Director and without an appropriate exemption;

21.3 The Respondents breached the OM Exemption and the new OM Exemption by failing to Offering Memoranda and Reports of Exempt Distributions on or before the 10<sup>th</sup> day after a distribution, or at all;

21.4 The Respondents breached subsection 92(3)(c) of the *Act* by making statements that they knew or ought reasonably to have known were misrepresentations in OM 1 and OM 2;

21.5 The Respondents breached subsection 92(4.1) of the *Act* by making statements that they knew or ought reasonably to have known were misleading or untrue in OM 2 and OM 3;

21.6 The Respondents breached the Alberta securities laws by failing to file documents required under NI 51-102 on time or at all;

22 As a result of the failures to comply with the registration and prospectus or exemptions requirements in the *Act*, the breaches of the OM Exemption, the new OM Exemption and NI 51-102, and the misrepresentations and misleading statements made by the Respondents to investors, Staff alleges that the Respondents acted contrary to the public interest.

Calgary, Alberta, 18 November 2005. ) ALBERTA SECURITIES COMMISSION  
)  
)  
) “Original Signed By”  
) \_\_\_\_\_  
) John P. Petch  
) Director, Enforcement