

Edgar Filing: CHESAPEAKE ENERGY CORP - Form 8-K

CHESAPEAKE ENERGY CORP
Form 8-K
April 23, 2002

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 8-K

Current Report Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported) April 22, 2002 (April 22, 2002)

CHESAPEAKE ENERGY CORPORATION

(Exact name of Registrant as specified in its Charter)

Oklahoma

1-13726

73-1395733

(State or other jurisdiction
of incorporation)

(Commission File No.)

(IRS Employer
Identification No.)

6100 North Western Avenue, Oklahoma City, Oklahoma 73118

(Address of principal executive offices)

(Zip Code)

(405) 848-8000

(Registrant's telephone number, including area code)

INFORMATION TO BE INCLUDED IN THE REPORT

ITEM 5. OTHER EVENTS

Edgar Filing: CHESAPEAKE ENERGY CORP - Form 8-K

Chesapeake Energy Corporation ("Chesapeake") issued a Press Release on April 22, 2002 announcing the execution of an Agreement and Plan of Merger among Chesapeake, CHK Acquisition, Inc., a wholly-owned subsidiary of Chesapeake, and Canaan Energy Corporation on April 19, 2002. The following was included in the Press Release:

"CHESAPEAKE ENERGY CORPORATION ANNOUNCES AGREEMENT
TO ACQUIRE CANAAN ENERGY CORPORATION
FOR \$18.00 PER SHARE IN CASH

Company Acquires 100 Bcfe of Proved Reserves, 50 Bcfe of
Probable and Possible Reserves and 22,000 Mcfe Per
Day of Gas Production for \$118 Million

Chesapeake and Canaan Energy Corporation (Nasdaq:KNAN) today jointly announced that Chesapeake has agreed to acquire the 4.5 million shares of fully diluted Canaan common stock not already owned by Chesapeake for \$18.00 per share in cash. Including assumed debt (net of stock option proceeds and working capital) of approximately \$33 million and \$4 million of Canaan common stock previously acquired by Chesapeake at \$12.00 per share, the estimated total cost of the transaction will be \$118 million. Chesapeake intends to pay for the transaction by using cash on hand.

Chesapeake values Canaan's estimated 100 billion cubic feet of natural gas equivalent (bcfe) of proved reserves at \$1.14 per mcfe after allocation of \$4 million of the purchase price to Canaan's undeveloped leasehold inventory and other assets. Canaan's proved reserves are 91% natural gas, 74% proved developed and are located almost exclusively in Chesapeake's core Mid-Continent operating area. Based on current production rates of 22,000 thousand cubic feet of natural gas equivalent (mcfe) per day (8 bcfe per year), Canaan's reserves-to-production ratio is an attractive 12.5.

Management Comments

Aubrey K. McClendon, Chesapeake's Chairman and Chief Executive Officer commented, "We are pleased to announce this negotiated acquisition of Canaan. This acquisition fits perfectly with Chesapeake's business strategy of creating value by acquiring and developing low-cost, long-lived natural gas assets in the Mid-Continent region of the U.S. Canaan has built a strong foundation of gas production and an attractive inventory of drilling projects, which Chesapeake intends to develop more aggressively than Canaan could have.

Although we originally offered \$12.00 per share, we were provided the opportunity to review Canaan's assets through negotiation with Canaan's management. We were impressed with what we saw and agreed to increase our offer to the mutually acceptable price of \$18.00 per share. The transaction will be accretive to Chesapeake's asset value, cash flow and ebitda in the second half of 2002, in 2003 and beyond."

John K. Penton, Canaan's President and Chief Operating Officer, commented, "We are pleased to enter into this transaction with Chesapeake. This transaction creates value for both companies and we enthusiastically recommend that our shareholders join us in voting for this merger."

Terms and Conditions

Although definitive purchase documents have been signed and both Boards of Directors have unanimously approved the transaction, the agreement is subject to normal regulatory approvals and a Canaan shareholder vote. Completion of the transaction is expected in the third quarter of 2002.

Canaan presently has 4.4 million common shares outstanding, plus employee and

Edgar Filing: CHESAPEAKE ENERGY CORP - Form 8-K

director options of 0.5 million shares. Of the outstanding shares, Chesapeake owns 0.3 million shares. Canaan's management and directors have agreed to vote their 1.2 million common shares in favor of the agreement.

Chesapeake will record the transaction using purchase accounting. In addition, under certain circumstances, Canaan has agreed to provide Chesapeake with a \$5.0 million break-up fee in the event the transaction is not completed. CIBC World Markets advised Canaan in the transaction.

Conference Call Information

Chesapeake's management invites your participation in its regularly scheduled earnings release conference call on Tuesday, April 30, 2002 at 9:00 am EDT. In addition to discussing first quarter results and the outlook for the remainder of 2002, the company will discuss the Canaan transaction and other important operational developments. You may participate in the call by dialing 913-981-5533 or listen to the call on the Internet by visiting our home page at chkenergy.com and clicking on the link under Shareholder Information or by going directly to Vcall.com. In addition, a replay of the call will be available by dialing 719-457-0820 through May 13. The passcode for the replay is 563827.

Canaan Energy Corporation ("Canaan") and the Directors and Executive Officers of Canaan may be deemed to be participants in any solicitation of proxies in connection with seeking approval of holders of common stock of Canaan of the proposed acquisition of Canaan by Chesapeake Energy Corporation. A description of the interests of the Directors and Executive Officers of Canaan is set forth in the proxy statement on Schedule 14A for Canaan's 2001 annual meeting of shareholders filed with the Securities and Exchange Commission. The Directors and Executive Officers as a group beneficially own approximately 1,167,000 shares of Canaan common stock, which constitutes approximately 27% of the shares outstanding. All of such Directors and Executive Officers have agreed to vote in favor of the merger. For additional information about the interest of the foregoing participants in the transaction, please refer to the preliminary and definitive proxy statements, which will be filed with the SEC, in connection with the solicitation described above. Securityholders are urged to read the proxy statement when it is available because it will contain important information. Investors and securityholders can obtain a free copy of the proxy statement (when it is available) and other relevant documents on the SEC's web site at www.sec.gov. The proxy statement and related materials may also be obtained for free, when filed and available, by directing such request to Canaan at 405-604-9200.

Chesapeake Energy Corporation is one of the largest independent natural gas producers in the U.S. Headquartered in Oklahoma City, the company's operations are focused on developmental drilling and property acquisitions in the Mid-Continent region of the United States. The company's Internet address is www.chkenergy.com.

Canaan Energy Corporation is an independent oil and gas exploration and production company headquartered in Oklahoma City, Oklahoma. Canaan trades on the NASDAQ NMS under the symbol KNAN. The company's Internet address is www.canaanenergy.com

The following are included as exhibits to this Form 8-K: Agreement and Plan of Merger dated April 19, 2002; form of Agreement and Limited Irrevocable Proxy; and form of Goodwill Protection Agreement.

ITEM 7. FINANCIAL STATEMENTS AND EXHIBITS

(c) Exhibits. The following exhibits are filed herewith:

99. (a) Agreement and Plan of Merger, dated as of April 19,

Edgar Filing: CHESAPEAKE ENERGY CORP - Form 8-K

2002, by and among Canaan Energy Corporation,
Chesapeake Energy Corporation and CHK Acquisition, Inc;

- (b) Form of Agreement and Limited Irrevocable Proxy, executed on April 19, 2002, in connection with the Agreement and Plan of Merger by John K. Penton, Leo E. Woodard, Michael S. Mewbourn, Thomas Henson, and Mischa Gorkuscha; and
- (c) Form of Goodwill Protection Agreement to be executed by John K. Penton, Leo E. Woodward, and Michael S. Mewbourn on consummation of the Agreement and Plan of Merger.

ITEM 9. REGULATION FD DISCLOSURE

The following was included in the Press Release:

"Chesapeake's estimated proved reserves at the end of 2001 were 1.8 tcf. Because of successful drilling during the first quarter and increased commodity prices, Chesapeake's estimated proved reserves at March 31, 2002 have increased to 1.9 tcf. The Canaan transaction will increase Chesapeake's proved reserves by 5% to 2.0 tcf and will increase Chesapeake's previously projected production for 2002 by 4 bcfe to 172 bcfe (assuming the transaction closes in the third quarter). Chesapeake's previously projected production for 2003 of 175 bcfe will increase by 8 bcfe to 183 bcfe."

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

CHESAPEAKE ENERGY CORPORATION

By: /s/ Aubrey K. McClendon

Aubrey K. McClendon
Chairman of the Board and
Chief Executive Officer

Dated: April 22, 2002

EXHIBIT 99(a)

AGREEMENT AND PLAN OF MERGER

among

CANAAN ENERGY CORPORATION,

CHK ACQUISITION, INC.

and

CHESAPEAKE ENERGY CORPORATION

COMMERCIAL LAW GROUP, P.C.
ATTORNEYS & COUNSELORS
2725 Oklahoma Tower
210 Park Avenue
Oklahoma City, Oklahoma 73102-5604
Telephone (405) 232-3001
Telecopier (405) 232-5553

AGREEMENT AND PLAN OF MERGER

TABLE OF CONTENTS

1.	Definitions.....	1
1.1	Affiliate(s).....	1
1.2	Agreement.....	2
1.3	Alternative Proposal.....	2
1.4	Bank Credit Agreement.....	2
1.5	Canaan 2	

Edgar Filing: CHESAPEAKE ENERGY CORP - Form 8-K

1.6	Canaan Area.....	2
1.7	Canaan Certificate.....	2
1.8	Canaan Common Stock.....	2
1.9	Canaan Disclosure Schedule.....	2
1.10	Canaan Employee(s).....	2
1.11	Canaan Employee Benefit Plans.....	2
1.12	Canaan Financial Statements.....	2
1.13	Canaan Material Agreements.....	2
1.14	Canaan Permits.....	2
1.15	Canaan Plans.....	2
1.16	Canaan Predecessor.....	2
1.17	Canaan Representative.....	3
1.18	Canaan Rights.....	3
1.19	Canaan Rights Agreement.....	3
1.20	Canaan SEC Documents.....	3
1.21	Canaan Severance Policy.....	3
1.23	Canaan Stock Option(s).....	3
1.24	Canaan Stockholder Meeting.....	3
1.25	Canaan Termination Fee.....	3
1.26	CERCLA 3	
1.27	Certificate of Merger.....	3
1.28	Closing.....	3
1.29	Closing Date.....	3
1.30	COBRA 3	
1.31	Code 4	
1.32	Confidentiality Agreement.....	4
1.33	Contract Employee.....	4
1.34	Defensible Title.....	4
1.35	Dissenting Stockholders.....	4
1.36	Effective Time.....	4
1.37	Environmental Law.....	4
1.38	ERISA 4	
1.39	Exchange Act.....	4
1.40	Exchange Agent.....	4
1.41	Exchange Fund.....	4
1.42	GAAP 4	
1.43	Goodwill Protection Agreement.....	5
1.44	Governmental Authority.....	5
1.45	Hazardous Material.....	5
1.46	HSR Act.....	5
1.47	Hydrocarbons.....	5
1.48	Indemnified Parties.....	5
1.49	Irrevocable Proxy.....	5
1.50	Lien(s).....	5
1.51	Material Adverse Effect.....	5
1.52	Merger 6	
1.53	Merger Consideration.....	6
1.54	Net Revenue Interests.....	6
1.55	Office Space Agreement.....	6
1.56	OGCA 6	
1.57	Oil and Gas Interests.....	6
1.58	Ownership Interests.....	7
1.59	Parent 7	
1.60	Parent Companies.....	7
1.61	Parent Representative.....	7
1.62	Parent Subsidiaries.....	7
1.63	Parties.....	7
1.64	Payout Balance.....	7
1.65	Permitted Encumbrances.....	7
1.66	Per Share Merger Consideration.....	8
1.67	Person(s).....	8
1.68	Proxy Statement.....	8

Edgar Filing: CHESAPEAKE ENERGY CORP - Form 8-K

1.69	Returns.....	8
1.70	SEC 8	
1.71	Securities Act.....	8
1.72	Sub 8	
1.73	Sub Common Stock.....	8
1.74	Superior Proposal.....	8
1.75	Surviving Corporation.....	8
1.76	Tax(es).....	9
1.77	Third-Party Consent.....	9
1.78	Transaction Documents.....	9
1.79	Working Interest.....	9
2.	Consummation of the Merger.....	9
2.1	The Merger.....	9
2.2	Effect of the Merger.....	9
2.3	Governing Instruments, Directors and Officers of the Surviving Corporation.....	9
2.3.1	Certificate of Incorporation.....	9
2.3.2	Bylaws 9	
2.3.3	Name 10	
2.3.4	Directors and Officers.....	10
2.4	Effect on Securities.....	10
2.4.1	Sub Common Stock.....	10
2.4.2	Canaan Common Stock.....	10
2.4.3	Canaan Stock Options.....	10
2.4.4	Treasury Stock and Parent Owned Stock.....	11
2.4.5	Dissenting Stockholder Shares.....	11
2.5	Exchange of Certificates.....	12
2.5.1	Exchange Fund.....	12
2.5.2	Notice and Surrender.....	12
2.5.3	Full Satisfaction.....	13
2.5.4	Unclaimed Exchange Fund.....	13
2.5.5	No Liability.....	13
2.5.6	Lost, Stolen or Destroyed Certificates.....	14
2.5.7	Investment of Exchange Fund.....	14
2.6	Closing.....	14
2.7	Effective Time of the Merger.....	14
2.8	Taking of Necessary or Further Action.....	14
3.	Canaan Representations and Warranties.....	15
3.1	Corporate Organization.....	15
3.2	Authority and Enforceability.....	15
3.3	No Violations.....	16
3.4	Consents and Approvals.....	16
3.5	Canaan SEC Documents.....	16
3.6	Financial Statements.....	17
3.7	Capital Structure.....	17
3.8	Governmental Regulation.....	18
3.9	Litigation.....	18
3.10	Brokers.....	18
3.11	Absence of Certain Changes or Events.....	18
3.12	Compliance with Laws, Material Agreements and Permits.....	18
3.13	No Restrictions.....	19
3.14	Taxes 19	
3.15	Employee Benefit Plans.....	21
3.16	Environmental Matters.....	23
3.17	Vote Required.....	24
3.18	Canaan Board of Directors Actions.....	24
3.19	Employment Contracts and Benefits.....	24
3.20	Labor Matters.....	24
3.21	Insurance.....	25
3.22	Intangible Property.....	25

Edgar Filing: CHESAPEAKE ENERGY CORP - Form 8-K

3.23	Title to Assets.....	25
3.24	Opinion of Financial Advisor.....	26
3.25	Oil and Gas Operations.....	26
3.26	Financial and Commodity Hedging.....	26
3.27	Books and Records.....	26
3.28	Other Entities.....	26
3.29	Account Information.....	26
3.30	Powers of Attorney.....	26
3.31	Plugging Status.....	27
3.32	No Knowledge of Breach of Representations.....	27
3.33	Proxy Statement.....	27
3.34	Equipment.....	27
3.35	Current Commitments.....	27
3.36	Payout Balances, Gas Imbalances and Take or Pay.....	28
3.37	Full Disclosure.....	28
3.38	Certain Agreements.....	28
3.39	Affiliate Transactions.....	28
4.	Parent and Sub Representations and Warranties.....	28
4.1	Organization and Standing.....	28
4.2	Authority and Enforceability.....	28
4.3	No Restriction.....	29
4.4	Consents and Approvals.....	29
4.5	Authorization.....	29
4.6	Litigation.....	29
4.7	Broker's or Finder's Fees.....	30
4.8	Funding.....	30
4.9	Interim Operations of Sub.....	30
4.10	Proxy Statement.....	30
4.11	No Knowledge of Breach of Representations.....	30
4.12	Prior Purchases.....	30
5.	Covenants.....	31
5.1	Conduct of Canaan Business Pending Closing.....	31
5.2	Access to Information.....	33
5.3	No Solicitation.....	34
5.4	Canaan Stockholder Meeting.....	35
5.5	Proxy Statement.....	35
5.6	Public Announcements.....	36
5.7	Notification of Certain Matters.....	36
5.8	Indemnification.....	37
5.9	Employee and Severance Matters.....	38
5.10	Reasonable Best Efforts.....	41
5.11	Stock Options.....	41
5.12	Stockholder Litigation.....	42
5.13	Further Assurances.....	42
5.14	Rights Agreement; Consequences if Rights Triggered.....	42
5.15	Payment of Expenses.....	43
5.16	Canaan Termination Fee.....	43
5.17	Dissenting Stockholder Payments.....	43
5.18	Name 43	
5.19	Related Agreements.....	43
6.	Conditions Precedent.....	44
6.1	Conditions to Each Party's Obligation to Effect the Merger.....	44
6.1.1	Stockholder Approval.....	44
6.1.2	Other Approvals.....	44
6.1.3	No Injunctions or Restraints.....	44
6.2	Conditions to Obligations of Parent and Sub.....	44
6.2.1	Representations and Warranties.....	44
6.2.2	Performance of Covenants and Agreements by Canaan.....	45
6.2.3	No Adverse Change.....	45

Edgar Filing: CHESAPEAKE ENERGY CORP - Form 8-K

6.2.4 Dissenting Stockholders.....45
6.2.5 Releases 45
6.2.6 Opinion of Counsel.....45
6.3 Conditions to Obligation of Canaan.....45
6.3.1 Representations and Warranties.....45
6.3.2 Performance of Covenants and Agreements by Parent and Sub....46
7. Termination.....46
7.1 Termination Rights.....46
7.1.1 Mutual Consent.....46
7.1.2 Date Certain.....46
7.1.3 By Parent 46
7.1.4 By Canaan 47
7.1.5 Superior Proposal.....47
7.2 Effect of Termination.....47
8. Miscellaneous.....47
8.1 Nonsurvival of Representations and Warranties.....47
8.2 Amendment.....48
8.3 Notices.....48
8.4 Counterparts.....49
8.5 Severability.....49
8.6 Entire Agreement; No Third Party Beneficiaries.....49
8.7 Applicable Law.....49
8.8 No Remedy in Certain Circumstances.....49
8.9 Enforcement of Agreement.....49
8.10 Assignment.....50
8.11 Waivers.....50
8.12 References and Titles.....50
8.13 Incorporation.....50

- Exhibit "A" - Irrevocable Proxy
- Exhibit "B" - Goodwill Protection Agreement
- Exhibit "C" - Office Space Agreement
- Exhibit "D" - Release
- Exhibit "E" - Opinion

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER is entered into effective the 19th day of April, 2002, by and among CANAAN ENERGY CORPORATION, an Oklahoma corporation ("Canaan"), CHK ACQUISITION, INC., an Oklahoma corporation ("Sub"), and CHESAPEAKE ENERGY CORPORATION, an Oklahoma corporation ("Parent").

B A C K G R O U N D:

A. The board of directors of each of Parent, Sub and Canaan has determined that it is in the best interests of its respective stockholders to approve the acquisition by Parent of Canaan by means of the merger of Sub with and into Canaan, upon the terms and subject to the conditions set forth in this Agreement and the applicable provisions of the OGCA;

Edgar Filing: CHESAPEAKE ENERGY CORP - Form 8-K

B. The board of directors of each of Parent, Sub and Canaan has unanimously adopted resolutions approving the Merger, this Agreement and the transactions contemplated hereby, and the board of directors of Canaan has unanimously agreed to recommend that the stockholders of Canaan approve this Agreement, the Merger and the transactions contemplated hereby;

C. Parent, Sub and Canaan desire to make certain representations, warranties, covenants and agreements in connection with the Merger and also to prescribe various conditions to the Merger;

D. Parent has advised Canaan and the Canaan Specified Stockholders that it will not enter into this Agreement unless the Canaan Specified Stockholders execute and deliver to Parent an Irrevocable Proxy in the form set forth in Exhibit "A" attached hereto and made a part hereof;

E. Parent has advised Canaan that Parent will not consummate this Agreement unless Leo E. Woodard, John K. Penton and Michael S. Mewbourn execute and deliver to Parent a Goodwill Protection Agreement in the form set forth in Exhibit "B" attached hereto and made a part hereof; and

F. Upon consummation of the Merger pursuant to this Agreement, all of the issued and outstanding Canaan Common Stock and Canaan Stock Options will be converted into the right to receive the Merger Consideration as determined in accordance with the terms of this Agreement.

NOW, THEREFORE, for and in consideration of the recitals and the mutual covenants and agreements set forth in this Agreement, the Parties hereby agree as follows:

10 Definitions. As used in this Agreement, each of the following terms has the meaning given in this paragraph or in the paragraphs referred to below:

1.1 Affiliate(s). With respect to any Person, each other Person that directly or indirectly (through one or more intermediaries or otherwise) controls, is controlled by, or is under common control with such Person.

- 53 -

1.2 Agreement. This Agreement and Plan of Merger, as amended, supplemented or modified from time to time.

1.3 Alternative Proposal. As defined in paragraph 5.3.2 of this Agreement.

1.4 Bank Credit Agreement. The Restated and Consolidated Agreement dated October 23, 2000, by and among Canaan and a lending group led by Bank One, Oklahoma, N.A. as amended October 9, 2001 and November 21, 2001.

1.5 Canaan. Canaan Energy Corporation, an Oklahoma corporation.

1.6 Canaan Area. As defined in paragraph 5.1.10 of this Agreement.

1.7 Canaan Certificate. A certificate representing shares of Canaan

Edgar Filing: CHESAPEAKE ENERGY CORP - Form 8-K

Common Stock.

- 1.8 Canaan Common Stock. Canaan's common stock, \$0.01 par value per share.
- 1.9 Canaan Disclosure Schedule. The disclosure schedule attached hereto entitled the Canaan Disclosure Schedule and any documents listed on such disclosure schedule or expressly incorporated therein by reference.
- 1.10 Canaan Employee(s). As defined in paragraph 5.9 of this Agreement.
- 1.11 Canaan Employee Benefit Plans. As defined in paragraph 3.15 of this Agreement.
- 1.12 Canaan Financial Statements. The audited and unaudited consolidated financial statements of Canaan (including the related notes) included (or incorporated by reference) in Canaan's Annual Report on Form 10-K for the year ended December 31, 2001, as filed with the SEC.
- 1.13 Canaan Material Agreements. The: (1) Bank Credit Agreement; (2) the Cedar Brush Prospect Agreement dated November 5, 2001, between Canaan and Union Gas Corporation, a Texas corporation; (3) all agreements or instruments filed with or listed in the Canaan SEC Documents as material contracts; and (4) any other written or oral agreements, contracts, commitments or understandings to which Canaan is a party, by which any of Canaan is directly or indirectly bound, or to which any asset of any of Canaan may be subject, involving total value, consideration or obligations in excess of One Million Dollars (\$1,000,000.00).
- 1.14 Canaan Permits. As defined in paragraph 3.12 of this Agreement.
- 1.15 Canaan Plans. The stock option plans and related agreements listed in section 2.4.3 of the Canaan Disclosure Schedule.
- 1.16 Canaan Predecessor. As defined in paragraph 3.14.1 of this Agreement.
- 1.17 Canaan Representative. Any director, officer, employee, agent, advisor (including legal, accounting and financial advisors), Affiliate or other representative of Canaan.
- 1.18 Canaan Rights. The preferred share purchase rights issued pursuant to the Canaan Rights Agreement for each share of Canaan Common Stock outstanding on March 25, 2002.
- 1.19 Canaan Rights Agreement. The Rights Agreement dated as of March 13, 2002 between Canaan and UMB Bank, N.A., as rights agent setting forth the terms and conditions of the Canaan Rights.
- 1.20 Canaan SEC Documents. As defined in paragraph 3.5 of this Agreement.
- 1.21 Canaan Severance Policy. As defined in paragraph 5.9.1(b) of this Agreement.

Edgar Filing: CHESAPEAKE ENERGY CORP - Form 8-K

- 1.22 Canaan Specified Stockholders. The stockholders of Canaan who are: (a) on Canaan's board of directors; or (b) executive officers of Canaan.
- 1.23 Canaan Stock Option(s). Any unexpired option or other right to purchase Canaan Common Stock issued under the Canaan Plans and outstanding as of the Effective Time (regardless of whether vested, unvested or currently exercisable).
- 1.24 Canaan Stockholder Meeting. The meeting of the stockholders of Canaan for the purpose of voting on this Agreement and the Merger.
- 1.25 Canaan Termination Fee. As defined in paragraph 5.16 of this Agreement.
- 1.26 CERCLA. The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.
- 1.27 Certificate of Merger. The Certificate of Merger to be prepared and executed in accordance with the applicable provisions of the OGCA and filed with the Secretary of State of Oklahoma to reflect the consummation of the Merger.
- 1.28 Closing. The closing of the Merger and the consummation of the other transactions contemplated by this Agreement.
- 1.29 Closing Date. Unless otherwise agreed to by Parent and Canaan in writing, the Closing will take place on the second business day following the day after which both of the following have occurred: (a) the Canaan Stockholder Meeting; and (b) the satisfaction of the conditions to the Merger as set forth in this Agreement (other than conditions that by their nature are to be satisfied at Closing).
- 1.30 COBRA. The Consolidated Omnibus Reconciliation Act of 1985, as amended, as contained in section 4980B of the Code.
- 1.31 Code. The Internal Revenue Code of 1986, as amended.
- 1.32 Confidentiality Agreement. The letter agreement dated March 28, 2002 between Canaan and Parent relating to Canaan's furnishing of information to Parent in connection with Parent's evaluation of a possible transaction between Parent and Canaan.
- 1.33 Contract Employee. As defined in paragraph 5.9.1(d) of this Agreement.
- 1.34 Defensible Title. Such right, title and interest to an asset that is: (a) evidenced by an instrument or instruments filed of record in accordance with the conveyance and recording laws of the applicable jurisdiction to the extent necessary to prevail against competing claims of bona fide purchasers for value without notice; (b) subject to Permitted Encumbrances; and (c) free and clear of all other Liens, claims, infringements, burdens or other defects.
- 1.35 Dissenting Stockholders. Any holder or holders of Canaan Common

Edgar Filing: CHESAPEAKE ENERGY CORP - Form 8-K

Stock who validly perfect appraisal rights under Section 1091 of the OGCA.

- 1.36 Effective Time. As defined in paragraph 2.7 of this Agreement.
- 1.37 Environmental Law. Any federal, state, local or foreign statute, code, ordinance, rule, regulation, policy, guideline, permit, consent, approval, license, judgment, order, writ, decree, injunction or other authorization relating to: (a) emissions, discharges, releases or threatened releases of Hazardous Materials into the natural environment (including, without limitation, ambient air, soil, sediments, land surface or subsurface, buildings or facilities, surface water, groundwater, publicly-owned treatment works, septic systems or land); (b) the generation, treatment, storage, disposal, use, handling, manufacture, transportation or shipment of Hazardous Materials; or (c) the pollution of the environment, solid waste or operation or reclamation of mines.
- 1.3 ERISA. The Employee Retirement Income Security Act of 1974, as amended from time to time.
- 1.39 Exchange Act. The Securities Exchange Act of 1934, as amended from time to time.
- 1.40 Exchange Agent. UMB Bank, N.A., the paying agent for shares of Canaan Common Stock.
- 1.41 Exchange Fund. As defined in paragraph 2.5.1 of this Agreement.
- 1.42 GAAP. Generally accepted accounting principles, as recognized by the U.S. Financial Accounting Standards Board (or any generally recognized successor).
- 1.43 Goodwill Protection Agreement. The agreement to be executed and delivered at the Closing by Leo E. Woodard, John K. Penton and Michael S. Mewbourn in favor of Canaan and Parent substantially in the form attached hereto as Exhibit "B."
- 1.44 Governmental Authority. Any national, state, county or municipal government, (whether domestic or foreign), agency, board, bureau, commission, court, department or other instrumentality of any such government, or any arbitrator in any case that has jurisdiction over Canaan, Parent or Sub or any of their respective properties or assets.
- 1.45 Hazardous Material. Any: (a) "hazardous substance" as defined by CERCLA; (b) "hazardous waste" as defined by the Resource Conservation and Recovery Act, as amended; (c) hazardous, dangerous or toxic chemical, material, waste or substance, within the meaning of and regulated by any Environmental Law; (d) radioactive material, including any naturally occurring radioactive material, and any source, special or byproduct material as defined in 42 U.S.C. 2011 et seq. and any amendments or authorizations thereof; (3) asbestos-containing materials in any form or condition; or (f) polychlorinated biphenyls in any form or condition.

Edgar Filing: CHESAPEAKE ENERGY CORP - Form 8-K

- 1.46 HSR Act. The Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended from time to time.
- 1.47 Hydrocarbons. Oil, condensate, gas, casinghead gas and other liquid or gaseous hydrocarbons.
- 1.48 Indemnified Parties. As defined in paragraph 5.8.1 of this Agreement.
- 1.49 Irrevocable Proxy. The irrevocable proxy in the form attached hereto as Exhibit "A" to be executed by the Canaan Specified Stockholders granting to Parent the right to vote such holders' Canaan Common Stock in connection with the stockholders' vote concerning the Merger and any and all related matters.
- 1.50 Lien(s). Any lien, mortgage, security interest, pledge, deposit, production payment, restriction, burden, encumbrance, rights of a vendor under any title retention or conditional sale agreement, or lease or other arrangement substantially equivalent thereto.
- 1.51 Material Adverse Effect. An event or condition or a series of related events or conditions that: (1) has an adverse financial impact of more than Five Million Dollars (\$5,000,000) on Canaan; (2) materially and adversely affects the business, assets, liabilities or financial condition of Canaan; or (3) with respect to either Party, materially and adversely affects the ability of the party to consummate the transactions contemplated by this Agreement in accordance herewith or fulfill the conditions to Closing. Notwithstanding the foregoing the following will not be taken into account in determining whether there has been a Material Adverse Effect: (x) any adverse affect or change that is caused by or results from conditions affecting the United States economy generally or the economy of any nation or region in which Canaan or Parent (as the case may be) conducts business on a consolidated basis; (y) any adverse affect or change that is caused by or results from conditions generally affecting the natural gas industry including, without limitation, the prices of natural gas and oil; and (z) any adverse affect or change that is caused by or results from the announcement or pendency of this Agreement, the Merger or the transactions contemplated hereby.
- 1.52 Merger. As defined in paragraph 2.1 of this Agreement.
- 1.53 Merger Consideration. The aggregate amount equal to the sum of: (1) the total number of shares of Canaan Common Stock that are issued and outstanding as of the Effective Time other than those held by Parent or Sub multiplied by the Per Share Merger Consideration; plus (2) the aggregate amount by which the Per Share Merger Consideration exceeds the exercise price of each of the Canaan Stock Options identified in Section 2.4.3 of the Canaan Disclosure Schedule which are in the money (based on the Per Share Merger Consideration) and which are outstanding at the Effective Time.
- 1.54 Net Revenue Interests. Canaan's interest in Hydrocarbons produced from or attributable to Canaan's Oil and Gas Interests, after deducting all lessor's royalties, overriding royalties, production payments, and other interests or burdens on Hydrocarbons produced from Canaan's oil and gas properties or any well thereon.

Edgar Filing: CHESAPEAKE ENERGY CORP - Form 8-K

- 1.55 Office Space Agreement. The agreement to be executed between Canaan and LJ Natural Gas Company, in substantially the form attached hereto as Exhibit "C."
- 1.56 OGCA. The Oklahoma General Corporation Act, as amended.
- 1.57 Oil and Gas Interests. Any and all: (a) direct and indirect interests in and rights with respect to oil, gas, mineral and related properties and assets of any kind and nature, direct or indirect, including working, royalty and overriding royalty interests, production payments, operating rights, net profits interests, other non-working interests and non-operating interests; (b) interests in and rights with respect to Hydrocarbons and other minerals or revenues therefrom and contracts in connection therewith and claims and rights thereto (including oil and gas leases, operating agreements, unitization and pooling agreements and orders, division orders, transfer orders, mineral deeds, royalty deeds, oil and gas sales, exchange and processing contracts and agreements and interests related to any of the foregoing), surface interests, fee interests, reversionary interests, reservations and concessions; (c) easements, rights of way, licenses, permits, leases, and other interests associated with, appurtenant to, or necessary for the operation of any of the foregoing; and (d) interests in fixtures, equipment and machinery (including well equipment and machinery), oil and gas production, gathering, transmission, compression, treating, processing and storage facilities (including tanks, tank batteries, pipelines and gathering systems), pumps, water plants, electric plants, gasoline and gas processing plants, refineries and other tangible personal property and fixtures associated with, appurtenant to, or necessary for the operation of any of the foregoing.
- 1.58 Ownership Interests. The Net Revenue Interests, Working Interests and other ownership interests, if any, of Canaan in Canaan's Oil and Gas Interests which were classified as having proved reserves as of December 31, 2001 as reported in the Canaan SEC Reports and listed in Section 1.58 of the Canaan Disclosure Schedule.
- 1.59 Parent. Chesapeake Energy Corporation, an Oklahoma corporation.
- 1.60 Parent Companies. Parent and the Parent Subsidiaries.
- 1.61 Parent Representative. Any director, officer, employee, agent, advisor (including legal, accounting and financial advisors), Affiliate or other representative of Parent or Parent Subsidiaries.
- 1.62 Parent Subsidiaries. Sub and all other direct or indirect wholly owned subsidiaries of Parent.
- 1.63 Parties. The collective reference to Parent, Sub and Canaan.
- 1.64 Payout Balance. As defined in paragraph 3.36 of this Agreement.

Edgar Filing: CHESAPEAKE ENERGY CORP - Form 8-K

1.65 Permitted Encumbrances. Any: (a) Liens for Taxes, assessments or other governmental charges or levies that are not at the particular time in question due and delinquent, foreclosure, distraint, sale or other similar proceedings have not been commenced or if commenced, have been stayed or are being contested in good faith by appropriate proceedings and if Canaan will have set aside on its books such reserves (segregated to the extent required by sound accounting practices) as may be required by GAAP or otherwise determined by its board of directors to be adequate with respect thereto; (b) Liens of carriers, warehousemen, mechanics, laborers, materialmen, landlords, vendors, workmen and operators arising by operation of law in the ordinary course of business or by a written agreement existing as of the date hereof and necessary or incident to the exploration, development, operation and maintenance of Hydrocarbon properties and related facilities and assets for sums not yet due or being contested in good faith by appropriate proceedings, if Canaan will have set aside on its books such reserves (segregated to the extent required by sound accounting practices) as may be required by GAAP or otherwise determined by its board of directors to be adequate with respect thereto; (c) Liens incurred in the ordinary course of business in connection with worker's compensation, unemployment insurance and other social security legislation (other than ERISA); (d) Liens incurred in the ordinary course of business to secure the performance of bids, tenders, trade contracts, leases, statutory obligations, surety and appeal bonds, performance and repayment bonds and other obligations of a like nature; (e) Liens, easements, rights-of-way, restrictions, servitudes, permits, conditions, covenants, exceptions, reservations and other similar encumbrances incurred in the ordinary course of business or existing on property and not (i) reducing the Canaan Net Revenue Interest set forth in Section 1.58 of the Canaan Disclosure Schedule, (ii) increasing the Canaan Working Interests in any Oil and Gas Interest set forth in Section 1.58 of the Canaan Disclosure Schedule or (iii) impairing the value of the assets of Canaan or interfering with the ordinary conduct of the business of Canaan or rights to any of their assets; (f) Liens created or arising by operation of law to secure a party's obligations as a purchaser of oil and gas; (g) all rights to consent by, required notices to, filings with, or other actions by any Governmental Authority to the extent customarily obtained subsequent to Closing; (h) farmout, carried working interest, joint operating, unitization, royalty, overriding royalty, sales and similar agreements relating to the exploration or development of, or production from, Hydrocarbon properties entered into in the ordinary course of business that do not (x) reduce the Canaan Net Revenue Interests set forth in Section 1.58 of the Canaan Disclosure Schedule, (y) increase the Canaan Working Interests in any Oil and Gas Interest set forth in Section 1.58 of the Canaan Disclosure Schedule or (z) adversely affect the value of any asset of Canaan; (i) any defects, irregularities or deficiencies in title to easements, rights-of-way or other surface use agreements that do not (x) reduce the Canaan Net Revenue Interests set forth in Section 1.58 of the Canaan Disclosure Schedule, (y) increase the Canaan Working Interests in any Oil and Gas Interest set forth in Section 1.58 of the Canaan Disclosure Schedule or (z) adversely affect the value of any asset of Canaan; (j) preferential rights to purchase and Third-Party Consents disclosed in Section 1.65 of the Canaan Disclosure Schedule; (k) Liens arising under or created pursuant to the Bank Credit Agreement; and (l) Liens specifically described in Section 1.65 of the Canaan Disclosure Schedule.

Edgar Filing: CHESAPEAKE ENERGY CORP - Form 8-K

- 1.66 Per Share Merger Consideration. Eighteen Dollars (\$18.00) per share of Canaan Common Stock including the associated Canaan Rights.
- 1.67 Person(s). Any natural person, corporation, company, limited or general partnership, joint stock company, joint venture, association, limited liability company, limited liability partnership, trust, bank, trust company, land trust, business trust or other entity or organization, whether or not a Governmental Authority.
- 1.68 Proxy Statement. A proxy statement in a definitive form relating to the Canaan Stockholder Meeting.
- 1.69 Returns. As defined in paragraph 3.14.1 of this Agreement.
- 1.70 SEC. The Securities and Exchange Commission.
- 1.71 Securities Act. The Securities Act of 1933, as amended from time to time.
- 1.72 Sub. CHK Acquisition, Inc., an Oklahoma corporation and wholly-owned subsidiary of Parent.
- 1.73 Sub Common Stock. Sub's common stock, par value \$1.00 per share.
- 1.74 Superior Proposal. As defined in paragraph 5.3.2 of this Agreement.
- 1.75 Surviving Corporation. As defined in paragraph 2.2 of this Agreement.
- 1.76 Tax(es). Any and all taxes, fees, levies, duties, tariffs, imposts, and other charges of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any Governmental Authority or taxing authority including, without limitation, taxes or other charges on or with respect to income, franchises, windfall or other profits, gross receipts, property, sales, use, capital stock, payroll, employment, social security, workers' compensation, unemployment compensation, or net worth, taxes or other charges in the nature of excise, withholding, ad valorem, stamp, transfer, value added, or gains taxes, license, registration and documentation fees, and custom duties, tariffs, and similar charges.
- 1.77 Third-Party Consent. The consent or approval of any Person other than Canaan, Parent, Sub or any Governmental Authority.
- 1.78 Transaction Documents. This Agreement, the Irrevocable Proxy, the Goodwill Protection Agreement, the Office Space Agreement and the other documents and instruments executed and delivered in connection with any of the foregoing.
- 1.79 Working Interest. Canaan's share of all of the costs, expenses, burdens, and obligations of any type or nature attributable to Canaan's interests in its oil and gas properties or any well thereon.
- 20 Consummation of the Merger. The Merger will be consummated as follows:
- 2.1 The Merger. Subject to the terms and conditions set forth in this Agreement, at the Effective Time, Sub will be merged with and into Canaan in accordance with the provisions of this Agreement and the

Edgar Filing: CHESAPEAKE ENERGY CORP - Form 8-K

OGCA. Such merger is referred to in this Agreement as the "Merger."

2.2 Effect of the Merger. Upon the effectiveness of the Merger, the separate existence of Sub will cease and Canaan, as the surviving corporation in the Merger (the "Surviving Corporation"), will continue its corporate existence under the laws of the State of Oklahoma. The Merger will have the effects specified in this Agreement and the OGCA.

2.3 Governing Instruments, Directors and Officers of the Surviving Corporation.

2.3.1 Certificate of Incorporation. The certificate of incorporation of Canaan, as in effect immediately prior to the Effective Time amended to reflect the change in the name of the Surviving Corporation as provided herein, will be the certificate of incorporation of the Surviving Corporation until duly amended in accordance with its terms and applicable law.

2.3.2 Bylaws. The bylaws of Canaan, as in effect immediately prior to the Effective Time, will be the bylaws of the Surviving Corporation until duly amended in accordance with their terms and applicable law.

2.3.3 Name. The name of the Surviving Corporation will be CHK Acquisition, Inc., however, ---- at the option of Parent, the name of the Surviving Corporation may be changed.

2.3.4 Directors and Officers. The directors and officers of Sub at the Effective Time will be the directors and officers, respectively, of the Surviving Corporation from the Effective Time until their respective successors have been duly elected or appointed in accordance with the certificate of incorporation and bylaws of the Surviving Corporation and applicable law.

2.4 Effect on Securities. As of the Effective Time, by virtue of the Merger and without any action on the part of any holder thereof, the Sub Common Stock, the Canaan Common Stock and other Canaan securities will be treated as follows subject to the terms and conditions of this Agreement:

2.4.1 Sub Common Stock. Each share of Sub Common Stock outstanding immediately prior to the Effective Time will be automatically converted into and become one (1) share of common stock of the Surviving Corporation on a one for one basis. As a result of the Merger the foregoing stock will represent one hundred percent (100%) of the issued and outstanding capital stock of the Surviving Corporation immediately after the Effective Time.

2.4.2 Canaan Common Stock. At the Effective Time, by virtue of the Merger and without any action on the part of any holder thereof, each share of Canaan Common Stock that is issued and outstanding immediately prior to the Effective Time will be converted into the right to receive the Per Share Merger Consideration. Notwithstanding the foregoing, the shares of Canaan Common Stock covered by paragraph 2.4.4 of this Agreement will be controlled by such paragraph and will not receive the Per Share Merger Consideration. Each share of Canaan Common Stock, when so converted, will automatically be canceled and

Edgar Filing: CHESAPEAKE ENERGY CORP - Form 8-K

retired, will cease to exist and will no longer be outstanding, and the holder of any Canaan Certificate representing any such shares will cease to have any rights with respect thereto, except the right to receive the Per Share Merger Consideration upon the surrender of such Canaan Certificate in accordance with paragraph 2.5.

2.4.3 Canaan Stock Options. Section 2.4.3 of the Canaan Disclosure Schedule lists: (a) each of the Canaan Plans; and (b) each Canaan Stock Option outstanding as of the date hereof specifying the Canaan Plan under which such Canaan Stock Option was issued, the number of shares of Canaan Common Stock covered by such Canaan Stock Option, the term of such Canaan Stock Option, the vesting schedule for such Canaan Stock Option and the exercise price for such Canaan Stock Option. Each Canaan Stock Option remaining outstanding at the Effective Time will be or become fully vested at the Effective Time. At the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof, each Canaan Stock Option will be canceled and each Canaan Stock Option will be converted into the right to receive, for each share of Canaan Common Stock with respect to which such Canaan Stock Option is exercisable, cash in an amount equal to the Per Share Merger Consideration, less the per share exercise price of such Canaan Stock Option. On presentation to Parent of the Canaan Stock Option or compliance with the provisions of paragraph 2.5.6 with respect thereto, the Parent will pay or cause to be paid to each holder of a Canaan Stock Option, for each share of Canaan Common Stock with respect to which such Canaan Stock Option is exercisable, cash in an amount equal to (i) the amount by which (A) the Per Share Merger Consideration, exceeds (B) the per share exercise price of such Canaan Stock Option, less (ii) amounts required to be withheld by Parent or Canaan, if any, in respect of federal taxes and other payroll withholding as a consequence of the cancellation and conversion of such Canaan Stock Option in accordance herewith. Without limiting the foregoing, except as expressly disclosed in Section 2.4.3 of the Canaan Disclosure Schedule, Canaan further hereby represents and warrants to Parent that: (i) all adjustments required to be made to the number of shares issuable or the exercise price for exercise under each of the Canaan Stock Options has been accurately made as disclosed in Section 2.4.3 of the Canaan Disclosure Schedule; and (ii) all required notices have been given to the holders of the Canaan Stock Options including, without limitation, adjustment notices. As of the Effective Time, as a result of the Merger, the provisions in any of the Canaan Plans or any other program, arrangement, option, warrant or other agreement providing for the issuance or grant of any interest in respect of the capital stock of Canaan will be canceled, cease to exist and no longer be outstanding as of the Effective Time and Canaan will take all action necessary to ensure that following the Effective Time no Person will have any right thereunder to acquire equity securities of Canaan, the Surviving Corporation or any subsidiary thereof.

2.4.4 Treasury Stock and Parent Owned Stock. At the Effective Time, by virtue of the Merger, all shares of Canaan Common Stock that are issued and held as treasury stock, if any, and all shares of Canaan Common Stock held by Parent will be canceled and retired and will cease to exist, and no Merger Consideration or other consideration will be paid or payable in exchange therefor.

2.4.5 Dissenting Stockholder Shares. Except as provided herein, any issued and outstanding shares of Canaan Common Stock held by a Dissenting Stockholder will be converted into the right to receive such consideration as may be determined to be due to such Dissenting Stockholder pursuant to the OGCA. If a Dissenting Stockholder effectively withdraws the demand for appraisal or loses the right of appraisal as provided under the OGCA, the shares of Canaan Common Stock held by such Dissenting Stockholder will be deemed to be converted under paragraph 2.4.2 of this Agreement (without interest). Canaan will provide prompt notice to Parent of any written demands for appraisal, withdrawals of demands for appraisal and any other instruments served pursuant to the OGCA and will provide to Parent the opportunity to direct all negotiations and proceedings with respect to demands for appraisal under the OGCA. Absent the prior written consent of Parent and Sub, Canaan will not negotiate, settle or offer to settle any demand for appraisal, provided, however that any and all payments made to settle such appraisal rights or made pursuant to the OGCA will be made solely out of Canaan assets and neither Parent nor Sub will have any liability therefor. Notwithstanding anything contained in this paragraph 2.4.5, if the Merger is rescinded or abandoned or if the stockholders of Canaan revoke the authority to effect the Merger, then the right of any Dissenting Stockholder to receive such consideration as may be determined to be due in respect of such Dissenting Stockholder's Canaan Common Stock pursuant to the OGCA will cease.

- 2.5 Exchange of Certificates. The exchange of Canaan Common Stock for the Per Share Merger Consideration will be consummated as follows:

2.5.1 Exchange Fund. At the Effective Time, Parent will deposit with the Exchange Agent, for the benefit of the holders of shares of Canaan Common Stock and for exchange in accordance with this Agreement, funds representing the Merger Consideration to be paid in exchange for shares of Canaan Common Stock pursuant to paragraph 2.5.2, less the amount of the Merger Consideration which: (i) would have been payable to Dissenting Stockholders; and (ii) will be payable with respect to the Canaan Stock Options. The funds delivered to the Exchange Agent pursuant hereto are referred to herein as the "Exchange Fund." The Exchange Agent, pursuant to irrevocable instructions consistent with the terms of this Agreement, will deliver the Per Share Merger Consideration to be paid pursuant to paragraph 2.5.2 out of the Exchange Fund, and the Exchange Fund will not be used for any other purpose whatsoever.

2.5.2 Notice and Surrender. As soon as reasonably practicable after the Effective Time, Parent will cause the Exchange Agent to mail to each holder of record of Canaan Common Stock that, immediately prior to the Effective Time, were converted into the right to receive the Per Share Merger Consideration pursuant to paragraph 2.4.2, a letter of transmittal to be used to effect the exchange of such Canaan Common Stock for the Per Share Merger Consideration, along with instructions for using such letter of transmittal to effect such exchange. The letter of transmittal (or the instructions thereto) will specify that delivery of any Canaan Certificate will be effected, and the risk of loss and title thereto will pass, only upon delivery of such Canaan Certificate to the Exchange Agent and will be in such form

Edgar Filing: CHESAPEAKE ENERGY CORP - Form 8-K

and have such other provisions as Parent may reasonably specify. On surrender to the Exchange Agent of a Canaan Certificate for cancellation, together with a duly completed and executed letter of transmittal and any other required documents: (a) the holder of such Canaan Certificate will be entitled to receive in exchange therefor the Per Share Merger Consideration for each share of Canaan Common Stock represented by such Canaan Certificate (after giving effect to any required withholding of Taxes); and (b) the Canaan Certificate so surrendered will forthwith be canceled. No interest will be paid or accrued on the Per Share Merger Consideration. In the event of a transfer of ownership of Canaan Common Stock that is not registered in the transfer records of Canaan, the Per Share Merger Consideration may be paid to a transferee if the Canaan Certificate representing such shares of Canaan Common Stock is presented to the Exchange Agent accompanied by all documents required to evidence and effect such transfer and to evidence that any applicable stock transfer Taxes have been paid. Until surrendered as contemplated by this paragraph 2.5.2, each Canaan Certificate will be deemed at any time after the Effective Time to represent only the right to receive on such surrender the Per Share Merger Consideration for the number of shares of Canaan Common Stock represented by such Canaan Certificate as provided in paragraph 2.4.2.

2.5.3 Full Satisfaction. Payment of the Per Share Merger Consideration upon the surrender for exchange of shares of Canaan Common Stock in accordance with the terms hereof will be deemed to have been paid in full satisfaction of all rights pertaining to such shares of Canaan Common Stock. After the Effective Time, there will be no further registration of transfers on the Surviving Corporation's stock transfer books of the shares of Canaan Common Stock that were outstanding immediately prior to the Effective Time. If, after the Effective Time, a Canaan Certificate is presented to the Surviving Corporation or Parent for any reason, it will be canceled and exchanged as provided in this paragraph 2.5.

2.5.4 Unclaimed Exchange Fund. Any portion of the Exchange Fund held by the Exchange Agent in accordance with the terms of this paragraph 2.5 that remains unclaimed by the former stockholders of Canaan for a period of one (1) year following the Effective Time will be delivered to Parent, on demand. Thereafter, any former stockholders of Canaan who have not theretofore complied with the provisions of this paragraph 2.5 will look only to Parent for payment of their claim for the Per Share Merger Consideration for the number of shares of Canaan Common Stock owned. No interest will be paid or payable on any Per Share Merger Consideration regardless of the date actually paid.

2.5.5 No Liability. Neither Parent, Sub, Canaan, the Surviving Corporation, the Exchange Agent nor any other Person will be liable to any former holder of shares of Canaan Common Stock for any amount properly delivered to any public official pursuant to any applicable abandoned property, escheat or similar law. Any amounts remaining unclaimed by former holders of Canaan Common Stock for a period of three (3) years following the Effective Time (or such earlier date immediately prior to the time at which such amounts would otherwise escheat to or become property of any Governmental Authority) will, to the extent permitted by applicable law, become the property of Parent, free and clear of any claims or interest of any such holders or their

Edgar Filing: CHESAPEAKE ENERGY CORP - Form 8-K

successors, assigns or personal representatives previously entitled thereto.

2.5.6 Lost, Stolen or Destroyed Certificates. If any Canaan Certificate is lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Canaan Certificate to be lost, stolen or destroyed and, if required by Parent, the posting by such Person of a bond, in such reasonable amount as Parent may direct, as indemnity against any claim that may be made against Parent with respect to such Canaan Certificate, the Exchange Agent will pay in exchange for such lost, stolen or destroyed Canaan Certificate the Per Share Merger Consideration deliverable with respect thereto pursuant to this Agreement.

2.5.7 Investment of Exchange Fund. The Exchange Agent will invest any cash included in the Exchange Fund from time to time, as directed by Parent, in short term money market assets or similar securities. Any interest and other income resulting from such investments will be payable to Parent on demand and will be the sole property of Parent.

2.6 Closing. The Closing will take place on the Closing Date at such time and place as is agreed upon by Parent and Canaan.

2.7 Effective Time of the Merger. The Merger will become effective immediately when the Certificate of Merger is accepted for filing by the Secretary of State of Oklahoma or at such time thereafter as is provided in the Certificate of Merger (the "Effective Time"). The Certificate of Merger will be filed on the Closing Date as soon as practicable after the Closing; provided, however, that the Certificate of Merger may be filed prior to the Closing Date or prior to the Closing so long as it provides for an Effective Time that occurs after the Closing.

2.8 Taking of Necessary or Further Action. Each of Parent, Sub and Canaan will use all reasonable efforts to take all such actions as may be necessary or appropriate in order to effectuate the Merger under the OGCA as promptly as commercially practicable. If, at any time after the Effective Time, any further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers and franchises of either Sub or Canaan, the officers and directors of the Surviving Corporation are fully authorized, in the name of the Surviving Corporation or otherwise to take, and will take all such lawful and necessary action.

3. Canaan Representations and Warranties. Except as set forth in the Canaan Disclosure Schedule with a reference to each paragraph of this Agreement modified by such item of disclosure, Canaan hereby represents and warrants to Parent and Sub that:

3.1 Corporate Organization. Canaan: (a) is a corporation duly organized, validly existing and in good standing under the laws of the state of Oklahoma; (b) has all requisite corporate power and authority to own, lease and operate its properties and assets and to carry on its business as it is presently being conducted; and (c) is duly qualified to do business as a foreign corporation, and is in good standing, in each jurisdiction where the character of the properties owned or

Edgar Filing: CHESAPEAKE ENERGY CORP - Form 8-K

leased by it or the nature of its activities makes such qualification necessary (except where any failure to be so qualified as a foreign corporation or to be in good standing would not, individually or in the aggregate, have a Material Adverse Effect on Canaan). Copies of the certificate or articles of incorporation and bylaws of Canaan have heretofore been delivered to Parent and such copies are accurate and complete as of the date hereof.

- 3.2 Authority and Enforceability. The board of directors of Canaan (at a meeting duly called and held) has: (a) determined that the Merger is advisable; and (b) resolved to approve the Merger and recommend the approval and adoption of this Agreement by Canaan's stockholders. In addition, the board of directors of Canaan has taken all action necessary to render the Control Share Acquisition Act, Sections 1145 through 1155 of Title 18 of the Oklahoma Statutes and Section 1090.3 of the OGCA inapplicable to the Merger and the other transactions contemplated by this Agreement. No other state takeover statute or similar statute or regulation applies or purports to apply to Canaan with respect to this Agreement, the Merger or any other transaction contemplated by this Agreement. Canaan has the requisite corporate power and authority to execute and deliver this Agreement and (with respect to consummation of this Agreement and the Merger, subject to the approval of the stockholders of Canaan) to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and (with the approval by the stockholders of Canaan) the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action on the part of Canaan, including approval by the board of directors of Canaan, and no other corporate proceedings on the part of Canaan are necessary to authorize the execution or delivery of this Agreement or (with approval by the stockholders of Canaan) to consummate the transactions contemplated hereby. The board of directors of Canaan has taken all action necessary to render the Canaan Rights inapplicable to this Agreement, the other Transaction Documents and the Merger and ensure that neither Parent nor Sub nor any of their Affiliates or associates is or will become an "Acquiring Person" (as defined in the Canaan Rights Agreement) by reason of any of the Transaction Documents or the Merger. In addition, a "Distribution Date" (as defined in the Canaan Rights Agreement) will not occur by reason of the execution of this Agreement, the execution of any of the Transaction Documents or the consummation of the Merger. This Agreement has been duly and validly executed and delivered by Canaan and constitutes a valid and binding obligation of Canaan, enforceable against Canaan in accordance with its terms.

- 3.3 No Violations. The execution and delivery of this Agreement does not, and the consummation of the transactions contemplated hereby and compliance by Canaan with the provisions hereof will not, conflict with, result in any violation of or default (with or without notice or lapse of time or both) under, give rise to a right of termination, cancellation or acceleration of any obligation (excluding any change of control put or acceleration) or to the loss of a material benefit under, or result in the creation of any Lien on any of the properties or assets of Canaan under, any provision of: (a) the certificate of incorporation or bylaws of Canaan; (b) any loan or credit agreement, note, bond, mortgage, indenture, lease, permit, concession, franchise, license or other agreement or instrument applicable to Canaan; or (c)

Edgar Filing: CHESAPEAKE ENERGY CORP - Form 8-K

assuming the consents, approvals, authorizations or permits and filings or notifications referred to in paragraph 3.4 are duly and timely obtained or made, any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Canaan or any of Canaan's properties or assets, other than, in the case of clause (b) or (c) above, any such conflict, violation, default, right, loss or Lien that, individually or in the aggregate, would not have a Material Adverse Effect on Canaan.

- 3.4 Consents and Approvals. No consent, approval, order or authorization of, registration, declaration, or filing with, or permit from, any Governmental Authority is required by or with respect to Canaan in connection with the execution and delivery of this Agreement by Canaan or the consummation by Canaan of the transactions contemplated hereby except for the following: (1) any such consent, approval, order, authorization, registration, declaration, filing or permit which the failure to obtain or make would not, individually or in the aggregate, have a Material Adverse Effect on Canaan; (2) the filing of the Certificate of Merger with the Secretary of State of Oklahoma pursuant to the provisions of the OGCA; (3) the filing, if necessary, of a pre-merger notification report under the HSR Act and the expiration or termination of the applicable waiting period; (4) the filing with the SEC of the Proxy Statement and such other reports under Section 13(a) of the Exchange Act and such other compliance with the Exchange Act and the Securities Act and the rules and regulations of the SEC thereunder as may be required in connection with this Agreement and the transactions contemplated hereby and the obtaining from the SEC of such orders as may be so required; and (5) such filings and approvals as may be required by any applicable state securities, "blue sky" or takeover laws or Environmental Laws. No Third-Party Consent is required by or with respect to Canaan in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby, except for: (x) any such Third-Party Consent which the failure to obtain would not, individually or in the aggregate, have a Material Adverse Effect on Canaan; (y) the valid approval of this Agreement and the Merger by the stockholders of Canaan; and (z) any consent, approval or waiver required by the terms of the Bank Credit Agreement, which consent, approval or waiver Canaan agrees to use reasonable efforts to obtain if requested by Parent or Sub.

- 3.5 Canaan SEC Documents. Parent has had available to it a true, correct and complete copy of each report, schedule, registration statement and definitive proxy statement filed by Canaan with the SEC since December 31, 2000, and prior to the Effective Time (the "Canaan SEC Documents"), which are all the documents that Canaan was or will be required to file with the SEC since such date. As of their respective dates, the Canaan SEC Documents complied or will comply in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and the rules and regulations of the SEC thereunder applicable to such Canaan SEC Documents, and none of the Canaan SEC Documents contained or will contain any untrue statement of a material fact or omitted or will omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

Edgar Filing: CHESAPEAKE ENERGY CORP - Form 8-K

- 3.6 Financial Statements. The Canaan Financial Statements were prepared in accordance with the applicable published rules and regulations of the SEC with respect thereto and in accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto) and fairly present in all material respects, in accordance with applicable requirements of GAAP, the financial position of Canaan as of their respective dates and the results of operations and the cash flows of Canaan for the periods presented therein.
- 3.7 Capital Structure. The authorized capital stock of Canaan consists of 50,000,000 shares of Canaan Common Stock and 1,000,000 shares of preferred stock, 25,000 of which have been designated as Series A Junior Participating Preferred Stock, par value \$.01. As of April 17, 2002: (a) 4,353,646 shares of Canaan Common Stock were validly issued and outstanding; (b) 500,000 shares of Canaan Common Stock were reserved for issuance pursuant to the Canaan Plans, of which Canaan Stock Options to purchase a total of 470,450 shares of Canaan Common Stock were issued and outstanding; (c) there are no shares of capital stock of Canaan of any class authorized, issued or outstanding other than the Canaan Common Stock; and (d) 578,169 shares of Canaan Common Stock were held by Canaan as treasury stock. Except for changes resulting from the exercise of Canaan Stock Options listed in section 2.4.3 of the Canaan Disclosure Schedule Canaan will notify Parent in writing simultaneously with any change after April 17, 2002, in any of the numbers of securities set forth in the immediately preceding sentence together with a detailed explanation of the event giving rise to such change. Except as described in subpart (a) above, as described in Section 2.4.3 of the Canaan Disclosure Schedule and the Canaan Rights under the Canaan Rights Plan, there are: (i) no outstanding shares of capital stock or other voting securities of Canaan; (ii) no outstanding securities of Canaan or any other Person convertible into or exchangeable or exercisable for shares of capital stock or other voting securities of Canaan; and (iii) no outstanding subscriptions, options, warrants, calls, rights (including preemptive rights, stock appreciation rights, phantom stock rights, conversion rights, commitments, understandings or agreements to which Canaan is a party or by which it is bound) obligating Canaan to issue, deliver, sell, purchase, redeem or acquire shares of capital stock or other securities of Canaan or obligating Canaan to grant, extend or enter into any such subscription, option, warrant, call, right, commitment, understanding or agreement. All outstanding shares of capital stock of Canaan are validly issued, fully paid and nonassessable and not subject to any preemptive right. As of the date hereof there is no, and at the Effective Time there will not be any, stockholder agreement, voting trust or other agreement or understanding to which Canaan is a party or by which it is bound relating to the voting of any shares of the capital stock of Canaan.
- 3.8 Governmental Regulation. Canaan is not subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act, the Investment Company Act of 1940 or any state public utilities laws.
- 3.9 Litigation. There is no litigation, arbitration, investigation or other proceeding of any Governmental Authority or other Person pending or, to the knowledge of Canaan, threatened against Canaan or Canaan's assets which, if adversely determined, could reasonably be expected to

Edgar Filing: CHESAPEAKE ENERGY CORP - Form 8-K

have a Material Adverse Effect on Canaan. Canaan has no knowledge of any facts that are likely to give rise to any litigation, arbitration, investigation or other proceeding of any Governmental Authority or other Person which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect on Canaan. Canaan is not subject to any outstanding injunction, judgment, order, decree or ruling (other than routine oil and gas field regulatory orders and any injunction, judgment, order, decree or ruling that, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect on Canaan). There is no litigation, investigation or other proceeding of any Governmental Authority or other Person pending or, to the knowledge of Canaan, threatened against or affecting Canaan that questions the validity or enforceability of this Agreement or any other document, instrument or agreement to be executed and delivered by Canaan in connection with the transactions contemplated hereby.

- 3.10 Brokers. No broker, finder, investment banker or other Person is or will be, in connection with the transactions contemplated by this Agreement, entitled to any brokerage, finder's or other fee or compensation based on any arrangement or agreement made by or on behalf of Canaan for which Canaan or Parent or Sub will have any obligation or liability.
- 3.11 Absence of Certain Changes or Events. Since December 31, 2001, Canaan has conducted its business only in the ordinary course of business consistent with past practices and, since such date, there has not been any event (financial or otherwise, whether or not in the ordinary course of business), circumstance or condition that: (a) would be reasonably likely to have a Material Adverse Effect on Canaan; or (b) would have required the consent of Parent pursuant to paragraph 5.1 had such event occurred after the date of this Agreement.
- 3.12 Compliance with Laws, Material Agreements and Permits. Canaan is not in violation of, or in default under, and no event has occurred that (with notice or the lapse of time or both) would constitute a violation of or default under: (a) its certificate or articles of incorporation or bylaws or other governing document; (b) any applicable law, rule, regulation, order, writ, decree or judgment of any Governmental Authority; or (c) any Canaan Material Agreement, except (in the case of clause (b) or (c) above) for any violation or default that would not, individually or in the aggregate, have a Material Adverse Effect on Canaan. Canaan has obtained and holds all permits, licenses, variances, exemptions, orders, franchises, approvals and authorizations of all Governmental Authorities necessary for the lawful conduct of its business or the lawful ownership, use and operation of its assets ("Canaan Permits"), except for Canaan Permits which the failure to obtain or hold would not, individually or in the aggregate, have a Material Adverse Effect on Canaan. Canaan is in compliance with the terms of each of the Canaan Permits, except where the failure to comply would not, individually or in the aggregate, have a Material Adverse Effect on Canaan. No investigation or review by any Governmental Authority with respect to Canaan is pending or, to the knowledge of Canaan, threatened, other than those, the outcome of which would not, individually or in the aggregate, have a Material Adverse Effect on Canaan. To the knowledge of Canaan, no party to any Canaan Material Agreement is in material breach of the

Edgar Filing: CHESAPEAKE ENERGY CORP - Form 8-K

terms, provisions and conditions of such Canaan Material Agreement.

- 3.13 No Restrictions. Canaan is not a party to: (a) any agreement, indenture or other instrument that contains restrictions with respect to the payment of dividends or other distributions with respect to its capital stock; (b) any financial arrangement with respect to or creating any indebtedness to any Person (other than indebtedness reflected in the Canaan Financial Statements or indebtedness incurred in the ordinary course of business); (c) any agreement, contract or commitment relating to the making of any advance to, or investment in, any Person; (d) any guaranty or other contingent liability with respect to any indebtedness or obligation of any Person (other than the endorsement of negotiable instruments for collection in the ordinary course of business); or (e) any agreement, contract or commitment limiting in any respect its ability to compete with any Person or otherwise conduct business of any line or nature.
- 3.14 Taxes. During the period beginning on January 1, 1998, and ending on the date hereof, except as expressly provided below:

3.14.1 Canaan and any affiliated, combined or unitary group of which Canaan or any subsidiary is or was a member and any Person that has been acquired by Canaan (a "Canaan Predecessor") has properly completed and timely (taking into account any extensions) filed all federal, state, local and foreign returns, declarations, reports, estimates, information returns and statements ("Returns") required to be filed in respect of any Tax and has timely paid all Taxes that are shown by such Returns to be due and payable and the Returns correctly and accurately (except for one or more matters the aggregate effect of which would not reasonably be expected to have a Material Adverse Effect) reflect the facts regarding the income, business and assets, operations, activities, status or other matters of Canaan required to be shown thereon or any other information required to be shown thereon and are not subject to penalties under Section 6662 of the Code, relating to accuracy-related penalties, or any corresponding provision of applicable state, local or foreign tax law or any predecessor provision. Canaan has established reserves that are adequate in the aggregate for the payment of all material Taxes not yet due and payable with respect to the results of operations of Canaan through the date hereof, and has complied with all applicable laws, rules and regulations relating to the payment and withholding of Taxes and the filing of material federal, state or local Returns except where the failure to comply would not reasonably be expected to have a Material Adverse Effect.

3.14.2 Section 3.14.2 of the Canaan Disclosure Schedule sets forth the last taxable period through which the federal income Tax Returns of Canaan and any Canaan Predecessor have been examined by the IRS. Except to the extent being contested in good faith, all material deficiencies asserted as a result of such examinations and any examination by any applicable state or local taxing authority have been paid, fully settled or adequately provided for in Canaan's most recent audited financial statements. No Tax audits or other administrative proceedings or court proceedings are presently pending with regard to any Taxes for which Canaan would be liable, and no deficiency which has not yet been paid for any such Taxes has been proposed, asserted or assessed against Canaan with respect to any

Edgar Filing: CHESAPEAKE ENERGY CORP - Form 8-K

period which would reasonably be expected to have a Material Adverse Effect. No claim has been asserted by an authority in any jurisdiction where Canaan do not file Returns that any Canaan Company is subject to Tax in that jurisdiction.

3.14.3 Canaan and the Canaan Predecessors have not executed or entered into (or prior to the close of business on the Closing Date will execute or enter into) with the IRS or any taxing authority: (a) any agreement extending the period for assessment or collection of any Tax for which Canaan is liable for any period that is open under the applicable statute of limitations; or (b) a closing agreement pursuant to Section 7121 of the Code or any similar provision of state or local income tax law that relates to Canaan for the current or any future taxable period. Canaan and the Canaan Predecessors have not made an election under Section 341(f) of the Code or agreed to have Section 341(f)(2) of the Code apply to any disposition of a subsection (f) asset (as such term is defined in Section 341(f)(4) of the Code) owned by Canaan. Canaan is not a party to, is not bound by and has no obligation under any tax sharing agreement or similar agreement or arrangement. Canaan is not a party to any agreement or other arrangement that would result separately or in the aggregate in the payment of any "excess parachute payments" within the meaning of Section 280G of the Code.

3.14.4 There are no Liens for Taxes (other than for current Taxes not yet due and payable) on the assets of Canaan.

3.14.5 Canaan has never been a member of an "affiliated group of corporations" within the meaning of Section 1504 of the Code, other than as a common parent corporation.

3.14.6 After the date hereof, no election which is inconsistent with past practices with respect to Taxes will be made by Canaan without the written consent of Parent.

3.14.7 None of the assets of Canaan are property that is required to be treated as being owned by any other Person pursuant to the "safe harbor lease" provisions of former Section 168(f)(8) of the Code.

3.14.11 Canaan and the Canaan Predecessors have not had a permanent establishment in any foreign country, as defined in any applicable tax treaty or convention between the United States and such foreign country.

3.14.12 Section 3.14.12 of the Canaan Disclosure Schedule identifies each arrangement to which Canaan is currently a party and which is a partnership for federal income tax purposes and which was required to file an income tax return for a taxable year of such partnership which ended in 2001 (taking into account any election which permitted such arrangement not to file a return).

3.14.13 Canaan did not have an excess loss account in any subsidiary which had on December 31, 2001, assets with a fair market value in excess of \$500,000.

3.14.14 Canaan is in compliance with all applicable laws, rules, regulations and orders applicable to the Oil and Gas Interests to the extent pertaining to escheatment or similar laws affecting the payment of revenues except where the failure to comply would not reasonably be

Edgar Filing: CHESAPEAKE ENERGY CORP - Form 8-K

expected to have a Material Adverse Effect on Canaan.

3.15 Employee Benefit Plans.

3.15.1 Section 3.15.1 of the Canaan Disclosure Schedule lists:

(i) the "employee benefit plans" (within the meaning of Section 3(3) of ERISA), which Canaan maintains or sponsors or with respect to which Canaan has any material liability (actual or contingent, primary or secondary); and (ii) all other (A) director or employee compensation or benefit plans, programs or arrangements, (B) stock purchase, stock option, severance, bonus, incentive and deferred compensation plans, (C) written employment or consulting contracts, and (D) change-in-control agreements which Canaan maintains, sponsors or is a party to or with respect to which Canaan has or could have any material liability (such plans, programs, arrangements, contracts and agreements are collectively referred to herein as the "Canaan Employee Benefit Plans").

3.15.2 (i) The reserves reflected in the balance sheet contained in the Canaan Financial Statements for the period ending December 31, 2001 (together with all footnotes attached thereto, the "Balance Sheet") relating to any unfunded benefits under the Canaan Employee Benefit Plans were adequate in the aggregate under GAAP as of December 31, 2001; and (ii) Canaan has not incurred any material unfunded liability in respect of any such Canaan Employee Benefit Plans since that date.

3.15.3 There are no suits, investigations or claims (other than undisputed claims for benefits) pending or, to the knowledge of Canaan threatened (or any basis therefor) relating to or for benefits under the Canaan Employee Benefit Plans.

3.15.4 Each Canaan Employee Benefit Plan has been established and administered in all material respects in accordance with its terms, and in all material respects in compliance with the applicable provisions of ERISA, the Code and other applicable laws, rules and regulations and each Canaan Employee Benefit Plan which is intended to be qualified within the meaning of Code Section 401(a) is so qualified.

3.15.5 (i) No Canaan Employee Benefit Plan currently has any "accumulated funding deficiency" as such term is defined in ERISA Section 302 and Code Section 412 (whether or not waived); (ii) no event or condition exists or is expected to occur which is a reportable event within the meaning of ERISA Section 4043 with respect to any Canaan Employee Benefit Plan that is subject to Title IV of ERISA and with respect to which the 30-day notice requirement has not been waived; (iii) each member of Canaan's Controlled Group (as defined below) has made all required premium payments when due to the Pension Benefit Guaranty Corporation ("PBGC"); (iv) neither Canaan nor any member of its Controlled Group is subject to any liability to the PBGC for any Canaan Employee Benefit Plan termination; (v) no amendment has occurred which requires Canaan or any member of its Controlled Group to provide security pursuant to Code Section 401(a)(29); and (vi) neither Canaan nor any member of its Controlled Group has engaged in a transaction which is reasonably likely to subject it to liability under ERISA Section 4069. For the purposes of

Edgar Filing: CHESAPEAKE ENERGY CORP - Form 8-K

this paragraph 3.15, the term "Controlled Group" means all corporations, trades or businesses which, together with Canaan, are treated as a single employer under Section 414 of the Code.

3.15.6 No Canaan Employee Benefit Plan is a multiemployer plan (within the meaning of Section 3(37) of ERISA) and neither Canaan nor any member of its Controlled Group has incurred or is reasonably likely to incur any liability to any multiemployer plan nor has or is engaged in a transaction which is reasonably expected to subject Canaan or any member of its Controlled Group to any liability under ERISA Section 4212(c).

3.15.7 Each Canaan Employee Benefit Plan described in subpart 3.15.1(i) above can be unilaterally terminated at any time by Canaan without material liability to Canaan.

3.16 Environmental Matters.

3.16.1 (i) The reserves reflected in the Canaan Financial Statements relating to environmental matters were adequate under GAAP as of December 31, 2001, and Canaan has not incurred any liability in respect of any environmental matter since that date which would reasonably be expected to have a Material Adverse Effect; and (ii) the Canaan SEC Documents include all information relating to environmental matters required to be included therein under the rules and regulations of the SEC applicable thereto.

3.16.2 To the knowledge of Canaan, except for any matters which would not reasonably be expected to have a Material Adverse Effect: (i) each of Canaan and Canaan Predecessors has conducted its business and operated its assets, and is conducting its business and operating its assets, in compliance with all Environmental Laws; (ii) Canaan has not been notified by any Governmental Authority that any of the operations or assets of Canaan is the subject of any investigation or inquiry by any Governmental Authority evaluating whether any material remedial action is needed to respond to a release of any Hazardous Material or to the improper storage or disposal (including storage or disposal at offsite locations) of any Hazardous Material; (iii) neither Canaan nor any other Person has filed any notice under any federal, state or local law indicating that (A) Canaan or any Canaan Predecessor is responsible for the improper release into the environment, or the improper storage or disposal of any Hazardous Material, or (B) any Hazardous Material is improperly stored or disposed of upon any property of Canaan or any Canaan Predecessor; (iv) Canaan does not have any contingent liability in connection with a release into the environment at or on the property now or previously owned or leased by Canaan or any Canaan Predecessor, or the storage or disposal of any Hazardous Material; (v) neither Canaan or any of the Canaan Predecessor has received any claim, complaint, notice, inquiry or request for information which remains unresolved as of the date hereof with respect to any alleged violation of any Environmental Law or regarding potential liability under any Environmental Law relating

Edgar Filing: CHESAPEAKE ENERGY CORP - Form 8-K

to operations or conditions of any facilities or property owned, leased or operated by Canaan or any Canaan Predecessor; (vi) there are no sites, locations or operations at which Canaan is currently undertaking, or has completed, any remedial or response action relating to any such disposal or release, as required by Environmental Laws; and (vii) all underground storage tanks and solid waste disposal facilities owned or operated by Canaan are used and operated in material compliance with Environmental Laws.

- 3.17 Vote Required. The affirmative vote of the holders of a majority of the outstanding shares of Canaan Common Stock voting as one class is the only vote of the holders of any class or series of Canaan capital stock or other voting securities necessary to approve this Agreement and the Merger. The affirmative vote of the holders of Canaan capital stock, or any of them, is not necessary to approve any of the Transaction Documents other than this Agreement or to consummate any transaction other than the Merger.
- 3.18 Canaan Board of Directors Actions. The board of directors of Canaan has by requisite vote of all directors present: (a) determined that the Merger is advisable; (b) approved the Merger in accordance with the provisions of Section 1081 of the OGCA and the transactions contemplated by this Agreement; and (c) recommended the approval of this Agreement and the Merger by the holders of Canaan Common Stock and directed that the Merger be submitted for consideration by the holders of Canaan Common Stock at a meeting of such stockholders contemplated by paragraph 5.4 hereof.
- 3.19 Employment Contracts and Benefits. Except as otherwise provided for in any Canaan Employee Benefit Plan: (a) Canaan is not subject to or obligated under any consulting, employment, severance, termination or similar arrangement, any employee benefit, incentive or deferred compensation plan with respect to any Person, or any bonus, profit sharing, pension, stock option, stock purchase or similar plan or other arrangement or other fringe benefit plan entered into or maintained for the benefit of employees or any other Person; and (b) no employee of Canaan, the Canaan Predecessor or any other Person owns, or has any rights granted by Canaan to acquire, any interest in any of the assets or business of Canaan. Section 3.19 of the Canaan Disclosure Schedule sets forth all indebtedness, promissory notes and other obligations owing by any employee, officer or non-employee director of Canaan including, without limitation, by any employee, officer or non-employee director, the principal amount thereof, the interest rate applicable thereto, any collateral securing payment thereof, the payment terms and the maturity date thereof.
- 3.20 Labor Matters. No employees of Canaan are represented by any labor organization. No labor organization or group of employees of Canaan has made a demand for recognition or certification as a union or other labor organization, and there are no representation or certification proceedings or petitions seeking a representation proceeding presently pending or threatened in writing to be brought or filed with the National Labor Relations Board or any other labor relations tribunal or authority. There are no organizing activities involving Canaan pending with any labor organization or group of employees of Canaan. Canaan is in material compliance with all laws, rules, regulations and orders relating to the employment of labor, including all such laws,

Edgar Filing: CHESAPEAKE ENERGY CORP - Form 8-K

rules, regulations and orders relating to wages, hours, collective bargaining, discrimination, civil rights, safety and health, workers' compensation and the collection and payment of withholding or social security Taxes and similar Taxes, except where the failure to comply would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Canaan.

- 3.21 Insurance. Each of the insurance policies currently maintained by Canaan is described in Section 3.21 of the Canaan Disclosure Schedule. Canaan maintains, and through the Closing Date will maintain, such insurance in full force and effect. Canaan may terminate each of its insurance policies or binders at or after the Closing and will incur no penalties or other material costs in doing so other than any short rate premium adjustments. None of such policies or binders was obtained through the use of false or misleading information or the failure to provide the insurer with all information requested in order to evaluate the liabilities and risks insured. There is no material default with respect to any provision contained in any such policy or binder, nor has Canaan failed to give any notice or present any claim under any such policy or binder in due and timely fashion. There are no billed but unpaid premiums past due under any such policy or binder. There (a) are no outstanding claims under any such policies or binders and, to the knowledge of Canaan, there has not occurred any event that might reasonably form the basis of any claim against or relating to Canaan that is not covered by any of such policies or binders; (b) is no notice of cancellation or non-renewal of any such policies or binders which has been received; and (c) no performance bonds outstanding with respect to Canaan.
- 3.22 Intangible Property. There are no material trademarks, trade names, patents, service marks, brand names, computer programs, databases, industrial designs, copyrights or other intangible property that are necessary for the operation, or continued operation, of the business of Canaan or for the ownership and operation, or continued ownership or operation, of any of Canaan's assets, for which Canaan does not hold valid and continuing authority in connection with the use thereof. Section 3.22 of the Canaan Disclosure Schedule lists each seismic agreement to which Canaan is a party.
- 3.23 Title to Assets. Canaan has Defensible Title subject only to Permitted Encumbrances to: (1) all Oil and Gas Interests of Canaan included or reflected in the Ownership Interests and included in section 1.58 of the Canaan Disclosure Schedule as having proved reserves; (2) all other Oil and Gas Interests of Canaan as listed in section 3.23 of the Canaan Disclosure Schedule detailing the type of interest and general location; (3) all other assets owned by Canaan. Each Oil and Gas Interest included or reflected in the Ownership Interests entitles Canaan to receive not less than the undivided Net Revenue Interest set forth in (or derived from) the Ownership Interests of all Hydrocarbons produced, saved and sold from or attributable to such Oil and Gas Interest, and the portion of such costs and expenses of operation and development of such Oil and Gas Interest that is borne or to be borne by Canaan is not greater than the undivided Working Interest set forth in (or derived from) the Ownership Interests.
- 3.24 Opinion of Financial Advisor. The board of directors of Canaan has received the opinion of CIBC World Markets, Inc., that, as of such

Edgar Filing: CHESAPEAKE ENERGY CORP - Form 8-K

date, the Per Share Merger Consideration to be received by the holders of Canaan Common Stock is fair to such holders from a financial point of view.

- 3.25 Oil and Gas Operations. (a) All wells included in the Oil and Gas Interests of Canaan have been drilled and (if completed) completed, operated and produced in accordance with generally accepted oil and gas field practices and in compliance with applicable oil and gas leases and applicable laws, rules, regulations, except where the failure or violation would not reasonably be expected to have a Material Adverse Effect on Canaan; and (b) proceeds from the sale of Hydrocarbons produced from Canaan's Oil and Gas Interests are being received by Canaan in a timely manner and are not being held in suspense for any reason (except for amounts, individually or in the aggregate, not in excess of \$250,000 held in suspense in the ordinary course of business).
- 3.26 Financial and Commodity Hedging. Section 3.26 of the Canaan Disclosure Schedule accurately summarizes the outstanding Hydrocarbon and financial hedging positions of Canaan (including fixed price controls, collars, swaps, caps, hedges and puts) as of the date reflected on the Canaan Disclosure Schedule. After the date hereof, Canaan has not and will not enter into, terminate or modify any hedging positions without Parent's prior written consent, which will not be unreasonably withheld.
- 3.27 Books and Records. All books, records and files of Canaan (including those pertaining to Canaan's Oil and Gas Interests, wells and other assets, the production, gathering, transportation and sale of Hydrocarbons, and corporate, accounting, financial and employee records): (a) have been prepared, assembled and maintained in accordance with usual and customary policies and procedures; and (b) fairly and accurately reflect the ownership, use, enjoyment and operation by Canaan of their respective assets.
- 3.28 Other Entities. Canaan has no direct or indirect equity interest in any corporation, partnership, limited liability company, joint venture, business association or other entity (other than joint venture, joint operating or ownership arrangements related to oil and gas activities entered into in the ordinary course of business or other partnerships that, individually or in the aggregate, are not material to the operations or businesses of Canaan).
- 3.29 Account Information. Section 3.29 of the Canaan Disclosure Schedule contains an accurate list of the names and addresses of every bank and other financial institution in which Canaan maintains an account (whether checking, savings or otherwise), lock box or safe deposit box, and the account numbers and Persons having signature authority or legal access thereto.
- 3.30 Powers of Attorney. There are no outstanding powers of attorney relating to or affecting Canaan.
- 3.31 Plugging Status. All wells operated by Canaan or any Canaan Predecessor that have been permanently plugged and abandoned have been so plugged and abandoned in accordance with all applicable requirements of each Governmental Authority having jurisdiction over

Edgar Filing: CHESAPEAKE ENERGY CORP - Form 8-K

Canaan and the Oil and Gas Interests except where failure to comply would not reasonably be expected to have a Material Adverse Effect.

- 3.32 No Knowledge of Breach of Representations. Canaan has no actual knowledge that any of the representations of Parent or Sub contained in this Agreement are untrue as of the date of this Agreement. If and to the extent that Canaan has any such knowledge as of the date of this Agreement, Canaan will not assert any remedy under this Agreement for breach of such representation (including, but not limited to, any right to not close the Merger due to a failure to satisfy the condition to Closing set forth in paragraph 6.3.1 arising solely as a result of any such breach).
- 3.33 Proxy Statement. None of the information supplied or to be supplied by Canaan for inclusion or incorporation by reference in the Proxy Statement and any amendments or supplements thereto will, at the time the Proxy Statement or any amendment or supplement thereto is first mailed to stockholders of Canaan, at the time such stockholders vote on approval and adoption of this Agreement and at the Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. If at any time prior to Effective Time any event with respect to Canaan or Canaan's officers and directors occurs which is required to be described in an amendment of, or a supplement to, the Proxy Statement, such event will be so described, and such amendment or supplement will be promptly filed with the SEC and, as required by law, disseminated to the stockholders of Canaan. The Proxy Statement will comply as to form in all material respects with the provisions of the Exchange Act.
- 3.34 Equipment. All equipment constituting part of the Oil and Gas Interests operated by Canaan has been installed, maintained, and operated by Canaan as a prudent operator in accordance with oil and gas industry standards, and is currently in a state of repair so as to be adequate for normal operations by Canaan, except where the failure to do so would not, individually or in the aggregate, have a Material Adverse Effect on Canaan.
- 3.35 Current Commitments. Section 3.35 of the Canaan Disclosure Schedule contains a true and reasonably complete list as of April 17, 2002, of all oral or written commitments for Canaan's portion of capital expenditures of more than \$50,000 with respect to any of the Oil and Gas Interests for which all of the activities anticipated in such commitments are not reasonably expected to have been completed by the Effective Time. Except for those set forth in Section 3.35 of the Canaan Disclosure Schedule or as otherwise permitted by paragraph 5.1.10 of this Agreement, as of Closing there will be no oral or written commitments for capital expenditures with respect to the Oil and Gas Interests.
- 3.36 Payout Balances, Gas Imbalances and Take or Pay. To the knowledge of Canaan the Payout Balance for each well owned and operated by Canaan is properly reflected in Section 3.36 of the Canaan Disclosure Schedule as of the respective date(s) shown thereon. To the knowledge of Canaan, the Payout Balance for any such third-party operated well in which Canaan owns an interest is properly reflected in Section 3.36

Edgar Filing: CHESAPEAKE ENERGY CORP - Form 8-K

of the Canaan Disclosure Schedule as of the respective date(s) shown thereon. "Payout Balance(s)" means the status, as of the dates of the Canaan's calculations, of the recovery by Canaan or a third party of a cost amount specified in the contract relating to a well out of the revenue from such well where the Net Revenue Interest of Canaan therein will be reduced or the Working Interest therein will be increased when such amount has been recovered. With respect to the Oil and Gas Interests (a) there are no production, transportation or processing imbalances existing with respect to Canaan or the Oil and Gas Interests, and (b) Canaan have received no deficiency payments under gas contracts for which any party has a right to take deficiency gas from Canaan, nor has Canaan received any payments for production which are subject to refund or recoupment out of future production.

3.37 Full Disclosure. The representations, warranties or other statements by Canaan in this Agreement or in the Canaan Disclosure Schedule or Exhibits hereto or any documents distributed generally to Canaan's stockholders, taken as a whole, do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading.

3.38 Certain Agreements. There are no contracts, agreements, arrangements or understandings to which Canaan is a party which create, govern or purport to govern the right of another party (other than Parent or Sub) to acquire Canaan.

3.39 Affiliate Transactions. There are no transactions between Canaan and any of Canaan's Affiliates, which are required to be disclosed in the Canaan SEC Documents which are not disclosed.

4. Parent and Sub Representations and Warranties. Parent and Sub hereby jointly and severally represent and warrant to Canaan that:

4.1 Organization and Standing. Each of Parent and Sub is a corporation duly formed, validly existing and in good standing under the laws of the State of Oklahoma and has the corporate power and authority to own its property and to carry on its business as such business is now being conducted.

4.2 Authority and Enforceability. Each of Parent and Sub has the requisite corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action on the part of Parent and Sub, including approval by the respective boards of directors of Parent and Sub and by Parent as the sole stockholder of Sub, and no other corporate proceedings on the part of Parent or Sub are necessary to authorize the execution or delivery of this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by each of Parent and Sub and (with respect to consummation of this Agreement and the Merger, assuming that this Agreement constitutes a valid and binding obligation of Canaan) constitutes a valid and binding obligation of each of Parent and Sub, enforceable against Parent and Sub in accordance with its terms.

Edgar Filing: CHESAPEAKE ENERGY CORP - Form 8-K

- 4.3 No Restriction. Neither Parent nor Sub is subject to any order, judgment or decree, or the subject of any litigation, claim or proceeding, pending or threatened, or any other restriction of any kind or character known to either Parent or Sub, which would affect its ability to carry out the transactions contemplated by this Agreement.
- 4.4 Consents and Approvals. No consent, approval, order or authorization of, registration, declaration, or filing with, or permit from, any Governmental Authority is required by or with respect to Parent or Sub in connection with the execution and delivery of this Agreement by Parent or Sub or the consummation by Parent and Sub of the transactions contemplated hereby except for the following: (a) any such consent, approval, order, authorization, registration, declaration, filing or permit which the failure to obtain or make would not, individually or in the aggregate, have a Material Adverse Effect; (b) the filing of the Certificate of Merger with the Secretary of State of Oklahoma pursuant to the provisions of the OGCA; (c) the filing, if necessary, of a pre-merger notification report by Parent under the HSR Act and the expiration or termination of the applicable waiting period; (d) the filing with the SEC of the Proxy Statement and such reports under Section 13(a) of the Exchange Act and such other compliance with the Exchange Act and the Securities Act and the rules and regulations of the SEC thereunder as may be required in connection with this Agreement and the transactions contemplated hereby and the obtaining from the SEC of such orders as may be so required; (e) such filings and approvals as may be required by any applicable state securities, "blue sky" or takeover laws or Environmental Laws; and (f) the valid approval of t