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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from continuous disclosure and insider reporting requirements in connection with an arrangement involving exchangeable shares

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 87, 91, 119(2)

Securities Rules, B.C. Reg. 194/97, ss. 144, 145, 149, 184(2)

**IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA,
BRITISH COLUMBIA, SASKATCHEWAN, MANITOBA, ONTARIO,
QUEBEC, NEW BRUNSWICK, PRINCE EDWARD ISLAND, NOVA
SCOTIA, NEWFOUNDLAND AND LABRADOR, THE NORTHWEST
TERRITORIES AND THE YUKON TERRITORY**

AND

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

AND

**IN THE MATTER OF STORM ENERGY INC., STORM ENERGY LTD.,
FOCUS ENERGY TRUST, FET RESOURCES LTD., AND FET
EXCHANGE CO LTD.**

MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (collectively, the "Decision Makers") in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Nova Scotia, the Yukon Territory and the Northwest Territories (the "Jurisdictions") has received an application from Focus Energy Trust (the "Trust"), Storm Energy Inc. ("Storm"), FET Resources Ltd. ("AcquisitionCo"), Storm Energy Ltd. ("ExploreCo"), and FET ExchangeCo Ltd. ("ExchangeCo") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirements contained in the Legislation:
 - 1.1 to be registered to trade in a security (the "Registration Requirement") and to file a preliminary prospectus and a prospectus and receive receipts therefore (the "Prospectus Requirement") in the Jurisdictions, except British Columbia (the "Registration and Prospectus Jurisdictions") shall

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not apply to certain trades of securities to be made in connection with a proposed plan of arrangement under section 193 of the *Business Corporations Act* (Alberta) (the "ABCA") involving the Trust, AcquisitionCo, Storm, ExploreCo, ExchangeCo and the security holders of Storm; and

- 1.2 with respect to AcquisitionCo (or its successor on amalgamation with Storm ("AmalgamationCo")) in those Jurisdictions in which it becomes a reporting issuer or the equivalent under the Legislation, to issue a press release and file a report with the Participating Jurisdictions upon the occurrence of a material change, file an annual report, where applicable, file interim financial statements and audited annual financial statements with the Participating Jurisdictions and deliver such statements to the security holders of AmalgamationCo, file and deliver an information circular or make an annual filing with the Participating Jurisdictions in lieu of filing an information circular, file an annual information form and provide management's discussion and analysis of financial condition and results of operations (the "Continuous Disclosure Requirements") shall not apply to AcquisitionCo or AmalgamationCo;
2. AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System") the Alberta Securities Commission is the principal regulator for this application;
3. AND WHEREAS the Trust, Storm, AcquisitionCo, ExploreCo and ExchangeCo have represented to the Decision Makers that:
 - 3.1 Storm is a corporation organized and subsisting under the ABCA;
 - 3.2 Storm is engaged in the exploration for, and the acquisition, development and production of, oil and natural gas in the Provinces of Alberta and British Columbia;
 - 3.3 the head and principal offices of Storm are located at 3300, 205 - 5th Avenue S.W., Calgary, Alberta, T2P 2V7 and its registered office is located at 1000, 440 – 2nd Avenue S.W., Calgary, Alberta, T2P 5E5;
 - 3.4 the authorized capital of Storm presently consists of an unlimited number of common shares ("Common Shares") and an unlimited number of first preferred shares, second preferred shares and third preferred shares, each issuable in series;

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- 3.5 as at July 8, 2002, 27,917,758 Common Shares and no preferred shares were issued and outstanding, and options ("Options") to purchase 2,045,000 Common Shares were outstanding;
- 3.6 on December 15, 2000, Storm implemented a normal course issuer bid to purchase in the period to December 19, 2001 up to 5% of its issued and outstanding Common Shares. A total of 292,000 Common Shares for a total cash consideration of \$1,661,365 were purchased under this arrangement. The normal course issuer bid was renewed for the period ending December 19, 2002;
- 3.7 the Common Shares are presently listed on the Toronto Stock Exchange (the "TSX");
- 3.8 Storm is a reporting issuer or the equivalent in the Provinces of British Columbia, Alberta, Manitoba, Ontario and Quebec and has been for more than 12 months;
- 3.9 Storm has filed all the information that it has been required to file as a reporting issuer in each of the Provinces of British Columbia, Alberta, Manitoba, Ontario and Quebec and is not in default of the securities legislation in any of these jurisdictions;
- 3.10 the Trust is an open-end unincorporated investment trust governed by the laws of the Province of Alberta and created pursuant to a trust indenture dated July 15, 2002 between Storm and Valiant Trust Company, as trustee (the "Trust Indenture");
- 3.11 the Trust was established for the purpose of: (a) investing in shares of AcquisitionCo and acquiring the Notes pursuant to the Arrangement; (b) acquiring the net profits interest from AcquisitionCo; (c) acquiring or investing in other securities of AmalgamationCo and in the securities of any other entity including without limitation bodies corporate, partnerships or trusts, and borrowing funds or otherwise obtaining credit for that purpose; (d) disposing of any part of the property of the Trust, including, without limitation, any securities of AmalgamationCo; (e) temporarily holding cash and investments for the purposes of paying the expenses and the liabilities of the Trust, making other permitted investments as contemplated by the Trust Indenture, paying amounts payable by the Trust in connection with the redemption of any trust units ("Trust Units"), and making distributions to Unitholders; and (f) paying costs, fees and expenses associated with the foregoing purposes or incidental thereto;

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- 3.12 the Trust was established with nominal capitalization and currently has only nominal assets and no liabilities and the only activity which will initially be carried on by the Trust will be the holding of securities of the AmalgamationCo;
- 3.13 the Trust is authorized to issue an unlimited number of Trust Units and an unlimited number of special voting rights ("Special Voting Rights");
- 3.14 as at July 15, 2002, there was one Trust Unit issued and outstanding and owned by Storm and there were no Special Voting Rights outstanding;
- 3.15 the Trust has received conditional approval from the TSX for the listing on the TSX of the Trust Units to be issued in connection with the Arrangement subject to, among other things, completion of the Arrangement;
- 3.16 the Trust is not a reporting issuer in any of the Jurisdictions;
- 3.17 AcquisitionCo was incorporated pursuant to the ABCA on July 12, 2002;
- 3.18 the head and principal offices of AcquisitionCo are located at Suite 3250, 205 - 5th Avenue S.W., Calgary, Alberta, T2P 2V7 and its registered office is located at 1400, 350 – 7th Avenue S.W., Calgary, Alberta, T2P 3N9;
- 3.19 AcquisitionCo was incorporated to participate in the Arrangement by acquiring, directly or indirectly, Common Shares of Storm;
- 3.20 the authorized capital of AcquisitionCo presently consists of an unlimited number of common shares and an unlimited number of exchangeable shares, issuable in series. Prior to the Arrangement, AcquisitionCo will amend its Articles to create Series A exchangeable shares (the "Exchangeable Shares") of which an unlimited number will be authorized;
- 3.21 as at July 15, 2002, one (1) common share of AcquisitionCo was issued and outstanding and owned by the Trust;
- 3.22 AcquisitionCo is not a reporting issuer in any of the Jurisdictions;
- 3.23 ExploreCo was incorporated pursuant to the ABCA on July 10, 2002 and has not carried on any active business since incorporation;

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- 3.24 the head and principal offices of ExploreCo are located at Suite 3300, 205 – 5th Ave. S.W., Calgary, Alberta, T2P 2V7 and its registered office is located at Suite 3300, 421- 7th Ave. S.W., Calgary, Alberta, T2P 4K9;
- 3.25 pursuant to the Arrangement, ExploreCo will acquire, directly and indirectly, certain oil and gas assets from Storm. Upon completion of the Arrangement, ExploreCo will be engaged in the exploration for, and acquisition, development and production of, oil and natural gas reserves, primarily in the Western Canada;
- 3.26 the authorized capital of ExploreCo consists of an unlimited number of common shares ("ExploreCo Shares") and an unlimited number of first preferred shares, second preferred shares and third preferred shares, issuable in series;
- 3.27 as at July 15, 2002, one ExploreCo Share and no preferred shares were issued and outstanding. Storm has also reserved a total of 3,000,000 ExploreCo Shares for issuance pursuant to outstanding stock options;
- 3.28 ExploreCo has received conditional approval from the TSX for the listing on the TSX of the ExploreCo Shares to be issued in connection with the Arrangement subject to, among other things, completion of the Arrangement. The ExploreCo Shares issuable from time to time will also be listed on the TSX, subject to receipt of final approval from the TSX;
- 3.29 ExploreCo is not a reporting issuer in any of the Jurisdictions. Upon completion of the Arrangement, ExploreCo will become a reporting issuer in certain of the Jurisdictions;
- 3.30 the Arrangement will be effected by way of a plan of arrangement under section 193 of the ABCA which will require approval by (i) not less than 2/3 of the votes cast by the holders of Common Shares and the holders of Options (present in person or represented by proxy), each voting separately as a class, at a meeting to be held on August 20, 2002 (the "Meeting") and thereafter, (ii) the approval of the Court of Queen's Bench of Alberta (the "Court");
- 3.31 the management information circular (the "Information Circular") mailed to the holders of Common Shares and the holders of Options in connection with the Meeting conforms with the ABCA, applicable securities laws and an interim order of the Court and contains prospectus-level disclosure concerning the respective business, affairs and securities

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of the Trust, Storm, AmalgamationCo and ExploreCo, and a detailed description of the Arrangement;

3.32 the Arrangement provides for a transaction where, commencing at the effective time of the Arrangement (the "Effective Time"), the events set out below shall be deemed to occur in the following order:

3.32.1 the Common Shares and Options held by Securityholders who validly exercise their rights of dissent pursuant to the ABCA, as modified by the Interim Order, shall, as of the Effective Time, be deemed to have been transferred to Storm and be cancelled and cease to be outstanding and, as of the Effective Time, such dissenting Securityholders shall cease to have any rights as securityholders of Storm other than the right to be paid the fair value of their Common Shares or Options;

3.32.2 subject to paragraph 3.32.4, each issued and outstanding Common Share (other than Option Common Shares, as defined below) will be transferred to AcquisitionCo in exchange for:

- (A) one (1) Series B exchangeable note of AcquisitionCo (a "Series B Note"); and
- (B) in accordance with the election or deemed election of the holder of such Common Share (other than a non-resident or tax-exempt Shareholder), one (1) unsecured promissory note of AcquisitionCo (a "Note") or one (1) Exchangeable Share and, in the case of a non-resident or tax-exempt Shareholder, one (1) Note;

3.32.3 each Note shall be transferred by the holder thereof to the Trust in exchange for Trust Units on the basis of one (1) Trust Unit for each Note held;

3.32.4 notwithstanding paragraph 3.32.2, the Common Shares held by holders ("Option Shareholders") who acquired such shares on the exercise of an option in circumstances such that subsection 7(1.1) or (8) of the *Income Tax Act* (Canada) applied ("Option Common Shares") may, at the election of the holder, be dealt with in the following manner:

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a) each Option Shareholder shall transfer such number of Option Common Shares to AcquisitionCo as is equal to the product of:

- i) the quotient obtained by dividing the fair market value of ExploreCo following the arrangement (as determined by ExploreCo) by the weighted average trading price of the Common Shares immediately prior to the Effective Date (the "Ratio"); and
- ii) the total number of Option Common Shares held by the Option Shareholder;

in exchange for such number of Series B Notes (rounded down to the nearest whole Series B Note) as is equal to the product of:

- iii) the total number of Option Common Shares so transferred; and
- iv) the reciprocal of the Ratio;

b) the remaining Option Common Shares held by an Option Shareholder after the operation of paragraph 3.32.4(a) shall be transferred to AcquisitionCo in exchange for, in accordance with the election or deemed election of such Option Shareholder:

- i) Trust Units issued and delivered by the Trust; or
- ii) Exchangeable Shares issued and delivered by AcquisitionCo;

in each case for such number of Trust Units or Exchangeable Shares, as the case may be, (rounded down to the nearest whole Trust Unit or Exchangeable Share) as is equal to the product of:

- iii) the total number of Option Common Shares so exchanged for Trust Units or Exchangeable Shares, as the case may be; and

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- iv) a fraction (the "Option Ratio"), the numerator of which is one (1) and the denominator of which is one (1) minus the Ratio;
 - c) AcquisitionCo shall, contemporaneously with the exchange of Option Common Shares pursuant to paragraph 3.32.4(b), issue and deliver to the Trust such number of Notes as is equal to the number of Trust Units required to be delivered by AcquisitionCo pursuant to paragraph 3.32.4(b) in consideration for the delivery of that number of Option Common Shares exchanged for Trust Units pursuant to paragraph 3.32.4(b);
 - d) the Trust shall, contemporaneously with the exchange of Option Common Shares pursuant to paragraph 3.32.4(b), deliver to the Option Shareholders such number of Trust Units as is determined pursuant to paragraph 3.32.4(b) in consideration for issuance of the Notes by AcquisitionCo to the Trust pursuant to paragraph 3.32.4(c); and
- 3.32.5 each of the steps set out in paragraphs 3.32.4(b), 3.32.4(c) and 3.32.4(d) shall, notwithstanding anything else contained herein, be deemed to happen contemporaneously with each other;
- 3.32.6 all unexercised Options (other than Options held by dissenting Optionholders) will be cancelled and the holders thereof will be entitled to receive an amount per Option from Storm equal to the difference between the exercise price of such Option and the weighted average trading price of the Common Shares as at the date preceding the date of the Meeting;
- 3.32.7 Storm and AcquisitionCo will amalgamate to form AmalgamationCo; and
- 3.32.8 each Series B Note will be transferred by the holder to AmalgamationCo in exchange for one ExploreCo Share.
- 3.33 AmalgamationCo will become a reporting issuer under the Legislation in British Columbia, Alberta, Manitoba, Ontario and Quebec, and will be subject to the Continuous Disclosure Requirements in such Jurisdictions;
- 3.34 the Trust will become a reporting issuer under the Legislation in British Columbia, Alberta, Ontario, and Quebec and will be subject to the Continuous Disclosure Requirements in such Jurisdictions;

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- 3.35 ExploreCo will become a reporting issuer under the Legislation in British Columbia, Alberta, Ontario, and Quebec and will be subject to the Continuous Disclosure Requirements in such Jurisdictions;
- 3.36 the Exchangeable Shares will provide a holder with a security having economic, ownership and voting rights which are, as nearly as practicable, equivalent to those of the Trust Units;
- 3.37 under the terms of the Exchangeable Shares and certain rights to be granted in connection with the Arrangement, holders of Exchangeable Shares will be able to exchange them at their option for Trust Units;
- 3.38 under the terms of the Exchangeable Shares and certain rights to be granted in connection with the Arrangement, the Trust, ExchangeCo or AmalgamationCo will redeem, retract or otherwise acquire Exchangeable Shares in exchange for Trust Units in certain circumstances;
- 3.39 in order to ensure that the Exchangeable Shares remain the voting and economical equivalent of the Trust Units prior to their exchange, the Arrangement provides for:
 - 3.39.1 a voting and exchange trust agreement to be entered into among the Trust, AmalgamationCo, ExchangeCo and Valiant Trust Company (the "Voting and Exchange Agreement Trustee") which will, among other things, (i) grant to the Voting and Exchange Agreement Trustee, for the benefit of holders of Exchangeable Shares, the right to require the Trust or ExchangeCo to exchange the Exchangeable Shares for Trust Units, and (ii) trigger automatically the exchange of the Exchangeable Shares for Trust Units upon the occurrence of certain specified events;
 - 3.39.2 the deposit by the Trust of a Special Voting Right with the Voting and Exchange Agreement Trustee which will effectively provide the holders of Exchangeable Shares with voting rights equivalent to those attached to the Trust Units; and
 - 3.39.3 a support agreement to be entered into between the Trust and AmalgamationCo which will, among other things, restrict the Trust from distributing additional Trust Units or rights to subscribe therefore or other property or assets to all or substantially all of the holders of Trust Units, or changing the

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rights, privileges or other terms of the Trust Units, unless the same or an economically equivalent change to the Exchangeable Shares (or in the rights of the holders thereof) is made simultaneously or approval of holders of Exchangeable Shares is obtained;

- 3.40 the steps under the Arrangement, the terms of the Exchangeable Shares and the exercise of certain rights provided for in connection with the Arrangement and the Exchangeable Shares involve a number of trades of potential trades of Common Shares, ExploreCo Shares, Trust Units, Exchangeable Shares, Notes, Series B Notes, Options, the Special Voting Right, certain rights to acquire Trust Units and Exchangeable Shares under the Arrangement and rights to otherwise make a trade of a security that was derived from the Arrangement (collectively, the "Trades");
- 3.41 there are no exemptions from the Registration Requirement or the Prospectus Requirement available under the Legislation of the Registration and Prospectus Jurisdictions for certain of the Trades;
- 3.42 the Information Circular discloses that the Trust, AcquisitionCo, AmalgamationCo and ExploreCo will rely on exemptions, including discretionary exemptions, from the Registration Requirement and Prospectus Requirement with respect to the issuance of Trust Units, Exchangeable Shares and ExploreCo Shares pursuant to the Arrangement and discloses that application will be made to relieve AmalgamationCo from the Continuous Disclosure Requirements; and
- 3.43 the Trust will concurrently send to holders of Exchangeable Shares resident in the Jurisdictions all disclosure material it sends to holders of Trust Units pursuant to the Legislation;
- 4. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");
- 5. AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;
- 6. THE DECISION of the Decision Makers under the Legislation is that:
 - 6.1 the Registration Requirement and Prospectus Requirement contained in the Legislation of the Registration and Prospectus Jurisdictions and shall not apply to the Trades provided that the first trade in securities acquired

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under this Decision shall be deemed to be a distribution or primary distribution to the public;

6.2 the Prospectus Requirement contained in the Legislation of the Registration and Prospectus Jurisdictions shall not apply to the first trade in Trust Units, Exchangeable Shares and ExploreCo Shares acquired by shareholders of Storm under the Arrangement and the first trade of the Trust Units acquired on the exercise of all rights, automatic or otherwise, under such Exchangeable Shares, provided that:

6.2.1 except in Québec, the conditions in subsections (3) or (4) of section 2.6 of Multilateral Instrument 45-102 Resale of Securities ("MI 45-102") are satisfied and, for the purposes of determining the period of time that the Trust or ExploreCo has been a reporting issuer under section 2.6 of MI 45-102, the period of time that Storm was a reporting issuer in at least one of the jurisdictions listed in Appendix B of MI 45-102 immediately before the Arrangement may be included; and

6.2.2 in Québec:

- e) the Trust is and has been a reporting issuer in Québec for the 12 months immediately preceding the trade, including the period of time that Storm was a reporting issuer in Québec immediately before the Arrangement;
- f) no unusual effort is made to prepare the market or create a demand for the securities that are the subject of the trade;
- g) no extraordinary commission or consideration is paid to a person or company in respect of the trade; and
- h) if the selling security holder is an insider or officer of the Trust, the selling security holder has no reasonable grounds to believe that the Trust is in default of securities legislation;

6.3 the Continuous Disclosure Requirements shall not apply to AmalgamationCo for so long as:

6.3.1 the Trust is a reporting issuer in Québec and at least one of the jurisdictions listed in Appendix B of MI 45-102 and is an electronic filer under National Instrument 13-101;

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- 6.3.2 the Trust sends to all holders of Exchangeable Shares resident in the Jurisdictions all disclosure material furnished to holders of Trust Units under the Continuous Disclosure Requirements;
- 6.3.3 the Trust complies with the requirements of the TSX, or such other market or exchange on which the Trust Units may be quoted or listed, in respect of making public disclosure of material information on a timely basis;
- 6.3.4 AmalgamationCo is in compliance with the requirements of the Legislation to issue a press release and file a report with the Decision Makers upon the occurrence of a material change in respect of the affairs of AmalgamationCo that is not also a material change in the affairs of the Trust;
- 6.3.5 the Trust includes in all future mailings of proxy solicitation materials to holders of Exchangeable Shares a clear and concise insert explaining the reason for the mailed material being solely in relation to the Trust and not to AmalgamationCo, such insert to include a reference to the economic equivalency between the Exchangeable Shares and Trust Units and the right to direct voting at meetings of holders of Trust Units;
- 6.3.6 the Trust remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities of AmalgamationCo; and
- 6.3.7 AmalgamationCo does not issue any preferred shares or debt obligations other than debt obligations issued to its affiliates or to banks, loan corporations, trust corporations, treasury branches, credit unions, insurance companies or other financial institutions.

DATED this 13th day of September, 2002.

Glenda A. Campbell, Q.C., Vice-Chair

James E. Allard, Member