

# 2005 BCSECCOM 436

June 17, 2005

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications

National Instrument 51-102, s. 13.1 - Continuous Disclosure Obligations - An exchangeable share issuer wants an exemption from having to file continuous disclosure documents to permit it to rely on the continuous disclosure documents of its parent issuer - The issuer is an exchangeable share issuer that complies with all of the conditions for continuous disclosure relief in section 13.3 of National Instrument 51-102 Continuous Disclosure Obligations except that its parent issuer is not an SEC issuer; the parent issuer is a Canadian reporting issuer that will send copies of all of its documents to the securityholders of the exchangeable share issuer and explain the reasons the information sent to them relates to the parent, rather than the exchangeable share issuer; the exchangeable share issuer will remain a subsidiary of the parent issuer, and will not issue any securities other than exchangeable shares or debt instruments to certain parties

National Instrument 51-101, s. 8.1 - Standards of Disclosure for Oil and Gas Activities - A reporting issuer wants relief from the requirements contained in Part 2 Annual Filing Requirements and in Part 3 Responsibilities of Reporting Issuers and Directors - The issuer is a wholly owned subsidiary of a trust; the issuer and the trust are both reporting issuers; the issuer is exempt from continuous disclosure obligations on the basis that the trust's disclosure record will be filed and delivered in place of the issuer's disclosure record; the trust is subject to NI 51-101 and will provide all of the disclosure required in Parts 2 and 3 of NI 51-101

## **Applicable British Columbia Provisions**

National Instrument 51-102, Parts 4-12, s. 13.1

National Instrument 51-101, Parts 2 and 3, section 8.1

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 85, 91, 117 and 119

*Securities Rules*, B.C. Reg. 194/97, ss. 144, 145, and 149

In the Matter of  
the Securities Legislation of  
Alberta, British Columbia, New Brunswick, Ontario, Québec and Saskatchewan  
(the Jurisdictions)

and

In the Matter of  
the Mutual Reliance Review System for Exemptive Relief Applications

# 2005 BCSECCOM 436

and

In the Matter of  
Chamaelo Energy Inc. (the Filer)

## MRRS Decision Document

### **Background**

1. The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation (the Legislation) of the Jurisdictions that in connection with a proposed plan of arrangement involving, among others, the Filer, Vault Energy Trust (the Trust) and a public exploration-focused oil and gas corporation (ExploreCo), with respect to the successor of the Filer (AmalgamationCo) on its amalgamation with Vault Acquisition Inc. (AcquisitionCo) in those Jurisdictions in which it becomes a reporting issuer or the equivalent under the Legislation, that:
  - 1.1 AmalgamationCo be exempted from National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) and from any comparable continuous disclosure requirements under the Legislation that has not yet been repealed or otherwise rendered ineffective as a consequence of the adoption of NI 51-102 (the Comparable Continuous Disclosure Requirements) (collectively, the Continuous Disclosure Relief),
  - 1.2 except in British Columbia and Québec, AmalgamationCo be exempted from Multilateral Instrument 52-109 *Certification of Disclosure in Issuer's Annual and Interim Filings* (MI 52-109)(the MI 52-109 Relief), and
  - 1.3 except in Québec, AmalgamationCo be exempted from Part 2 (Annual Filing Requirements) and Part 3 (Responsibilities of Reporting Issuers and Directors) of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (NI 51-101)(the NI 51-101 Relief).
2. Under the Mutual Reliance Review System for Exemptive Relief (the MRRS):
  - 2.1 the Alberta Securities Commission is the principal regulator for this application, and

## 2005 BCSECCOM 436

- 2.2 this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

3. Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

### **Representations**

4. This Decision is based on the following facts represented by the Filer:
- 4.1 The Filer is an oil and gas corporation incorporated as 1100974 Alberta Inc. under the *Business Corporations Act* (Alberta) (the ABCA) on April 5, 2004. Pursuant to a Certificate of Amendment dated April 21, 2004, it changed its name to Chamaelo Energy Inc. Pursuant to Articles of Arrangement dated June 1, 2004, the Filer completed a plan of arrangement involving Viracocha Energy Inc., Provident Energy Trust, Provident Energy Ltd. and the Filer.
- 4.2 The authorized capital of the Filer consists of an unlimited number of common shares (the Chamaelo Shares) and an unlimited number of preferred shares issuable in series.
- 4.3 The Filer is a reporting issuer in British Columbia, Alberta, Saskatchewan, Ontario, Québec and New Brunswick.
- 4.4 The Chamaelo Shares are listed on the Toronto Stock Exchange (the TSX).
- 4.5 The Filer intends to reorganize its corporate structure, pursuant to a plan of arrangement (the Arrangement) under the ABCA, into the Trust and ExploreCo.
- 4.6 At the date on which the Arrangement becomes effective under the ABCA, the Arrangement will result in holders of Chamaelo Shares (Chamaelo Shareholders) exchanging each one of their Chamaelo Shares for, at their election where eligible, either 0.50 of one trust unit (a Trust Unit) of the Trust or 0.50 of one share exchangeable into a Trust Unit (an Exchangeable Share), and 0.20 of one common share of ExploreCo (an ExploreCo Share).
- 4.7 The information circular (the Information Circular) with respect to the annual general and special meeting of Chamaelo Shareholders

## 2005 BCSECCOM 436

and the holders of outstanding warrants of the Filer (collectively, Chamaelo Securityholders) to be held on June 20, 2005 for the purpose of approving the Arrangement (the "Meeting") contains (or to the extent permitted, incorporates by reference) prospectus-level disclosure in respect of the Filer, the Trust and ExploreCo and a detailed description of the Arrangement.

- 4.8 The Trust is an oil and gas royalty trust created under the laws of the Province of Alberta pursuant to a trust indenture dated April 25, 2005.
- 4.9 The Trust will become a reporting issuer in at least one of the Jurisdictions and has applied to list the Trust Units on the TSX.
- 4.10 Pursuant to the terms of an assignment and assumption agreement (the Come-Along Agreement) dated May 19, 2005 between, among others, the Filer, the Trust and Orbus Pharma Inc. (Orbus), if certain conditions are satisfied, Orbus will participate in the Arrangement, and it will become thereby, ExploreCo.
- 4.11 In the event that the conditions contained in the Come-Along Agreement are not satisfied, the Filer will proceed with 1166554 Alberta Inc. (1166554) as ExploreCo.
- 4.12 Orbus is a corporation incorporated under the ABCA and a reporting issuer in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec and Nova Scotia, and the common shares of Orbus are listed on the TSX and the Frankfurt Stock Exchange.
- 4.13 1166554 is a corporation incorporated under the ABCA.
- 4.14 1166554 will become a reporting issuer in at least one of the Jurisdictions and has applied to list the ExploreCo Shares on the TSX.
- 4.15 As part of the Arrangement, a limited number of Exchangeable Shares issued by AcquisitionCo, which number shall be less than the total number of Trust Units issuable, will be made available for issuance at the election of eligible Chamaelo Shareholders. In the event that more Exchangeable Shares are requested than those available, the Exchangeable Shares will be prorated and Chamaelo Shareholders will receive Trust Units in lieu of Exchangeable

## 2005 BCSECCOM 436

Shares. In lieu of monthly cash distributions, the exchange value of the Exchangeable Shares will increase based on the amount of distributions paid to Unitholders and decrease based on the amount of dividends paid to holders of Exchangeable Shares. Chamaelo Shareholders which are non-resident or tax exempt will not be eligible to receive Exchangeable Shares.

- 4.16 As part of the Arrangement, the Filer will amalgamate with AcquisitionCo, a wholly-owned subsidiary of the Trust, to form AmalgamationCo and all of the common shares and unsecured, subordinated promissory notes (Notes) issuable in conjunction with the operation of the Arrangement by AcquisitionCo, pursuant to a note indenture to be entered into between AcquisitionCo and Valiant Trust Company, will be owned by the Trust.
- 4.17 Upon completion of the Arrangement, the former Chamaelo Shareholders (other than those Chamaelo Shareholders validly exercising their rights of dissent under Section 191 of the ABCA) will have exchanged their Chamaelo Shares for (i) ExploreCo Shares plus (ii) Trust Units or Exchangeable Shares (or a combination thereof). All former non-resident or tax exempt Chamaelo Shareholders will have exchanged their Chamaelo Shares for ExploreCo Shares and Trust Units.
- 4.18 The Exchangeable Shares will be exchangeable for Trust Units and will provide a former Chamaelo Shareholder with a security having participation and voting rights which are, as nearly as practicable, equivalent to those of Trust Units. A Chamaelo Shareholder who is resident in Canada will generally be able to receive the Exchangeable Shares on a tax-deferred rollover basis.
- 4.19 A special voting right will be created in favour of a trustee (the Voting and Exchange Agreement Trustee) under a voting and exchange trust agreement (the Voting and Exchange Trust Agreement) and will entitle the Voting and Exchange Agreement Trustee to exercise at each meeting of Unitholders the number of votes equal to the number of Trust Units into which the Exchangeable Shares are then exchangeable multiplied by the number of votes to which the holder of one Trust Unit is then entitled. By furnishing instructions to the Voting and Exchange Agreement Trustee, holders of Exchangeable Shares will be able to exercise the same voting rights with respect to the Trust as they

## 2005 BCSECCOM 436

would if they exchanged their Exchangeable Shares for Trust Units.

- 4.20 The Exchangeable Shares are exchangeable by the holder thereof into Trust Units. The exchange ratio used to determine how many Trust Units a holder of Exchangeable Shares is entitled to receive upon an exchange of such shares (the Exchange Ratio) will initially be equal to 1-to-1. The Exchange Ratio will then be cumulatively adjusted by: (i) increasing the Exchange Ratio based in part on the amounts of the distributions paid on the Trust Units; and (ii) decreasing the Exchange Ratio based in part on the amounts of the dividends paid on the Exchangeable Shares. The Exchange Ratio will also be adjusted in the event of certain other reorganizations or distributions in respect of the Trust Units as necessary on an economic equivalency basis.
- 4.21 Upon completion of the Arrangement, AmalgamationCo will be a reporting issuer under the Legislation of Alberta, British Columbia, Saskatchewan, New Brunswick, Québec and Ontario due to the fact that its existence will continue following the exchange of securities in connection with the Arrangement.
- 4.22 The Filer is not in default of any of the requirements under the Legislation in those Jurisdictions where it is a reporting issuer.

### **Decision**

5. 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 Continuous Disclosure Relief is granted for so long as:
- 6.1.1 the Trust is a reporting issuer in at least one of the jurisdictions listed in Appendix B of Multilateral Instrument 45-102 *Resale of Securities* and is an electronic filer under National Instrument 13-101 *System for Electronic Data Analysis and Retrieval* (SEDAR),
- 6.1.2 the Trust sends concurrently to all holders of Exchangeable Shares resident in the Jurisdictions all disclosure material furnished to holders of Trust Units pursuant to the

## 2005 BCSECCOM 436

requirements of NI 51-102 and the Comparable Continuous Disclosure Requirements (collectively, the Continuous Disclosure Requirements),

- 6.1.3 the Trust files with each Decision Maker copies of all documents required to be filed by it pursuant to the Continuous Disclosure Requirements and MI 52-109 (collectively, the Trust Documents),
- 6.1.4 concurrently with the filing of the Trust Documents, the Trust files in electronic format under the SEDAR profile of AmalgamationCo either,
  - 6.1.4.1 the Trust Documents, or
  - 6.1.4.2 a notice that indicates
    - 6.1.4.2.1 that AmalgamationCo has been granted an exemption from the Continuous Disclosure Requirements and the requirements of MI 52-109,
    - 6.1.4.2.2 that the Trust has filed the Trust Documents, and
    - 6.1.4.2.3 where a copy of the Trust Documents can be found for viewing on SEDAR by electronic means,
- 6.1.5 the Trust is in compliance with the requirements in the Legislation and of any marketplace on which the securities of the Trust are listed or quoted in respect of making public disclosure of material information on a timely basis, and immediately issues and files any news release that discloses a material change in its affairs,
- 6.1.6 AmalgamationCo issues a news release and files a material change report in accordance with Part 7 of NI 51-102 for all material changes in respect of the affairs of AmalgamationCo that are not also material changes in the affairs of the Trust,

## 2005 BCSECCOM 436

- 6.1.7 the Trust includes in all mailings of proxy solicitation materials to holders of Exchangeable Shares a clear and concise statement that explains the reason the mailed material relates solely to the Trust, indicates that the Exchangeable Shares are the economic equivalent to the Trust Units, and describes the voting rights associated with the Exchangeable Shares,
  - 6.1.8 the Trust remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities of AmalgamationCo, and
  - 6.1.9 AmalgamationCo does not issue any securities, other than Exchangeable Shares, securities issued to the Trust or its affiliates or debt securities issued to banks, loan corporations, trust corporations, treasury branches, credit unions, insurance companies or other financial institutions,
- 6.2 the MI 52-109 Relief is granted for so long as:
- 6.2.1 AmalgamationCo is not required to, and does not, file its own interim filings and annual filings (as those terms are defined under MI 52-109), and
  - 6.2.2 AmalgamationCo is exempt from or otherwise not subject to the Continuous Disclosure Requirements, and
- 6.3 the NI 51-101 Relief is granted for so long as:
- 6.3.1 the Trust files with each Decision Maker copies of all documents required to be filed by it pursuant to NI 51-101 (the 51-101 Documents) and concurrently with the filing of the NI 51-101 Documents the Trust files in electronic format under the SEDAR profile of AmalgamationCo either:
    - 6.3.1.1 the NI 51-101 Documents, or
    - 6.3.1.2 a notice that indicates:
      - 6.3.1.2.1 that AmalgamationCo has been granted an exemption from the requirements of Part 2 (Annual Filing Requirements)

## 2005 BCSECCOM 436

and Part 3 (Responsibilities of Reporting Issuers and the Directors) of NI 51-101,

6.3.1.2.2 that the Trust has filed the NI 51-101 Documents, and

6.3.1.2.3 where a copy of the NI 51-101 Documents can be found for viewing on SEDAR by electronic means,

6.3.2 AmalgamationCo disseminates, or causes the Trust to disseminate on AmalgamationCo's behalf, a news release announcing the filing by AmalgamationCo or the Trust of the information set out in section 6.2.1 above, and indicating where a copy of the filed information can be found for viewing on SEDAR by electronic means,

6.3.3 AmalgamationCo is exempt or otherwise not subject to the Continuous Disclosure Requirements,

6.3.4 if disclosure to which NI 51-101 applies is made by AmalgamationCo separately from the Trust, the disclosure includes a statement to the effect that AmalgamationCo is relying on an exemption from the requirements to file information annually under NI 51-101 separately from the Trust, and indicates where disclosure under NI 51-101 filed by the Trust (or by AmalgamationCo, if applicable) can be found for viewing on SEDAR by electronic means, and

6.3.5 if the Trust files a material change report to which section 6.1 of NI 51-101 applies, AmalgamationCo files the same material change report.

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