

# 2003 BCSECCOM 866

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – relief from continuous disclosure requirements for reporting issuer who is a subsidiary of another public company – holders of exchangeable shares more interested in obtaining information about parent – relief from requirement to have a current AIF to be a qualifying issuer under MI 45-102

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 85(1), 91 and 119

*Securities Rules*, B.C. Reg. 194/97, ss. 144, 145, 149 and 184

Multilateral Instrument 45-102 *Resale of Securities*, s. 4.1

**IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA,  
BRITISH COLUMBIA, SASKATCHEWAN, MANITOBA, ONTARIO,  
QUÉBEC, NOVA SCOTIA AND NEWFOUNDLAND AND LABRADOR**

**AND**

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

**AND**

**IN THE MATTER OF NAV ENERGY TRUST, NAVIGO ENERGY INC.,  
NAV ACQUISITION CORP., C1 ENERGY LTD., NAV EXCHANGE CO  
LTD. AND EDGE ENERGY INC.**

## **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (collectively, the “Decision Makers”) in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador (the “Jurisdictions”) has received an application from NAV Energy Trust (the “Trust”), Navigo Energy Inc. (“Navigo”), NAV Acquisition Corp. (“AcquisitionCo”), C1 Energy Ltd. (“C1 Energy”), NAV ExchangeCo Ltd. (“ExchangeCo”) and Edge Energy Inc. (“Edge”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that:

- A. the requirements contained in the Legislation to be registered to trade in a security (the “Registration Requirement”) and to file a preliminary prospectus and a prospectus, and to receive receipts therefor to distribute a security (the “Prospectus Requirement”), in Manitoba, Ontario and Québec, shall not apply to certain trades of securities to be made in

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connection with a proposed plan of arrangement (the “Arrangement”) under section 193 of the *Business Corporations Act* (Alberta) (the “ABCA”) involving the Trust, AcquisitionCo, Navigo, C1 Energy, ExchangeCo and Edge and the security holders of Navigo;

- B. the requirements contained in the Legislation with respect to AcquisitionCo (or its successor on amalgamation with Navigo (“AmalgamationCo”)), in those Jurisdictions in which it becomes a reporting issuer or the equivalent under the Legislation, to issue a news release and file a report with the 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 Jurisdictions and deliver such statements to security holders of AcquisitionCo and AmalgamationCo, file and deliver an information circular or make an annual filing with the Jurisdictions, where applicable, 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;
- C. C1 Energy be deemed or declared to be a reporting issuer at the effective date of the Arrangement for the purposes of the Legislation of Ontario; and
- D. the requirement of C1 Energy to have a “current AIF” filed on SEDAR under Multilateral Instrument 45-102 - Resale of Securities (“MI 45-102”) not apply;

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”) the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or Québec Commission Notice 14-101;

AND WHEREAS the Trust, Navigo, AcquisitionCo, C1 Energy, ExchangeCo and Edge have represented to the Decision Makers that:

1. Navigo is a corporation incorporated and subsisting pursuant to the provisions of the ABCA;

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2. the head and principal office of Navigo is located at 2500, 205 – 5<sup>th</sup> Avenue S.W., Calgary, Alberta, T2P 2V7, and its registered office is located at 1400, 350 – 7<sup>th</sup> Avenue S.W., Calgary, Alberta T2P 3N9;
3. Navigo is actively engaged in the exploration for, and the acquisition, development and production of, oil and natural gas in the Provinces of Alberta and Saskatchewan;
4. the authorized capital of Navigo consists of an unlimited number of common shares (“Common Shares”);
5. as at November 1, 2003, 35,020,481 Common Shares were issued and outstanding. Navigo has also reserved a total of 2,824,850 Common Shares for issuance pursuant to outstanding options (“Options”) to purchase Common Shares;
6. the Common Shares are listed on the Toronto Stock Exchange (the “TSX”);
7. Navigo is a reporting issuer in the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador and has been for more than 12 months;
8. Navigo 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, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador and is not in default of the securities legislation in any of these jurisdictions;
9. 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 November 12, 2003 between Navigo and Computershare Trust Company of Canada, as trustee;
10. the Trust was established for the purpose of, among other things:
  - (a) investing in shares of AcquisitionCo and acquiring the Common Shares and the unsecured, subordinate promissory notes issuable by AcquisitionCo (the “Notes”) pursuant to the Arrangement;
  - (b) acquiring a net profits interest pursuant to a net profits interest agreement to be entered into between AmalgamationCo and the Trust; and

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- (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;
- 11. the head and principal office of the Trust is located at 2500, 205 – 5<sup>th</sup> Avenue S.W., Calgary, Alberta, T2P 2V7;
- 12. the Trust was established with nominal capitalization and currently has only nominal assets and no liabilities. The only activity which will initially be carried on by the Trust will be the holding of securities of AcquisitionCo, AmalgamationCo and ExchangeCo;
- 13. the Trust is authorized to issue an unlimited number of trust units (“Trust Units”) and an unlimited number of special voting rights (“Special Voting Rights”);
- 14. as of the date hereof, there is one Trust Unit issued and outstanding, which is owned by Navigo, and no Special Voting Rights are outstanding;
- 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. The Trust Units issuable from time to time in exchange for exchangeable shares (“Exchangeable Shares”) of AcquisitionCo will also be listed on the TSX, subject to receipt of final approval from the TSX;
- 16. the Trust is not a reporting issuer in any of the Jurisdictions;
- 17. AcquisitionCo is a wholly-owned subsidiary of the Trust and was incorporated pursuant to the ABCA on September 25, 2003. AcquisitionCo was incorporated to participate in the Arrangement by acquiring Common Shares of Navigo (other than those held by dissenting Shareholders);
- 18. the head and principal office of AcquisitionCo is located at 2500, 205 – 5<sup>th</sup> Avenue S.W., Calgary, Alberta, T2P 2V7 and its registered office is located at 1400, 350 – 7<sup>th</sup> Avenue S.W., Calgary, Alberta, T2P 3N9;
- 19. the authorized capital of AcquisitionCo currently consists of an unlimited number of common shares. Prior to the Arrangement, the articles of AcquisitionCo will be amended to create the Exchangeable Shares;

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20. as of the date hereof there are one hundred (100) common shares of AcquisitionCo issued and outstanding, which are owned by the Trust. All common shares of AmalgamationCo will be owned beneficially (directly or indirectly) by the Trust, for as long as any outstanding Exchangeable Shares are owned by any person other than the Trust or any of the Trust's subsidiaries and other affiliates;
21. AcquisitionCo is not a reporting issuer in any of the Jurisdictions;
22. C1 Energy was incorporated pursuant to the ABCA on September 25, 2003. C1 Energy has not carried on any active business since incorporation;
23. the head and principal office of C1 Energy is located at 2500, 205 – 5<sup>th</sup> Avenue S.W., Calgary, Alberta, T2P 2V7, and its registered office is located at 1400, 350 – 7<sup>th</sup> Avenue S.W., Calgary, Alberta, T2P 3N9;
24. pursuant to the Arrangement, C1 Energy will acquire, directly and indirectly, certain oil and gas assets from Navigo. Upon completion of the Arrangement, C1 Energy will be engaged in the exploration for, and acquisition, development and production of, oil and natural gas reserves, primarily in the Province of Alberta;
25. the authorized capital of C1 Energy consists of an unlimited number of C1 Energy Common Shares. Prior to the Arrangement becoming effective, the authorized capital of C1 Energy will consist of an unlimited number of C1 Energy Common Shares, an unlimited number of non-voting common shares and 1,442,000 performance shares;
26. as of the date hereof, one (1) C1 Energy Common Share is issued and outstanding;
27. C1 Energy has applied for conditional approval from the TSX for the listing on the TSX of the C1 Energy Common Shares to be issued in connection with the Arrangement subject to, among other things, completion of the Arrangement. The C1 Energy Common Shares issuable from time to time will also be listed on the TSX, subject to receipt of final approval from the TSX;
28. C1 Energy is not a reporting issuer in any of the Jurisdictions;
29. ExchangeCo was incorporated pursuant to the ABCA on September 25, 2003. ExchangeCo has not carried on any active business since incorporation;

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30. the head and principal office of ExchangeCo is located at 2500, 205 – 5<sup>th</sup> Avenue S.W., Calgary, Alberta, T2P 2V7, and its registered office is located at 1400, 350 – 7<sup>th</sup> Avenue S.W., Calgary, Alberta, T2P 3N9;
31. the authorized capital of ExchangeCo consists of an unlimited number of common shares;
32. as of the date hereof, one hundred (100) common shares were issued and outstanding and owned by the Trust;
33. Edge was incorporated pursuant to the ABCA. Edge is a wholly-owned subsidiary of Navigo and is engaged in the oil and natural gas business;
34. the head and principal office of Edge is located at 2500, 205 – 5<sup>th</sup> Avenue S.W., Calgary, Alberta, T2P 2V7, and its registered office is located at 1400, 350 – 7<sup>th</sup> Avenue S.W., Calgary, Alberta, T2P 3N9;
35. the Arrangement will be effected by way of plan of arrangement (the “Plan”) pursuant to section 193 of the ABCA. The Arrangement will require:
  - (i) approval by not less than two-thirds of the votes cast by the shareholders (the “Shareholders”) and the optionholders of Navigo (collectively, the “Securityholders”) (present in person or represented by proxy), voting together as a single class, at the special meeting (the “Meeting”) of Securityholders to be held for the purpose of approving the Arrangement, and thereafter;
  - (ii) approval of the Court of Queen's Bench of Alberta;
36. Navigo's information circular dated November 14, 2003 (the “Information Circular”) contains prospectus-level disclosure concerning the respective business and affairs of Navigo, C1 Energy, the Trust and AmalgamationCo and a detailed description of the Arrangement, and has been mailed to Securityholders in connection with the Meeting. The Information Circular has been prepared in conformity with the provisions of the ABCA and applicable securities laws and policies;
37. the assets that will make up the business of C1 Energy have been the subject of continuous disclosure on an ongoing basis for more than 12 months, in accordance with Navigo's responsibilities as a reporting issuer subject to the Continuous Disclosure Requirements;
38. the Arrangement provides for a transaction where, commencing at the time the Arrangement takes effect (the “Effective Time”), the events set out below shall be deemed to occur in the following order:

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- (a) the Common Shares and Options held by dissenting Securityholders who have exercised dissent rights which remain valid immediately prior to the Effective Time shall, as of the Effective Time, be deemed to have been transferred to Navigo 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 Navigo other than the right to be paid the fair value of their Common Shares or Options;
- (b) the class A preferred shares ("Class A Preferred Shares"), the class D common shares ("New Common Shares"), the class B non-voting shares ("Class B Non-Voting Shares") and the class C preferred shares ("Class C Preferred Shares") shall be created as new classes of shares of Navigo and each Common Share, other than Common Shares held by non-resident Shareholders ("Non Residents"), will be exchanged pursuant to a reorganization of the capital of Navigo for one (1) Class A Preferred Share, one (1) New Common Share and one (1) Class B Non-Voting Share and the stated value of each:
  - (i) Class A Preferred Share shall be set at the paid up capital of each Common Share exchanged less: (A) the Class B Non-Voting Share Stated Value; and (B) \$0.01;
  - (ii) New Common Share shall be set at \$0.01; and
  - (iii) Class B Non-Voting Share shall initially be set at \$0.45, subject to adjustment based upon the number of Common Shares outstanding immediately prior to the Effective Time (the "Class B Non-Voting Share Stated Value");
- (c) Edge will convey certain oil and natural gas assets to C1 Energy and C1 Energy shall deliver an unsecured, subordinated promissory note issued by C1 Energy to Edge in satisfaction of the purchase price;
- (d) each Class B Non-Voting Share will be transferred to C1 Energy in exchange for one (1) C1 Energy Common Share;
- (e) each Class B Non-Voting Share will be exchanged pursuant to a reorganization of the capital of Navigo for one (1) Class C Preferred Share;
- (f) Edge shall be dissolved, in accordance with the following:

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- (i) the stated capital of the common shares of Edge shall be reduced to \$1.00 in aggregate;
  - (ii) all of the property of Edge shall be transferred to Navigo; and
  - (iii) Navigo shall be liable for all of the obligations of Edge;
- (g) the C1 Energy Note shall be transferred by Navigo to C1 Energy in exchange for all of the Class C Preferred Shares and the issuance to Navigo of C1 Energy Common Shares;
- (h) subject to the Plan, each New Common Share and each Class A Preferred Share, other than New Common Shares and Class A Preferred Shares held by Shareholders exempt from tax under Part 1 of the Tax Act ("Tax Exempt Shareholders") will be transferred to AcquisitionCo in accordance with the election or deemed election of the holder of such New Common Shares and Class A Preferred Shares for one (1) Trust Unit or one (1) Exchangeable Share (together with the ancillary rights associated with the Exchangeable Shares);
- (i) each New Common Share and each Class A Preferred Share held by Tax Exempt Shareholders will be transferred to AcquisitionCo in exchange for one (1) Trust Unit;
- (j) each Common Share held by Non Residents will be transferred to AcquisitionCo in exchange for one (1) Trust Unit and the right to receive one (1) C1 Energy Common Share;
- (k) AcquisitionCo will issue one (1) Note to the Trust for each Trust Unit issued pursuant to subsections 3.1(h), (i) and (j) of the Plan;
- (l) each Option (whether vested or unvested) shall cease to represent the right to acquire Common Shares and shall only entitle the holder to acquire one-third (1/3) of a Trust Unit for each Common Share which the holder was previously entitled to acquire under the Option at a price per Trust Unit equal to the existing exercise price less an amount equal to the Class B Non-Voting Share Stated Value;
- (m) Navigo and AcquisitionCo shall be amalgamated and continued as one corporation, AmalgamationCo, in accordance with the following:
  - (i) the stated capital of the common shares of Navigo shall be reduced to \$1.00 in aggregate immediately prior to the amalgamation;



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- (ii) the shares of Navigo, all of which are owned by AcquisitionCo, shall be cancelled without any repayment of capital;
- (iii) the articles of AmalgamationCo shall be the same as the articles of AcquisitionCo, and the name of AmalgamationCo shall be “Navigo Energy Inc.”;
- (iv) no securities shall be issued by AmalgamationCo in connection with the amalgamation and for greater certainty, the common shares, Notes and Exchangeable Shares of AcquisitionCo shall survive and continue to be common shares, Notes and Exchangeable Shares of AmalgamationCo without amendment;
- (v) the property of each of the amalgamating corporations shall continue to be the property of AmalgamationCo;
- (vi) AmalgamationCo shall continue to be liable for the obligations of each of the amalgamating corporations;
- (vii) any existing cause of action, claim or liability to prosecution of either of the amalgamating corporations shall be unaffected;
- (viii) any civil, criminal or administrative action or proceeding pending by or against either of the amalgamating corporations may be continued to be prosecuted by or against AmalgamationCo;
- (ix) a conviction against, or ruling, order or judgment in favour of or against, either of the amalgamating corporations may be enforced by or against AmalgamationCo;
- (x) the Articles of Amalgamation of AcquisitionCo shall be deemed to be the Articles of Incorporation of AmalgamationCo and the Certificate of Amalgamation of AcquisitionCo shall be deemed to be the Certificate of Incorporation of AmalgamationCo;
- (xi) the by-laws of AmalgamationCo shall be the by-laws of AcquisitionCo;
- (xii) the first directors of AmalgamationCo shall be the directors of AcquisitionCo;

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- (xiii) the first officers of AmalgamationCo shall be the officers of AcquisitionCo; and
  - (xiv) the registered office of AmalgamationCo shall be the registered office of AcquisitionCo;
  - (n) AmalgamationCo will grant a net profits interest (the “NPI”) pursuant to a net profits interest agreement to be entered into between AmalgamationCo and the Trust to the Trust in consideration of the return of Notes in an amount equal to the fair market value of the NPI as determined by AmalgamationCo;
  - (o) AmalgamationCo shall deliver the C1 Energy Common Shares to the Non Residents entitled to such C1 Energy Common Shares referred to in section 3.1(j) of the Plan;
  - (p) each C1 Energy Non-Voting Share will be exchanged pursuant to a reorganization of capital of C1 Energy for one (1) C1 Energy Common Share; and
  - (q) each C1 Energy Common Share, Trust Unit and Exchangeable Share will be consolidated on the basis of one (1) C1 Energy Common Share, one (1) Trust Unit and one (1) Exchangeable Share for each three (3) outstanding C1 Energy Common Shares, Trust Units and Exchangeable Shares;
39. AmalgamationCo will become a reporting issuer under the Legislation of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador, and will be subject to the Continuous Disclosure Requirements in such Jurisdictions;
40. the Trust will become a reporting issuer under the Legislation of British Columbia, Alberta, Saskatchewan, Ontario, Québec, Nova Scotia and Newfoundland and Labrador, and will be subject to the Continuous Disclosure Requirements in such Jurisdictions;
41. C1 Energy will become a reporting issuer under the Legislation of certain of the applicable Jurisdictions (including Québec) but will not be a reporting issuer within the definitions of all of the applicable Jurisdictions at the Effective Time;

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42. following the completion of the Arrangement, C1 Energy anticipates the need to carry out one or more private placements of C1 Energy Common Shares in order to fund its exploration and production activities;
43. the Exchangeable Shares provide a holder with a security having economic and voting rights which are, as nearly as practicable, equivalent to those of the Trust Units;
44. 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;
45. 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;
46. in order to ensure that the Exchangeable Shares remain the voting and economic equivalent of the Trust Units prior to their exchange, the Arrangement provides for:
  - (a) a voting and exchange trust agreement to be entered into among the Trust, AcquisitionCo, ExchangeCo and Computershare Trust Company of Canada (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;
  - (b) 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
  - (c) a support agreement to be entered into between the Trust, AcquisitionCo, ExchangeCo and the Voting and Exchange Agreement Trustee which will, among other things, restrict the Trust from issuing or distributing to the holders of all or substantially all of the outstanding Trust Units:
    - (i) additional Trust Units or securities convertible into Trust Units;

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- (ii) rights, options or warrants for the purchase of Trust Units; or
- (iii) units or securities of the Trust other than Trust Units, evidences of indebtedness of the Trust or other assets of the Trust;

unless the same or an equivalent distribution is made to holders of Exchangeable Shares, an equivalent change is made to the Exchangeable Shares, such issuance or distribution is made in connection with a distribution reinvestment plan instituted for holders of Trust Units or a unitholder rights protection plan approved for holders of Trust Units by the board of directors of AcquisitionCo, or the approval of holders of Exchangeable Shares has been obtained;

- 47. 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 or potential trades of securities, including Common Shares, Class A Preferred Shares, New Common Shares, Class B Non-Voting Shares, Class C Preferred Shares, common shares of Edge, C1 Energy Common Shares, C1 Energy Non-Voting Shares, C1 Energy Notes, Notes, Exchangeable Shares, Trust Units, Options, the Special Voting Right and certain rights to acquire Trust Units, Exchangeable Shares and C1 Energy Common Shares under the Arrangement, and rights to otherwise make a trade of a security that was derived from the Arrangement (collectively, the “Trades”);
- 48. there are no exemptions from the Registration Requirement or the Prospectus Requirement available under the Legislation of Manitoba, Ontario and Québec for certain of the Trades;
- 49. the Information Circular discloses that the securities that are the subject of the Trades will be issued in reliance on exemptions, including discretionary exemptions, from the Registration Requirement and the Prospectus Requirement and discloses that application will be made to relieve AmalgamationCo from the Continuous Disclosure Requirements; and
- 50. 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;

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);

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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;

THE DECISION of the Decision Makers under the Legislation is that:

- (a) the Registration Requirement and the Prospectus Requirement contained in the Legislation of Manitoba, Ontario and Québec shall not apply to the Trades, provided that the first trade in securities acquired pursuant to the Arrangement shall be deemed to be a distribution or a primary distribution to the public;
- (b) the Prospectus Requirement contained in the Legislation of Manitoba, Ontario and Québec shall not apply to the first trade in securities acquired by Shareholders under the Arrangement and the first trade of securities acquired on the exercise of all rights, automatic or otherwise, under such securities, provided that:
  - (i) in Manitoba and Ontario, the conditions in subsection (3) or (4), as applicable, of section 2.6 of MI 45-102 are satisfied and, for the purposes of determining the period of time that the Trust or C1 Energy has been a reporting issuer under section 2.6 of MI 45-102, the period of time that Navigo 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
  - (ii) in Québec:
    - a. the Trust, AmalgamationCo or C1 Energy, as applicable, is and has been a reporting issuer in Québec for the 12 months immediately preceding the trade, including the period of time that Navigo was a reporting issuer in Québec immediately before the Arrangement;
    - b. no unusual effort is made to prepare the market or create a demand for the securities that are the subject of the trade;
    - c. no extraordinary commission or consideration is paid to a person or company in respect of the trade; and
    - d. if the selling securityholder is an insider or officer of the Trust, AmalgamationCo or C1 Energy, as applicable, the selling securityholder has no reasonable grounds to believe

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that the Trust, AmalgamationCo or C1 Energy, as applicable, is in default of securities legislation;

- (a) the Continuous Disclosure Requirements of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador (other than the requirement to file an annual information form and to file and deliver interim and annual MD&A) shall not apply to AmalgamationCo for so long as:
  - (i) 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;
  - (ii) 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;
  - (iii) 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;
  - (iv) AmalgamationCo is in compliance with the requirements of the Legislation to issue a press release and file a report with the Jurisdictions 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;
  - (v) 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 Unitholders;
  - (vi) the Trust remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities of AmalgamationCo; and
  - (vii) 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,

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credit unions, insurance companies or other financial institutions;  
and

- (b) C1 Energy shall be deemed or declared a reporting issuer at the time of the Arrangement becoming effective for the purposes of the Legislation of Ontario.

DATED this 17th day of December, 2003

Harold P. Hands

Robert Korthals

THE FURTHER DECISION of the Decision Makers under the legislation is that:

- (c) the requirement to file an annual information form and to provide management's discussion and analysis of financial condition and results of operations shall not apply to AmalgamationCo for so long as the conditions in paragraph (c) above are complied with; and
- (d) upon the completion of the Arrangement:
  - (i) in British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland and Labrador the requirement contained in the Legislation to have a "current AIF" filed on SEDAR in order to be a "Qualifying Issuer" under MI 45-102 shall not apply to C1 Energy provided that C1 Energy files:
    - a. a notice on SEDAR advising that the Information Circular has been filed as an alternate form of annual information form and identifying the SEDAR Project Number under which the Information Circular was filed and Appendix H to the Information Circular containing disclosure specific to C1 Energy; and
    - b. a copy of Appendix H of the Information Circular under C1 Energy's SEDAR profile; and
    - c. a Form 45-102F2 on or before the tenth day after the distribution day of any securities certifying that it is a Qualifying Issuer except for the requirement to have a current AIF;

this exemption to expire 140 days after C1 Energy's financial year ended December 31, 2003; and

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- (ii) in Québec, C1 Energy will be exempt from the requirements of subparagraph 1(e) of decision no. 2003-C-0377 of the Commission des valeurs mobilières du Québec given that the Information Circular in connection with the Arrangement contains prospectus level disclosure including financial statements for the six months ended June 30, 2003 and the year ended December 31, 2002, for the purpose of C1 Energy qualifying for the shortened hold period. This exemption will expire on May 20, 2004.

DATED this 17<sup>th</sup> day of December, 2003

Kelly Gorman