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April 7, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act, ss. 91 and 119 - Exemption from filing all continuous disclosure materials including financial statements, annual reports, quarterly reports, and insider reports - NI 51-102 section 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 NI 51-102 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

NI 51-101 section 8.1 - Exemption from disclosure requirements in NI 51-101 - 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

Securities Act, R.S.B.C. 1996, c. 418, ss. 91 and 119 - Exemption from filing all continuous disclosure materials including financial statements, annual reports, quarterly reports, and insider reports

NI 51-102 *Continuous Disclosure Obligations*, section 13.1

NI 51-101 *Standards of Disclosure for Oil and Gas Activities*, section 8.1 - Exemption from disclosure requirements in NI 51-101

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

and

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

and

In the Matter of Daylight Energy Ltd. (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 of the Jurisdictions (the Legislation) that:
 - 1.1 except in Québec, the Filer 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),
 - 1.2 the Filer 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) and in Québec that order 2004-PDG-0020 dated March 26, 2004 (the Québec Order) be revised to provide the same result (collectively, the Continuous Disclosure Relief), and
 - 1.3 except in British Columbia and Québec, the Filer 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).
2. Under the Mutual Reliance Review System for Exemptive Relief Applications (the MRRS):
 - 2.1 the Alberta Securities Commission is the principal regulator for this application, and

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- 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. The decision is based on the following facts represented by the Filer:
- 4.1 The Filer was amalgamated pursuant to the *Business Corporations Act* (Alberta)(the ABCA) on November 30, 2004 and came into existence as a result of a plan of arrangement pursuant to which, among other things, Daylight Acquisition Corp., Midnight Oil & Gas Ltd. (Midnight), Midnight Energy Inc., Midnight Resources Corporation, Vintage Petroleum Canada, Inc. and Vintage Petroleum NWT Ltd. amalgamated (the Arrangement).
 - 4.2 The head office and registered office of the Filer are each located in Calgary, Alberta.
 - 4.3 The Filer is a reporting issuer in each of the Jurisdictions.
 - 4.4 The Filer has filed all of the information that it has been required to file as a reporting issuer in the Jurisdictions and is not in default of the Legislation.
 - 4.5 The authorized share capital of the Filer includes an unlimited number of common shares (Common Shares) and an unlimited number of exchangeable shares (the Exchangeable Shares).
 - 4.6 As at January 31, 2005, the Filer had the following securities issued and outstanding:
 - 4.6.1 100 Common Shares, all of which were owned by Daylight Energy Trust (the Trust),
 - 4.6.2 2,330,282 Exchangeable Shares, and
 - 4.6.3 debt securities issued to the Trust.

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- 4.7 No securities of the Filer, including the Common Shares and Exchangeable Shares, are listed or quoted on any exchange or marketplace.
- 4.8 The Trust was established pursuant to a trust indenture dated October 1, 2004 under the laws of Alberta.
- 4.9 The Trust is, for the purposes of the *Income Tax Act* (Canada), an unincorporated, open-end mutual fund trust.
- 4.10 The head office of the Trust is located in Calgary, Alberta.
- 4.11 The authorized capital of the Trust consists of an unlimited number of trust units (Trust Units), \$80,000,000 principal amount of series A 8.5% convertible unsecured subordinated debentures, each in the principal amount of \$1,000 (the Convertible Debentures) and an unlimited number of special voting units.
- 4.12 As at January 31, 2005, the Trust had the following securities issued and outstanding:
 - 4.12.1 40,996,451 Trust Units,
 - 4.12.2 \$80,000,000 principal amount of Convertible Debentures, and
 - 4.12.3 one (1) special voting unit.
- 4.13 The unitholders of the Trust are the sole beneficiaries of the Trust. Valiant Trust Company (the Trustee) is the initial trustee of the Trust. The Filer is the administrator of the Trust.
- 4.14 The Trust Units and the Convertible Debentures are listed and posted for trading on the Toronto Stock Exchange.
- 4.15 The Trust is a reporting issuer in each of the Jurisdictions.
- 4.16 Further to a letter dated March 8, 2005 addressed to the Decision Makers, the Trust has adopted the renewal annual information form of Midnight dated April 20, 2004 as its own.
- 4.17 Daylight ExchangeCo Ltd. (ExchangeCo) was incorporated pursuant to the ABCA on September 10, 2004.

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- 4.18 The head office and registered office of ExchangeCo are each located in Calgary, Alberta.
- 4.19 ExchangeCo was incorporated for the sole purpose of participating in the Arrangement.
- 4.20 ExchangeCo is authorized to issue an unlimited number of common shares (the ExchangeCo Common Shares).
- 4.21 All of the issued and outstanding ExchangeCo Common Shares are owned by the Trust.
- 4.22 ExchangeCo is not a reporting issuer in any of the Jurisdictions.
- 4.23 No securities of ExchangeCo, including the ExchangeCo Common Shares, are listed or quoted on any exchange or marketplace.
- 4.24 The Exchangeable Shares are exchangeable for Trust Units and, to the extent possible, are the economic equivalent of the Trust Units.
- 4.25 The Exchangeable Shares have voting attributes equivalent to those of the Trust Units.
- 4.26 Holders of Exchangeable Shares will receive all disclosure materials that the Trust is required to send to holders of Trust Units under the Legislation.
- 4.27 The exchange rights attaching to the Exchangeable Shares are governed by a voting and exchange trust agreement among the Trust, the Filer, ExchangeCo and the Trustee that provides the Trustee the right to require the Trust or ExchangeCo to exchange the Exchangeable Shares and which will trigger automatically the exchange of the Exchangeable Shares for Trust Units upon the occurrence of certain specified events.
- 4.28 The Exchangeable Shares are also subject to a support agreement among the Trust, the Filer and ExchangeCo, pursuant to which the Trust and ExchangeCo will take certain actions and make certain payments and will deliver or cause to be delivered Trust Units in satisfaction of the obligations of the Filer.

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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 requirements of NI 51-102, the Comparable Continuous Disclosure Requirements and the Québec Order (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 the Filer either,
 - 6.1.4.1 the Trust Documents, or
 - 6.1.4.2 a notice that indicates
 - 6.1.4.2.1 that the Filer 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

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- 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 the Filer 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 the Filer that are not also material changes in the affairs of the Trust,
 - 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 the Filer, and
 - 6.1.9 the Filer 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 NI 51-101 Relief is granted for so long as:
- 6.2.1 the Trust files with each Decision Maker copies of all documents required to be filed by it pursuant to NI 51-101,
 - 6.2.2 the Filer is exempt from or otherwise not subject to the Continuous Disclosure Requirements,

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6.2.3 if disclosure to which NI 51-101 applies is made by the Filer separately from the Trust:

6.2.3.1 that disclosure includes a statement to the effect that the Filer is relying on an exemption from the requirement to file information annually under NI 51-101 separately from the Trust, and

6.2.3.2 the Filer disseminates a news release announcing the filing by the Filer of the disclosure, and indicating where a copy of the filed disclosure can be found for viewing on SEDAR by electronic means, and

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

6.3 The MI 52-109 Relief is granted for so long as:

6.3.1 the Filer 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

6.3.3 the Filer is exempt from or otherwise not subject to the Continuous Disclosure Requirements.

Stephen R. Murison, Vice-Chair
Alberta Securities Commission

Karl M. Ewoniak, CA, Member
Alberta Securities Commission