

# 2005 BCSECCOM 358

May 24, 2005

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-102 Continuous Disclosure Obligations – Securities Act, s. 119  
Proxy solicitation requirements - An issuer wants relief from the requirement to include prospectus-level disclosure in an information circular to be circulated in connection with an arrangement, reorganization, acquisition or amalgamation - Alternate financial information will be provided about the issuer that is consistent with the financial information required in the continuous disclosure context for significant acquisitions; information will be provided about the parties to the transaction sufficient for shareholders to assess the transaction as a whole

## **Applicable British Columbia Provisions**

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

National Instrument 51-102 *Continuous Disclosure Obligations*, ss. 9.1 and 13.1  
Form 51-102F5, Item 14.2

In the Matter of  
the Securities Legislation of  
Alberta, British Columbia, Saskatchewan, Ontario, Quebec and New Brunswick

and

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

and

In the Matter of  
Chamaelo Energy Inc.

## MRRS Decision Document

## **Background**

1. The local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, British Columbia, Saskatchewan, Ontario, Québec and New Brunswick (the "Jurisdictions") has received an application from Chamaelo Energy Inc. (the "Filer") for a decision under the securities legislation (the "Legislation") of the Jurisdictions that the Filer be exempted, subject to certain conditions:
  - 1.1 from the requirements to provide audited statements of income, retained earnings and cash flow and a full pro forma income

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statement and a balance sheet in respect of certain acquisitions made by the Filer within the last three financial years and certain probable acquisitions to be made by the Filer and ExploreCo (as defined and referred to below), each of which would be considered to be a "significant acquisition" to the Filer and ExploreCo as applicable, as required by the Legislation; and

- 1.2 in Québec, by a revision of the general order that will provide the same result as the relief requested above

(collectively, the "Disclosure Requirements").

2. Under Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Alberta Securities Commission is the principal regulator of this application.
3. Under the System, this MRRS Decision Document evidences the decision of each Decision Maker (the "Decision").

### **Interpretation**

4. Unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions*.

### **Representations**

5. This Decision is based on the following facts represented by the Filer:
  - 5.1 The Filer is an oil and gas company 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 was arranged pursuant to the Viracocha Arrangement (as defined in 5.13 below).
  - 5.2 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.
  - 5.3 The Filer is a reporting issuer in British Columbia, Alberta, Saskatchewan, Ontario and New Brunswick.
  - 5.4 The Chamaelo Shares are listed on the Toronto Stock Exchange (the "TSX").

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- 5.5 The Filer intends to reorganize its corporate structure, pursuant to a plan of arrangement (the "Arrangement") under the ABCA, into Vault Energy Trust (the "Trust") and a public exploration-focused oil and gas company ("ExploreCo").
- 5.6 At the date on which the Arrangement becomes effective under the ABCA (the "Effective Date"), the Arrangement will result in holders of Chamaelo Shares ("Chamaelo Shareholders") exchanging each 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").
- 5.7 The information circular (the "Information Circular") with respect to the annual general and special meeting of Chamaelo Shareholders and the holders of outstanding warrants of the Filer (collectively, "Chamaelo Securityholders") to be held on or about June 20, 2005 for the purpose of approving the Arrangement (the "Meeting") will contain (or to the extent permitted, will incorporate by reference) prospectus-level disclosure in respect of the Filer, the Trust and ExploreCo and a detailed description of the Arrangement.
- 5.8 The Trust will be an oil and gas royalty trust created under the laws of the Province of Alberta pursuant to a trust indenture to be entered into prior to the mailing of the Information Circular.
- 5.9 The Trust will become a reporting issuer in at least one of the Jurisdictions and will apply to list the Trust Units on the TSX.
- 5.10 Pursuant to the terms of an assignment and assumption agreement (the "Come-Along Agreement") to be entered into before the mailing of the Information Circular 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.
- 5.11 In the event that the conditions contained in the Come-Along Agreement are not satisfied, Chamaelo will proceed with 1166554 Alberta Inc. ("1166554") as ExploreCo.

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- 5.12 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 Orbus Shares are listed on the TSX and the Frankfurt Stock Exchange.
- 5.13 1166554 is a corporation incorporated under the ABCA.
- 5.14 1166554 will become a reporting issuer in at least one of the Jurisdictions and will apply to list the ExploreCo Shares on the TSX.
- 5.15 Pursuant to item 14.2 of Form 51-102F5 of National Instrument 51-102 *Continuous Disclosure Obligations* ("NI 51-102"), the Filer is required to provide disclosure (including financial statement disclosure) in the Information Circular for each entity, securities of which are being changed, exchanged, issued or distributed, and for each entity that would result from the significant acquisition or restructuring transaction, prescribed by the form of prospectus that the entity would be eligible to use for a distribution of securities in the Jurisdictions which, in this case, disclosure for the Filer, the Trust and ExploreCo is prescribed by Part 6 of OSC Rule 41-501 *General Prospectus Requirements* ("OSC Rule 41-501").
- 5.16 On May 27, 2004, pursuant to a plan of arrangement (the "Viracocha Arrangement"), the Filer acquired certain oil and gas exploration assets (the "Viracocha Assets") previously owned by Viracocha Energy Inc.
- 5.17 The information circular of Viracocha dated April 27, 2004 with respect to the Viracocha Arrangement contained, among other things, the statements of revenues and operating expenses of the Viracocha Assets for the financial years ended December 31, 2003, 2002 and 2001 which were audited by KPMG LLP.
- 5.18 The acquisition of the Viracocha Assets was a "significant acquisition" for the Filer under OSC Rule 41-501. The acquisition was in excess of 50% on the asset test and in excess of 50% on the income test.
- 5.19 On November 30, 2004, the Filer acquired certain oil and natural gas properties (the "CFOL Assets") from Canadian Forest Oil Ltd.

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- 5.20 On February 11, 2005, the Filer filed a business acquisition report (the "CFOL BAR") under Part 8 of NI 51-102 announcing that it had completed its acquisition of the CFOL Assets.
- 5.21 The CFOL BAR contained unaudited pro forma consolidated financial statements of the Filer, audited statements of revenue and operating expenses of the CFOL Assets for the two years ended December 31, 2003 and 2002, and the unaudited interim statements of revenue and operating expenses of the CFOL Assets for the nine-month period ended September 30, 2004 and 2003.
- 5.22 The acquisition of the CFOL Assets was a "significant acquisition" for the Filer under OSC Rule 41-501. The acquisition was in excess of 50% on the asset test and in excess of 50% on the income test.
- 5.23 Pursuant to a purchase and sale agreement to be entered into between the Filer and a senior oil and gas producer (the "Vendor"), the Filer will acquire, in conjunction with the Arrangement, certain oil and gas properties (the "Vendor Assets") from the Vendor.
- 5.24 The proposed acquisition of the Vendor Assets is a "significant probable acquisition" for the Filer under OSC Rule 41-501. The acquisition will be in excess of 50% on the asset test and in excess of 50% on the income test.
- 5.25 The Vendor will not be in a position to provide the requisite financial information pertaining to the Vendor Assets to the Filer before the mailing date of the Information Circular, as the Vendor is not the operator of the Vendor Assets and depends on third parties to supply the relevant information.
- 5.26 Pursuant to a petroleum, natural gas and general rights conveyance agreement to be entered into between the Filer and ExploreCo, ExploreCo will acquire, in conjunction with the Arrangement, certain of the Filer's oil and gas properties (the "ExploreCo Assets") from the Filer.
- 5.27 The proposed acquisition of the ExploreCo Assets is a "significant probable acquisition" for ExploreCo under OSC Rule 41-501. The acquisition will be in excess of 50% on the asset test and in excess of 50% on the income test for ExploreCo.

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- 5.28 Under the applicable prospectus requirements, the Filer would be required to include three years of audited financial statements of income, retained earnings and cash flow and a full pro forma income statement and a balance sheet in respect of the Viracocha Assets, CFOL Assets, Vendor Assets and ExploreCo Assets, as the case may be, as well as certain unaudited financial statements, in the Information Circular (and in the case of the ExploreCo Assets, with respect to the significant acquisition thereof by ExploreCo).
- 5.29 The Filer proposes to include the following financial disclosure in the Information Circular:
- 5.29.1 with respect to the acquisition of the Viracocha Assets,
- 5.29.1.1 audited statements of revenue and operating expenses in respect of the Viracocha Assets for the years ended December 31, 2003, December 31, 2002 and December 31, 2001;
- 5.29.1.2 unaudited statements of revenue and operating expenses in respect of the Viracocha Assets for the three-month periods ending March 31, 2004 and March 31, 2003;
- 5.29.1.3 a pro forma income statement for the Trust for the year ended December 31, 2004 combining the Viracocha Assets;
- 5.29.1.4 pro forma earnings per share based upon the statement referred to in 5.29.1.3 directly above; and
- 5.29.1.5 information with respect to reserve estimates of future net revenue and production volumes and other relevant material information relating to the Viracocha Assets;
- 5.29.2 with respect to the acquisition of the CFOL Assets,
- 5.29.2.1 audited statements of revenue and operating expenses in respect of the CFOL Assets for the years ended December 31, 2003, December 31, 2002 and December 31, 2001;

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- 5.29.2.2 unaudited statements of revenue and operating expenses in respect of the CFOL Assets for the nine-month periods ending September 30, 2004 and September 30, 2003;
  - 5.29.2.3 a pro forma income statement for the Trust for the year ended December 31, 2004 combining the CFOL Assets;
  - 5.29.2.4 pro forma earnings per share based upon the statement referred to in 5.29.2.3 directly above; and
  - 5.29.2.5 information with respect to reserve estimates of future net revenue and production volumes and other relevant material information relating to the CFOL Assets;
- 5.29.3 with respect to the acquisition of the Vendor Assets:
- 5.29.3.1 audited statements of revenue and operating expenses in respect of the Vendor Assets for the years ended December 31, 2004, December 31, 2003 and December 31, 2002;
  - 5.29.3.2 a pro forma income statement for the Trust for the year ended December 31, 2004 combining the Vendor Assets;
  - 5.29.3.3 pro forma earnings per share based upon the statement referred to in 5.29.3.2 directly above; and
  - 5.29.3.4 information with respect to reserve estimates of future net revenue and production volumes and other relevant material information relating to the Vendor Assets; and
- 5.29.4 with respect to the acquisition of the ExploreCo Assets by ExploreCo:

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- 5.29.4.1 audited statements of revenue and operating expenses in respect of the ExploreCo Assets for the years ended December 31, 2004, December 31, 2003 and December 31, 2002;
- 5.29.4.2 a pro forma income statement for ExploreCo for the year ended December 31, 2004 combining the ExploreCo Assets;
- 5.29.4.3 pro forma earnings per share based upon the statement referred to in 5.29.4.2 directly above; and
- 5.29.4.4 information with respect to reserve estimates of future net revenue and production volumes and other relevant material information relating to the ExploreCo Assets

(collectively, the "Alternative Financial Disclosure").

- 5.30 Each of the acquisitions referred to herein is an acquisition of interests in oil and gas properties constituting a business, as provided in the Companion Policy to OSC Rule 41-501.
- 5.31 Each of the acquisitions referred to herein has no separate historical audited financial statements exist in respect of the assets in question.
- 5.32 Each of the acquired and to-be-acquired assets referred to herein does not constitute a reportable segment for the relevant entity.
- 5.33 The Filer is not in default of any of the requirements under the Legislation.

### **Decision**

- 6. 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.
- 7. The Decision of the Decision Makers under the Legislation is that the requirement contained in the Legislation to include financial statement disclosure in an information circular prepared in connection with a plan of arrangement, including audited and unaudited statements of income,

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retained earnings and cash flow and a full pro forma income statement and a balance sheet in respect to the Viracocha Assets, the CFOL Assets, the Vendor Assets and the ExploreCo Assets for a three-year period as required by the Disclosure Requirements, shall not apply to Chamaelo provided that the Alternative Financial Disclosure for Chamaelo, the Trust and ExploreCo, as applicable, is included in the Information Circular.

DATED at Calgary, Alberta on this 24th day of May, 2005.

Agnes Lau  
Deputy Director, Capital Markets  
ALBERTA SECURITIES COMMISSION