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April 28, 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 security holders 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

Applicable British Columbia Provisions

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

National Instrument 51-102 *Continuous Disclosure Obligations*, Parts 4, 5, 6, 7, 8 and 9, and s. 13.1

In the Matter of
the Securities Legislation of
Alberta (the “Principal Jurisdiction”), British Columbia, Saskatchewan, Ontario
and Québec

and

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

and

In the Matter of
Total Energy Services Ltd. (“Total Energy”),
Total Energy Services Trust (the “Trust”),
Total Acquisition Corp. (“AcquisitionCo”) and
Total ExchangeCo Ltd. (“ExchangeCo”) (collectively, the “Filers”)

MRRS Decision Document

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Background

1. The local securities regulatory authority or regulator (collectively, the “Decision Makers”) in each of Alberta, British Columbia, Saskatchewan, Ontario and Québec (the “Jurisdictions”) has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that:
 - 1.1 in the Jurisdictions, where applicable, the requirements contained in Parts 4, 5, 6, 7, 8 and 9 of National Instrument 51-102 - *Continuous Disclosure Obligations* (“NI 51-102”) and in Québec, by a revision of the general order that will provide the same result as an exemption order (collectively, the “Continuous Disclosure Requirements”) shall not apply to the continuing corporation following the amalgamation of Total Energy and AcquisitionCo (“AmalCo”) pursuant to the proposed plan of arrangement (the “Arrangement”) under section 193 of the *Business Corporations Act* (Alberta) (the “ABCA”) involving the Filers and the shareholders and optionholders of Total Energy; and
 - 1.2 in the Jurisdictions other than British Columbia and Québec, the requirements contained in Multilateral Instrument 52-109 - *Certification of Disclosure in Issuers' Annual and Interim Filings* (“MI 52-109”) shall not apply to AmalCo.
2. Under the Mutual Reliance Review System for Exemptive Relief Applications (the “MRRS”),
 - (a) the Alberta Securities Commission is the principal regulator for this application, and
 - (b) this MRRS decision 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 Filers:

Total Energy

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- 4.1 Total Energy was incorporated under the ABCA under the name Anorak Capital Corp. on November 4, 1996 and changed its name to Total Energy pursuant to Articles of Amendment filed on December 3, 1997.
- 4.2 The head and principal office of Total Energy is located at Suite 2410, 520 – 5th Avenue S.W., Calgary, Alberta, T2P 3R7, and the registered office is located at Suite 4500, 855 – 2nd Street S.W., Calgary, Alberta, T2P 4K7.
- 4.3 Total Energy is engaged in the business of providing drilling and production services to the western Canadian oil and gas industry.
- 4.4 The authorized share capital of Total Energy consists of an unlimited number of common shares (the “Common Shares”) and an unlimited number of preferred shares, issuable in series. As of March 28, 2005, there were 27,514,745 Common Shares issued and outstanding and no preferred shares issued and outstanding. Options to acquire 1,218,333 Common Shares (the “Options”) were also outstanding as of March 28, 2005.
- 4.5 The Common Shares are listed and posted for trading on the Toronto Stock Exchange (the “TSX”). Total Energy has applied on behalf of the Trust to have the trust units of the Trust (“Trust Units”), as described below, listed in substitution for the Common Shares and to have the Common Shares delisted from the TSX as soon as possible after the Effective Date.
- 4.6 Total Energy is a reporting issuer in each of the Jurisdictions and has been for more than twelve months.
- 4.7 Total Energy 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 in those Jurisdictions.

Total Energy Services Trust

- 4.8 The Trust was established pursuant to a Deed of Trust dated March 23, 2005.
- 4.9 The Trust will be, for the purposes of the *Income Tax Act* (Canada) (the “Tax Act”), an open-ended, unincorporated mutual fund trust.

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- 4.10 The capital structure of the Trust consists of an unlimited number of Trust Units and an unlimited number of special voting units.
- 4.11 As of the date hereof, one Trust Unit was issued and outstanding but will be redeemed pursuant to the Arrangement.
- 4.12 The Trust is not a reporting issuer in any of the Jurisdictions.

Total Acquisition Corp.

- 4.13 AcquisitionCo was incorporated pursuant to the ABCA on March 22, 2005.
- 4.14 The head and principal office of AcquisitionCo is located at Suite 2410, 520 – 5th Avenue S.W., Calgary, Alberta, T2P 3T7, and the registered office is located at Suite 4500, 855 - 2nd Street S.W., Calgary, Alberta, T2P 4K7.
- 4.15 AcquisitionCo was incorporated for purposes of participating in the Arrangement, including creating and issuing the Notes (defined below) and the Exchangeable Shares (defined below) required for implementing the Arrangement.
- 4.16 AcquisitionCo is authorized to issue an unlimited number of common shares and an unlimited number of exchangeable shares, issuable in series. As of the date hereof, one common share of AcquisitionCo was issued and outstanding, the sole holder of which is the Trust. There are currently no exchangeable shares issued and outstanding.
- 4.17 AcquisitionCo is not a reporting issuer in any of the Jurisdictions.

Total ExchangeCo Ltd.

- 4.18 ExchangeCo was incorporated pursuant to the ABCA on March 22, 2005.
- 4.19 The head and principal office of ExchangeCo is Suite 2410, 520 – 5th Avenue S.W., Calgary, Alberta, T2P 3T7, and the registered office is located at Suite 4500, 855 - 2nd Street S.W., Calgary, Alberta, T2P 4K7.

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- 4.20 ExchangeCo was incorporated for the sole purpose of participating in the Arrangement.
- 4.21 ExchangeCo is authorized to issue an unlimited number of common shares. As of the date hereof, one common share of ExchangeCo was issued and outstanding, the sole holder of which is the Trust.
- 4.22 ExchangeCo is not a reporting issuer in any of the Jurisdictions.

The Arrangement

- 4.23 The Arrangement will be effected by way of a plan of arrangement pursuant to section 193 of the ABCA which will require approval by: (i) at least two-thirds of the votes cast by the holders of Common Shares ("Shareholders") and holders of Options ("Optionholders") (collectively, the "Securityholders") present in person or represented by proxy, voting together as a single class at a special meeting of Securityholders scheduled to be held on April 28, 2005 (the "Meeting"); and (ii) the Court of Queen's Bench of Alberta.
- 4.24 An information circular and proxy statement (the "Information Circular") was delivered to Securityholders in respect of the Meeting which contained, among other things, prospectus level disclosure of the business and affairs of each of Total Energy and the Trust, the particulars of the Arrangement, as well as a fairness opinion of an independent financial advisor.
- 4.25 Pursuant to the Arrangement, Total Energy will be reorganized into an income trust to be known as the Trust. The Arrangement does not contemplate the acquisition of any additional operating assets or the disposition of any of Total Energy's existing operating assets. Following completion of the Arrangement, AmalCo will own all of Total Energy's existing operating assets and will be the operating entity in the income trust structure.
- 4.26 Pursuant to the Arrangement, Shareholders, other than non-resident and tax-exempt Shareholders, will receive in exchange for each of their Common Shares, at the Shareholder's election or deemed election:
 - (a) one Trust Unit; or

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- (b) one series 1 exchangeable share in the capital of AcquisitionCo (the “Exchangeable Shares”).

4.27 The Arrangement involves a number of steps, including the following, each of which will be deemed to occur sequentially:

- (a) The Common Shares and Options held by Securityholders who have exercised the right to dissent pursuant to section 191 of the ABCA and the interim order of the Court of Queen's Bench of Alberta (“Dissenting Securityholders”) which remain valid immediately prior to the effective time of the Arrangement (the “Effective Time”) shall, as of the Effective Time, be deemed to have been transferred to AcquisitionCo 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 Total Energy other than the right to be paid the fair market value of their Common Shares or Options, as the case may be.
- (b) Each Option outstanding and not exercised prior to the Effective Date with an exercise price per Common Share equal to or greater than the weighted average trading price of the Common Shares prior to the Effective Date (the “Out-of-the-Money Options”), other than Out-of-the-Money Options held by Dissenting Shareholders, shall be cancelled in exchange for the payment by Total Energy to each Optionholder of \$0.01 multiplied by the number of Common Shares to which the Optionholder's Out-of-the-Money Options relate, net of any applicable withholdings or taxes as required by law.
- (c) Each Option outstanding and not exercised prior to the Effective Date with an exercise price per Common Share less than the weighted average trading price of the Common Shares prior to the Effective Date (the “In-the-Money Options”), other than In-the-Money Options held by Dissenting Securityholders, shall be cancelled in exchange for the payment by Total Energy to each Optionholder of the amount by which the weighted average trading price of the Common Shares exceeds the exercise price of the In-the-Money Options, multiplied by the number of

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Common Shares to which the Optionholder's In-the-Money Options relate, net of any applicable withholdings or taxes as required by law.

- (d) Each Common Share held by Shareholders that are residents of Canada and not tax-exempt Shareholders will, at the Shareholder's election, be transferred to AcquisitionCo in exchange for one unsecured, subordinated promissory note (a "Note") or one Exchangeable Share.
 - (e) Each Common Share held by tax-exempt Shareholders will be transferred to AcquisitionCo in exchange for one Note.
 - (f) Each Common Share held by non-resident Shareholders will be transferred to AcquisitionCo in exchange for one Note.
 - (g) Each Common Share held by non-responding Shareholders will be transferred to AcquisitionCo in exchange for one Note.
 - (h) Each Note held by Shareholders will be exchanged with the Trust for one Trust Unit.
- 4.28 As a further step to the Arrangement, AcquisitionCo and Total Energy will amalgamate under the ABCA and will continue as one corporation (AmalCo).
- 4.29 Exchangeable Shares are intended to be, to the extent possible, the economic equivalent of Trust Units.
- 4.30 Exchangeable Shares will have voting attributes equivalent to those of the Trust Units.
- 4.31 Holders of Exchangeable Shares will receive all disclosure materials that the Trust is required to send to holders of Trust Units under the Legislation.
- 4.32 The exchange rights of the Exchangeable Shares will be governed by a Voting and Exchange Trust Agreement among the Trust, AcquisitionCo, ExchangeCo, and Olympia Trust Company as trustee (the "Trustee") that provides for certain ancillary rights including the right to require the Trust or ExchangeCo to exchange the Exchangeable Shares for Trust Units (which right will trigger

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automatically the exchange of the Exchangeable Shares for Trust Units upon the occurrence of certain specified events).

- 4.33 The Exchangeable Shares will be subject to a Support Agreement among the Trust, AcquisitionCo 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 AcquisitionCo.
- 4.34 A maximum of 4,000,000 Exchangeable Shares may be issued pursuant to the Arrangement.
- 4.35 In the event that more Exchangeable Shares are requested than are available, the Exchangeable Shares will be prorated and those shareholders who have elected to receive Exchangeable Shares will receive Trust Units in lieu of Exchangeable Shares.
- 4.36 Any Exchangeable Shares issued will not be listed on the TSX.
- 4.37 Upon completion of the steps of the Arrangement, Shareholders will own all of the issued and outstanding Trust Units and Exchangeable Shares and the Trust will own all of the issued and outstanding common shares of AmalCo.
- 4.38 Upon completion of the Arrangement, the Trust will be a reporting issuer in each of the Jurisdictions as a result of the Trust Units being list and posted for trading on the TSX.
- 4.39 Upon completion of the Arrangement, AmalCo will be a reporting issuer in each of the Jurisdictions.
- 4.40 Upon completion of the Arrangement, AmalCo will be subject to the Continuous Disclosure Requirements and, where applicable, MI 52-109.
- 4.41 The Information Circular mailed to Securityholders in connection with the Arrangement discloses that AmalCo will seek relief from the Continuous Disclosure Requirements and MI 52-109.
- 4.42 AmalCo and its insiders will comply with the insider reporting requirement and the requirement to file an insider profile under National Instrument 55-102 – *System for Electronic Disclosure by Insiders*. The Trust will take the appropriate measures to require

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that each insider of AmalCo will (i) file insider reports about trades in Trust Units and Exchangeable Shares and (ii) comply with legislative prohibitions against insider trading.

- 4.43 Following completion of the Arrangement, the financial information of AmalCo will be consolidated into the annual and interim financial statements of the Trust that the Trust will prepare pursuant to NI 51-102.
- 4.44 The Trust will include, in both its interim and annual management's discussion and analysis ("MD&A") that the Trust will prepare pursuant to NI 51-102, disclosure about the specific risks and uncertainties relating to the operations of AmalCo and the potential impact of those risks and uncertainties on future distributions of the Trust. The Trust will also include, in both interim and annual MD&A for the fiscal year ended December 31, 2005, comparative financial information in respect of the 2004 financial results of Total Energy and in the interim MD&A for the period ended March 31, 2006, comparative financial information in respect of the financial results of Total Energy for the equivalent period in 2005.

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 Requirements shall not apply to AmalCo for so long as:
 - 6.1.1 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 – *System for Electronic Document Analysis and Retrieval (SEDAR)*;
 - 6.1.2 the Trust concurrently sends to all holders of Exchangeable Shares all disclosure material furnished to holders of Trust Units under the Continuous Disclosure Requirements;

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- 6.1.3 the Trust files with each Decision Maker copies of all documents required to be filed by it pursuant to NI 51-102;
 - 6.1.4 the Trust is in compliance with the requirements in the Legislation 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;
 - 6.1.5 AmalCo 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 AmalCo that are not also material changes in the affairs of the Trust;
 - 6.1.6 the Trust includes in all future mailings of proxy solicitation materials to holders of Exchangeable Shares a clear and concise statement that explains the reason the mailed materials relate solely to the Trust, indicates the Exchangeable Shares are the economic equivalent to the Trust Units and describes the voting rights associated with the Exchangeable Shares;
 - 6.1.7 the Trust remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities of AmalCo;
 - 6.1.8 AmalCo does not issue any securities, other than Exchangeable Shares, securities issued to affiliates, common shares issued only to the Trust, or debt securities issued to banks, loan corporations, trust corporations, treasury branches, credit unions, insurance companies or other financial institutions; and
 - 6.1.9 AmalCo files a notice under its SEDAR profile that AmalCo has been granted relief from certain continuous disclosure requirements and that AmalCo will be relying on the continuous disclosure file of the Trust.
- 6.2 Other than in British Columbia and Québec, the requirements under MI 52-109 shall not apply to AmalCo for so long as:

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- 6.2.1 AmalCo is not required to, and does not, file its own interim and annual filings (as those terms are defined under MI 52-109);
- 6.2.2 the Trust files in electronic format under the SEDAR profile of AmalCo the:
 - (i) interim filings,
 - (ii) annual filings;
 - (iii) interim certificates; and
 - (iv) annual certificatesof the Trust, at the same time as such documents are required to be filed under the Legislation by the Trust; and
- 6.2.3 AmalCo is exempt from or otherwise not subject to the Continuous Disclosure Requirements.

DATED at Calgary, Alberta on this 28th day of April, 2005

Mavis Legg, CA
Manager, Securities Analysis