

# 2004 BCSECCOM 265

## **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

## **Applicable British Columbia Provisions**

National Instrument 51-102 *Continuous Disclosure Obligations*, s. 13.1

**IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA,  
BRITISH COLUMBIA, SASKATCHEWAN, MANITOBA, ONTARIO,  
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 PEAK ENERGY SERVICES TRUST, PEAK  
ENERGY SERVICES LTD. AND PEAK ACQUISITION CORP.**

## **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (collectively, the “Decision Makers”) in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Nova Scotia and Newfoundland and Labrador (the “Jurisdictions”) has received an application from Peak Energy Services Trust (the “Trust”), Peak Energy Services Ltd. (“Peak”) and Peak Acquisition Corp. (“AcquisitionCo”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that AcquisitionCo (or its successor on amalgamation with Peak, “AmalgamationCo”), be granted an exemption from National Instrument 51-102 Continuous Disclosure Obligations (“NI 51-102”), in its entirety, and further be granted an exemption from any comparable continuous disclosure requirements under the Legislation of the Jurisdictions that has not yet been repealed or otherwise rendered ineffective as a consequence of the adoption of NI 51-102 (collectively, the “Continuous Disclosure Requirements”);

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”) the Alberta 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;

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AND WHEREAS the Trust, Peak and AcquisitionCo have represented to the Decision Makers that:

1. Peak is a corporation incorporated and subsisting pursuant to the provisions of the *Business Corporations Act* (Alberta) (the “ABCA”);
2. the head and principal office of Peak is located at 1800, 530 – 8<sup>th</sup> Avenue S.W., Calgary, Alberta, T2P 3S8, and its registered office is located at 1400, 350 – 7<sup>th</sup> Avenue S.W., Calgary, Alberta T2P 3N9;
3. Peak is a Canadian oil field service company providing drilling and production services to the western Canadian oil and gas industry;
4. the authorized capital of Peak consists of an unlimited number of common shares (the “Common Shares”);
5. as at March 30, 2004, 39,034,924 Common Shares were issued and outstanding. Peak has also reserved a total of 2,102,200 Common Shares for issuance pursuant to outstanding options to purchase Common Shares (the “Options”);
6. the Common Shares are listed on the Toronto Stock Exchange (the “TSX”);
7. Peak is a reporting issuer in the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia and Newfoundland and Labrador and has been for more than 12 months in British Columbia, Alberta, Saskatchewan, Manitoba and Ontario;
8. Peak 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, Quebec, 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 March 26, 2004 between Peak and Valiant Trust Company, as trustee;
10. the Trust was established for the purpose of, among other things:
  - (a) participating in a proposed plan of arrangement (the “Plan”) under section 193 of the ABCA (the “Arrangement”) and other matters contemplated by an arrangement agreement (the “Arrangement Agreement”) dated March 30, 2004 among Peak, AcquisitionCo, Peak

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ExchangeCo Ltd. (“ExchangeCo”), the Trust and Peak Commercial Trust (“PCT”);

- (b) investing in securities of PCT, AcquisitionCo, ExchangeCo or any other subsidiary of the Trust and acquiring certain securities of AcquisitionCo and PCT pursuant to the Plan, which investments are for the purpose of funding the acquisition, development, exploitation and disposition of all types of energy services related assets and services, including without limitation, facilities of any kind, oil and gas services assets, oil sands services assets, electricity or power generating services assets and pipeline, gathering, processing and transportation services assets (collectively, “Energy Services Assets”);
  - (c) acquiring or investing in the securities of any other entity, including bodies corporate, partnerships or trusts, and borrowing funds or otherwise obtaining credit, including granting guarantees, for that purpose, for the purpose of directly or indirectly acquiring Energy Services Assets; and
  - (d) making loans or other advances to PCT and/or AmalgamationCo to finance future acquisitions and capital expenditures;
11. the head and principal office of the Trust is located at Suite 1800, 530 - 8<sup>th</sup> Avenue S.W., Calgary, Alberta, T2P 3S8;
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 PCT, ExchangeCo and, indirectly, AcquisitionCo;
13. the Trust is authorized to issue an unlimited number of trust units (the “Trust Units”) and an unlimited number of special voting rights (the “Special Voting Rights”);
14. as of the date hereof, there are ten (10) Trust Units issued and outstanding, which are owned by Peak, and no Special Voting Rights are outstanding;
15. the Trust has obtained the conditional approval of 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 the exchangeable shares of AmalgamationCo (the “Exchangeable Shares”) will also be listed on the TSX, subject to receipt of final approval from the TSX;

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16. the Trust is not a reporting issuer in any of the Jurisdictions;
17. AcquisitionCo is an indirect, wholly-owned subsidiary of the Trust and was incorporated pursuant to the ABCA on March 9, 2004. AcquisitionCo was incorporated to participate in the Arrangement by acquiring the Common Shares of Peak (other than those held by dissenting holders of Common Shares ("Shareholders"));
18. the head and principal office of AcquisitionCo is located at 1800, 530 – 8<sup>th</sup> Avenue S.W., Calgary, Alberta, T2P 3S8 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;
20. as of the date hereof there is one (1) common share of AcquisitionCo issued and outstanding, which is indirectly 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. the Arrangement will require: (i) approval by not less than two-thirds of the votes cast by the Shareholders and the holders of Options ("Optionholders") (present in person or represented by proxy), voting together as a single class, at the meeting of Shareholders and Optionholders to be held on April 28, 2004 to consider the Arrangement (the "Meeting"), and thereafter; (ii) approval of the Court of Queen's Bench of Alberta (the "Court");
23. the information circular and proxy statement of Peak (the "Information Circular") delivered to Shareholders and Optionholders (collectively, the "Securityholders") in connection with the Meeting contains prospectus-level disclosure concerning the respective business and affairs of Peak, 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;
24. the Arrangement provides for a transaction where, commencing at the time (the "Effective Time") the Arrangement takes effect, which is expected to be

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on May 1, 2004 (the “Effective Date”), the events set out below shall be deemed to occur in the following order:

- (a) Peak's shareholder rights plan shall be terminated and be of no further force or effect and any and all rights issued pursuant to Peak's shareholder rights plan shall be cancelled, void and of no further force or effect;
- (b) 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 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 AcquisitionCo other than the right to be paid the fair value of their Common Shares or Options;
- (c) each issued and outstanding Common Share (other than Common Shares held by dissenting Shareholders) shall be exchanged with AcquisitionCo, in accordance with the election or deemed election of the holder of such Common Share:
  - (i) on the basis of one unsecured, subordinated promissory note (a “Note”) of AcquisitionCo for each two Common Shares held;
  - (ii) on the basis of one Exchangeable Share for each two Common Shares held; or
  - (iii) for a combination of Notes and Exchangeable Shares;
- (d) all unexercised Options (other than Options held by dissenting Optionholders), if any, will be cancelled and the Optionholders thereof shall be entitled to receive from Peak in respect of each such Option a specified amount in cash;
- (e) one hour after the Effective Time, each Note shall be exchanged with the Trust for one Trust Unit;
- (f) the Trust will transfer the Notes to PCT in consideration for notes of PCT and units of PCT in a 99:1 ratio;
- (g) Peak and AcquisitionCo shall be amalgamated and continued as one corporation, AmalgamationCo, in accordance with the following:

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- (i) the shares of Peak, all of which are owned by AcquisitionCo, shall be cancelled without any repayment of capital;
- (ii) the articles of AmalgamationCo shall be the same as the articles of AcquisitionCo, and the name of AmalgamationCo shall be “Peak Energy Services Ltd.”;
- (iii) 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;
- (iv) the property of each of the amalgamating corporations shall continue to be the property of AmalgamationCo;
- (v) the stated capital of the Common Shares of Peak shall be reduced to \$1.00 in aggregate immediately prior to the amalgamation;
- (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 shall be deemed to be the Articles of Incorporation of AmalgamationCo and the Certificate of Amalgamation 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 Peak;

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- (xiii) the first officers of AmalgamationCo shall be the officers of Peak;  
and
- (xiv) the registered office of AmalgamationCo shall be the registered office of Peak;
- 25. 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;
- 26. the Trust will become a reporting issuer under the Legislation of British Columbia, Alberta, Saskatchewan, Ontario, Québec and Newfoundland and Labrador, and will be subject to the Continuous Disclosure Requirements in such Jurisdictions;
- 27. 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;
- 28. 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;
- 29. 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;
- 30. 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 Valiant Trust Company (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

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of Exchangeable Shares with voting rights equivalent to those attached to the Trust Units; and

- (c) a support agreement to be entered into among 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;
  - (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;

- 31. the Information Circular discloses that application will be made to relieve AmalgamationCo from the Continuous Disclosure Requirements;
- 32. 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
- 33. AmalgamationCo and its insiders will comply with the insider reporting requirement and the requirement to file an insider profile under National Instrument 55-102;

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

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 the Continuous Disclosure Requirements of the Jurisdictions shall not apply to AmalgamationCo for so long as:



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- (a) the Trust is a reporting issuer in at least one of the jurisdictions listed in Appendix B of Multilateral Instrument 45-102 and is an electronic filer under National Instrument 13-101;
- (b) 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;
- (c) the Trust is in compliance with the requirements 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;
- (d) 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;
- (e) 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;
- (f) the Trust remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities of AmalgamationCo; and
- (g) AmalgamationCo does not issue any securities, other than the Exchangeable Shares, securities issued to the Trust, PCT or their affiliates, or debt securities issued to banks, loan corporations, trust corporations, treasury branches, credit unions, insurance companies or other financial institutions.

DATED at Calgary, Alberta on this 4<sup>th</sup> day of May, 2004.

Mavis Legg, CA

Manager, Securities Analysis