

2004 BCSECCOM 556

September 27, 2004

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 91 All Continuous Disclosure, Securities Act s. 119 and National Instrument 51-102, s. 13.1 - Exemption from filing all continuous disclosure materials - 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;

National Instrument 51-101, s. 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

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

National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*, s. 8.1

In the Matter of
the Securities Legislation of
Manitoba (the "Principal Jurisdiction"), Alberta, British Columbia, Saskatchewan,
Ontario, Québec, New Brunswick, Nova Scotia, and
Newfoundland & Labrador (collectively, the "Participating Jurisdictions")

and

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

2004 BCSECCOM 556

and

In the Matter of

Esprit Exploration Ltd. (“Esprit”), Esprit Energy Trust (the “Trust”),
ProspEx Resources Ltd. (“ProspEx”), Esprit Acquisition Corp. (“AcquisitionCo”)
and Esprit ExchangeCo Ltd. (“ExchangeCo”) (collectively, the “Filers”)

MRRS Decision Document

Background

1. The local securities regulatory authority or regulator (collectively, the “Decision Makers”) in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, and Newfoundland & Labrador (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 Manitoba and Québec (the “Registration and Prospectus Jurisdictions”) the dealer registration requirement and the prospectus requirement (the “Registration and Prospectus Requirements”) shall not apply to all trades made in connection with a proposed Plan of Arrangement (the “Arrangement”) pursuant to section 192 of the *Canada Business Corporations Act* (the “CBCA”), involving the Filers and the shareholders and optionholders of Esprit (the “Securityholders”) and shall not apply to the first trade of securities acquired under the Arrangement or the first trade of securities acquired on the exercise of all rights, automatic or otherwise, under such securities;
 - 1.2 in the Jurisdictions, where applicable, the requirements contained in 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, and any comparable continuous disclosure requirements under the Legislation of the Jurisdictions that have not yet been repealed or otherwise rendered ineffective as a consequence of the adoption of NI 51-102 (the “Continuous Disclosure Requirements”) shall not apply to the continuing corporation following the amalgamation of Esprit and AcquisitionCo pursuant to the Arrangement (“AmalgamationCo”);

2004 BCSECCOM 556

- 1.3 in the Jurisdictions other than Québec, the requirements contained in 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”) shall not apply to AmalgamationCo; and
- 1.4 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 AmalgamationCo.
2. Under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”),
 - (a) the Manitoba 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 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:

Esprit

- 4.1 Esprit was incorporated under the CBCA under the name Canadian 88 Energy Corp. on September 4, 1987 and changed its name to Esprit pursuant to Articles of Amendment filed on May 26, 2003.
- 4.2 The head and principal office of Esprit is located at Suite 900, 606 – 4th Street S.W., Calgary, Alberta, T2P 1T1, and the registered office is located at 4500 Bankers Hall East, 855 – 2nd Street S.W., Calgary, Alberta, T2P 4K7.
- 4.3 Esprit is engaged in the business of development and production of natural gas, natural gas liquids and oil.
- 4.4 The authorized share capital of Esprit consists of an unlimited number of common shares (the “Common Shares”), an unlimited

2004 BCSECCOM 556

number of Class B non-voting common shares, and an unlimited number of six classes of preferred shares, issuable in series. As of August 16, 2004, there were 160,752,675 Common Shares issued and outstanding, and no Class B non-voting common shares or preferred shares. Options to acquire 8,475,584 Common Shares were also outstanding as of August 16, 2004.

- 4.5 The Common Shares are listed and posted for trading on the Toronto Stock Exchange (the “TSX”). Esprit has applied to have the Common Shares delisted from the TSX and to have the class A trust and class B trust units of the Trust (“Class A Trust Units” and “Class B Trust Units” and collectively the “Trust Units”), as described below, listed in substitution for the Common Shares as soon as possible after the Effective Date.
- 4.6 Esprit is a reporting issuer in each of the Jurisdictions in which such status is available and has been for more than four months.
- 4.7 Esprit has filed all of the information that it has been required to file as a reporting issuer in the Jurisdictions in which it is a reporting issuer and is not in default of the Legislation in those Jurisdictions.

The Trust

- 4.8 The Trust was established pursuant to a Trust Indenture dated August 16, 2004.
- 4.9 The Trust is, for the purposes of the *Income Tax Act* (Canada) (the “Tax Act”), an unincorporated, open-end mutual fund trust.
- 4.10 The capital structure of the Trust is intended to ensure that the Trust continues to qualify as a mutual fund trust under the *Income Tax Act* (Canada) on and after the Effective Date. The capital structure of the Trust consists of an unlimited number of Class A Trust Units and an unlimited number of Class B Trust Units. The Class A Trust Units and Class B Trust Units have the same rights to vote, receive distributions and participate in the assets of the Trust upon dissolution or wind-up. Class A Trust Units have no residency restrictions and Class B Trust Units may only be held by Canadian residents. At any one time, the number of Class A Trust Units issued and outstanding cannot exceed 80% of the number of Class B Trust Units issued and outstanding (excluding the number

2004 BCSECCOM 556

of Class B Trust Units which may be issued on the exchange of outstanding Exchangeable Shares and Post-Arrangement Entitlements, both described below).

- 4.11 As of August 26, 2004, one Class B Trust Unit was issued and outstanding but will be redeemed pursuant to the Arrangement.
- 4.12 The trustees of the Trust may declare all or any part of the net income of the Trust, less expenses and liabilities, to be payable and distributed in cash to the holders of Class A Trust Units and Class B Trust Units (a "Distribution").
- 4.13 Esprit, on behalf of the Trust, has applied to list the Class A Trust Units and Class B Trust Units to be issued pursuant to the Arrangement on the TSX.
- 4.14 The Trust is not a reporting issuer in any of the Jurisdictions.

ProspEx Resources Ltd.

- 4.15 ProspEx was incorporated pursuant to the *Business Corporations Act* (Alberta) on August 13, 2004.
- 4.16 The head and principal office of ProspEx is located at Suite 900, 606 – 4th Street S.W., Calgary, Alberta, T2P 1T1, and the registered office is located at 4500 Bankers Hall East, 855 - 2nd Street S.W., Calgary, Alberta, T2P 4K7.
- 4.17 ProspEx is the primary vehicle through which Esprit shareholders will continue to participate in an oil and natural gas exploration and development company focused on growth through reinvestment of cash flows.
- 4.18 Pursuant to the Arrangement, certain of the assets of Esprit will be transferred to ProspEx.
- 4.19 The authorized capital of ProspEx consists of an unlimited number of common shares (the "ProspEx Common Shares"), an unlimited number of non-voting shares (the "ProspEx Non-Voting Shares"), and an unlimited number of preferred shares issuable in series. As of August 25, 2004, one common share of ProspEx was issued and outstanding and is owned by the Trust.

2004 BCSECCOM 556

- 4.20 Shareholders (defined below) will be asked to approve an initial private placement of approximately 32,142,857 units (6,428,571 units after giving effect to the Arrangement, pursuant to which the share capital of ProspEx will be consolidated on a five-for-one basis as described below) to certain directors, officers, and employees of ProspEx, and certain other service providers, including directors, officers and employees of AmalgamationCo (defined below) (the “Placees”). Each unit will consist of one ProspEx Non-Voting Share and one-half of one performance warrant, each whole performance warrant entitling the holder thereof to acquire one additional ProspEx Common Share. If the initial private placement is approved by Shareholders at the Meeting, each ProspEx Non-Voting Share will be exchanged and cancelled pursuant to the Arrangement for one (1) ProspEx Common Share.
- 4.21 Esprit, on behalf of ProspEx, has applied to list the ProspEx Common Shares on the TSX.
- 4.22 ProspEx is not a reporting issuer in any of the Jurisdictions.

AcquisitionCo

- 4.23 AcquisitionCo was incorporated pursuant to the CBCA on August 13, 2004.
- 4.24 The head and principal office of AcquisitionCo is Suite 900, 606 – 4th Street S.W., Calgary, Alberta, T2P 1T1, and the registered office is located at 4500 Bankers Hall East, 855 – 2nd Street S.W., Calgary, Alberta, T2P 4K7.
- 4.25 AcquisitionCo was incorporated for the sole purpose of participating in the Arrangement, including issuing the Exchangeable Shares and the Notes (described below).
- 4.26 AcquisitionCo is authorized to issue an unlimited number of common shares. As of August 26, 2004, 100 common shares of AcquisitionCo were issued and outstanding, the sole holder of which is the Trust.
- 4.27 AcquisitionCo is not a reporting issuer in any of the Jurisdictions.

2004 BCSECCOM 556

ExchangeCo

- 4.28 ExchangeCo was incorporated pursuant to the CBCA on August 13, 2004.
- 4.29 The head and principal office of ExchangeCo is located at Suite 900, 606 - 4th Street S.W., Calgary, Alberta, T2P 1T1 and the registered office is located at 4500 Bankers Hall East, 855 - 2nd Street S.W., Calgary, Alberta, T2P 4K7.
- 4.30 ExchangeCo was incorporated for the sole purpose of participating in the Arrangement.
- 4.31 ExchangeCo is authorized to issue an unlimited number of common shares. As of August 26, 100 common shares of ExchangeCo were issued and outstanding, the sole holder of which is the Trust.
- 4.32 ExchangeCo is not a reporting issuer in any of the Jurisdictions.

The Arrangement

- 4.33 The Arrangement will be effected by way of a plan of arrangement pursuant to section 192 of the CBCA 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 the Meeting; and (ii) the Court of Queen's Bench of Alberta.
- 4.34 Each registered Shareholder of Esprit will be required to complete a declaration confirming whether the Shareholder is a resident of Canada or a non-resident of Canada (the "Residency Declaration") set forth in the Letter of Transmittal and Election Form. Depending on the response provided in the Residency Declaration, each Shareholder (other than a dissenting Shareholder) will receive the following in exchange for each Common Share owned (after giving effect to the Arrangement, one of the steps of which includes a consolidation described below):
 - (a) if the Shareholder is a resident of Canada and is not exempt from tax under Part 1 of the Tax Act (a "Tax-Exempt

2004 BCSECCOM 556

Shareholder”), (i) at the Shareholder's election either 0.25 of a Class B Trust Unit or 0.25 of an exchangeable share of AcquisitionCo, exchangeable at the holder's option into a Class B Trust Unit (an “Exchangeable Share”), subject to the minimum and maximum number of Exchangeable Shares issuable pursuant to the Arrangement, as described below, and (ii) 0.20 of a ProspEx Common Share, and (iii) a special distribution of \$0.22 (the “Special Distribution”).

- (b) if the Shareholder is a resident of Canada and is a Tax-Exempt Shareholder, (i) 0.25 of a Class B Trust Unit, (ii) 0.20 of a ProspEx Common Share, and (iii) the Special Distribution.
- (c) if the Shareholder is a non-resident of Canada (a “Non-Resident”), (i) 0.25 of a Class A Trust Unit, (ii) 0.20 of a ProspEx Common Share, and (iii) the Special Distribution.
- (d) if the Shareholder does not return a duly completed and validly executed Residency Declaration to the Depository (a “Non-Responding Shareholder”), (i) 0.25 of a Post-Arrangement Entitlement (described below), (ii) 0.20 of a ProspEx Common Share, and (iii) the Special Distribution.

- 4.35 Exchangeable Shares are intended to be, to the extent possible, the economic equivalent of Class B Trust Units.
- 4.36 Exchangeable Shares have voting attributes equivalent to those of the Trust Units.
- 4.37 Holders of Exchangeable Shares will receive all disclosure materials that the Trust is required to send to holders of Trust Units under the Legislation.
- 4.38 The exchange rights of the Exchangeable Shares will be governed by a Voting and Exchange Trust Agreement among the Trust, AcquisitionCo, ExchangeCo, and Computershare Trust Company of Canada as trustee (the “Trustee”) that provides for certain ancillary rights (the “Ancillary Rights”) which are:
 - (a) optional exchange rights granted to the Trustee, for the use and benefit of the holders of Exchangeable Shares pursuant to the Voting and Exchange Trust Agreement to require the

2004 BCSECCOM 556

Trust to exchange or purchase, or cause ExchangeCo to exchange or purchase, Exchangeable Shares for Class B Trust Units, upon the occurrence of

- (i) an Insolvency Event (being the institution by AcquisitionCo of any proceeding to be adjudicated a bankrupt or insolvent or to be wound up, or the consent of AcquisitionCo to the institution of bankruptcy, insolvency, dissolution or winding-up proceedings against it, or the filing of a petition, answer or consent seeking dissolution or winding-up under any bankruptcy, insolvency or analogous laws, and the failure by AcquisitionCo to contest in good faith to any such proceedings commenced in respect of AcquisitionCo within 15 days of becoming aware thereof, or the consent by AcquisitionCo to the filing of any such petition or to the appointment of a receiver, or the making by AcquisitionCo of a general assignment for the benefit of creditors or the admission in writing by AcquisitionCo of its inability to pay its debts generally as they become due, or AcquisitionCo not being permitted, pursuant to solvency requirements of applicable law, to redeem any Exchangeable Shares that are subject to a right of retraction); or
- (ii) the Trust and AcquisitionCo electing not to exercise a right to purchase, redeem or retract the Exchangeable Shares, such right being provided pursuant to the provisions of the Exchangeable Shares; and

- (b) the issuance of a special voting unit of the Trust to the Trustee which will entitle the holders of Exchangeable Shares to a number of votes at meetings of Trust Unitholders equal to the aggregate equivalent vote amount.

4.39 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 Class B Trust Units in satisfaction of the obligations of AcquisitionCo.

2004 BCSECCOM 556

- 4.40 A minimum of 2,115,000 and a maximum of 4,230,000 Exchangeable Shares may be issued pursuant to the Arrangement. No Exchangeable Shares will be issued if fewer than 2,115,000 Exchangeable Shares are requested.
- 4.41 In the event that Exchangeable Shares are issued and 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 Class B Trust Units in lieu of Exchangeable Shares.
- 4.42 Any Exchangeable Shares issued will not be listed on the TSX.
- 4.43 The maximum number of Class A Trust Units that will be issued and outstanding at any time will not exceed 80% of the number of Class B Trust Units issued and outstanding at such time (the "Ownership Threshold").
- 4.44 In the event that the number of Class A Trust Units that are requested to be issued pursuant to the Arrangement exceeds the Ownership Threshold, the Class A Trust Units will be pro-rated among the Non-Resident Shareholders that have duly completed a Letter of Transmittal and Election Form and the obligation of Esprit and the Trust to deliver Class A Trust Units in excess of the Ownership Threshold will be satisfied by the Trust delivering Class B Trust Units for sale on the TSX and delivering the net proceeds of sale, after expenses and net of any withholding taxes, on a pro rata basis, to such Non-Resident Shareholders.
- 4.45 Non-Responding Shareholders will receive 0.25 of a post-arrangement entitlement ("Post-Arrangement Entitlement") for each Common Share held.
- 4.46 An unlimited number of Post-Arrangement Entitlements may be created and issued.
- 4.47 The holder of a Post-Arrangement Entitlement has the right to receive Class A Trust Units or Class B Trust Units, as applicable, from the Trust, upon delivering to the transfer agent of the Trust a duly completed and validly executed Residency Declaration, subject to the Ownership Threshold not having been exceeded. If the Ownership Threshold has been exceeded, then Class B Trust

2004 BCSECCOM 556

Units will be issued in lieu of Class A Trust Units and will be sold on the TSX with the net proceeds of sale, after expenses and net of any withholding taxes, being distributed to such Non-Residents on a pro rata basis.

- 4.48 The holder of a Post-Arrangement Entitlement also has the right to vote at meetings of the holders of Trust Units and will receive all disclosure material that the Trust is required to send to holders of Trust Units under the Legislation.
- 4.49 Distributions shall not be declared or paid by the Trust on any Post-Arrangement Entitlements, and the number of Class A Trust Units or Class B Trust Units to be received upon the receipt of a duly completed Residency Declaration after the Effective Date will not be increased on a cumulative basis in respect of Distributions. The holder of a Post-Arrangement Entitlement will not be entitled to any distributions of the Trust's net assets in the event of termination of winding-up of the Trust.
- 4.50 Any Post-Arrangement Entitlements issued will not be listed on the TSX.
- 4.51 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 190 of the CBCA and interim order of the Court of Queen's Bench of Alberta (a "Dissenting Securityholder") which remain valid immediately prior to the Effective Time shall, as of the Effective Time, be deemed to have been transferred to AcquisitionCo and, as of the Effective Time, such the Dissenting Securityholders shall cease to have any rights as Securityholders as Esprit other than to be paid the fair market value of their Common Shares or Options, as the case may be;
 - (b) Four new classes of shares in the capital of Esprit will be created, being Class A preferred shares ("Class A Preferred Shares"), class D common shares ("New Common Shares"), class B non-voting shares ("Class B Non-Voting Shares") and class C preferred shares ("Class C Preferred Shares");

2004 BCSECCOM 556

- (c) each Common Share (other than Common Shares held by AcquisitionCo, Non-Residents and Non-Responding Shareholders) will be exchanged and cancelled pursuant to a reorganization of the capital of Esprit for consideration consisting of the Special Distribution, one (1) Class A Preferred Share, one (1) New Common Share and one (1) Class B Non-Voting Share;
- (d) subject to pro-rationing, each New Common Share and each Class A Preferred Share (other than New Common Shares and Class A Preferred Shares held by 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) Class B Trust Unit or one (1) Exchangeable Share (together with the Ancillary Rights);
- (e) 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) Class B Trust Unit;
- (f) subject to the Ownership Threshold, each Common Share held by Non-Residents will be transferred to AcquisitionCo in exchange for the Special Distribution, one (1) Class A Trust Unit and the right to receive one (1) ProspEx Common Share;
- (g) each Common Share held by Non-Responding Shareholders will be transferred to AcquisitionCo in exchange for the Special Distribution, one (1) Post-Arrangement Entitlement and the right to receive one (1) ProspEx Common Share;
- (h) AcquisitionCo will issue one (1) Note to the Trust for each Trust Unit and each Post-Arrangement Entitlement issued pursuant to paragraphs (d), (e), (f) and (g) above;
- (i) each Option (whether vested or unvested) with an Option Value of nil (other than Options held by AcquisitionCo) shall be cancelled for a cash payment of five cents (\$0.05);

2004 BCSECCOM 556

- (j) each Option (whether vested or unvested) with an Option Value greater than nil (other than Options held by AcquisitionCo or a Non-Resident) shall cease to represent the right to acquire a Common Share and shall thereafter only entitle the holder to acquire a ProspEx Converted Option and a Trust Converted Option under the following terms and conditions:
 - (i) the exercise price for each one-fifth (1/5) of a ProspEx Common Share shall be equal to the fair market value of one-fifth (1/5) of a ProspEx Common Share determined immediately after the Effective Time less the product obtained when the Option Value is multiplied by the ProspEx Option Ratio;
 - (ii) the exercise price for each one-fourth (1/4) of a Class B Trust Unit shall be equal to the fair market value of one-fourth (1/4) of a Class B Trust Unit determined immediately after the Effective Time less the product obtained when the Option Value is multiplied by the Trust Option Ratio; and
 - (iii) if the foregoing calculation results in a former Optionholder holding a ProspEx Converted Option or a Trust Converted Option being exercisable for a fraction of a ProspEx Common Share or Class B Trust Unit, as the case may be, such ProspEx Converted Option or Trust Converted Option will be rounded down to the nearest whole number of ProspEx Common Shares or Class B Trust Units, as the case may be, and the exercise price per whole ProspEx Common Share or Class B Trust Unit will be as determined in (i) and (ii) above;
- (k) each Option (whether vested or unvested) held by a Non-Resident with an Option Value greater than nil shall be cancelled for a cash payment equal to the Option Value less any applicable withholding tax;
- (l) each Class B Non-Voting Share will be transferred to ProspEx in exchange for one (1) ProspEx Common Share;

2004 BCSECCOM 556

- (m) each Class B Non-Voting Share will be exchanged pursuant to a reorganization of the capital of Esprit for one (1) Class C Preferred Share;
- (n) AmalgamationCo shall deliver the ProspEx Common Shares to the Non-Residents and Non-Responding Shareholders entitled to such ProspEx Common Shares;
- (o) each ProspEx Non-Voting Share will be exchanged and cancelled pursuant to a reorganization of capital of ProspEx for one (1) ProspEx Common Share;
- (p) each ProspEx Common Share will be consolidated on the basis of one (1) ProspEx Common Share for each five (5) outstanding ProspEx Common Shares;
- (q) each Trust Unit will be consolidated on the basis of one (1) Trust Unit for each four (4) outstanding Trust Units, and
- (r) each Exchangeable Share will be consolidated on the basis of one (1) Exchangeable Share for each four (4) outstanding Exchangeable Shares and each Post-Arrangement Entitlement will be consolidated on the basis of one (1) Post-Arrangement Entitlement for each four (4) outstanding Post-Arrangement Entitlements.

(each of the trades described above referred to collectively as the “Trades”)

- 4.52 As a further step to the Arrangement, AcquisitionCo and Esprit will amalgamate under the CBCA and will continue as one corporation (“AmalgamationCo”).
- 4.53 Upon completion of the steps of the Arrangement, Shareholders will own all of the issued and outstanding Trust Units and Exchangeable Shares, the Trust will own all of the issued and outstanding common shares of AmalgamationCo, and Shareholders and Placees will own all of the issued and outstanding ProspEx Common Shares.
- 4.54 Upon completion of the Arrangement, the Trust will be a reporting issuer in British Columbia, Alberta, Saskatchewan, Ontario and Québec and, if an application made under the System in Nova

2004 BCSECCOM 556

Scotia, New Brunswick and Newfoundland & Labrador is granted, the Trust will be deemed or declared to be a reporting issuer in Nova Scotia, Newfoundland & Labrador, and New Brunswick. The Trust will be subject to the Continuous Disclosure Requirements, to NI 51-101 and to MI 52-109.

- 4.55 Upon completion of the Arrangement, ProspEx will become a reporting issuer in all Jurisdictions where such status is available except Manitoba.
- 4.56 Upon completion of the Arrangement, AmalgamationCo will be a reporting issuer in all Jurisdictions where such status is available.
- 4.57 Upon completion of the Arrangement, AmalgamationCo will be subject to the Continuous Disclosure Requirements and, where applicable, NI 51-101 and MI 52-109.
- 4.58 The Information Circular and Proxy Statement mailed to Shareholders in connection with the Plan of Arrangement (the “Information Circular”) discloses that AmalgamationCo will seek relief from the Continuous Disclosure Requirements.
- 4.59 The Information Circular contains prospectus-level disclosure about the business and affairs of each of Esprit, the Trust and ProspEx and the particulars of the Arrangement as well as a fairness opinion of a financial advisor.
- 4.60 AmalgamationCo 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*.
- 4.61 There are no exemptions from the Registration and Prospectus Requirements available under the Legislation of the Registration and Prospectus Jurisdictions for certain of the Trades.

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:

2004 BCSECCOM 556

- 6.1 In the Registration and Prospectus Jurisdictions,
 - 6.1.1 the Registration and Prospectus Requirements shall not apply to the Trades except that the first trade in the securities acquired under a Trade shall be deemed to be a distribution or primary distribution to the public;
 - 6.1.2 the Prospectus Requirement shall not apply to the first trade in securities acquired by Shareholders pursuant to the Arrangement or the first trade of securities acquired on the exercise of all rights, automatic or otherwise under such securities, other than ProspEx Common Shares issued to Placees, provided that:
 - 6.1.2.1 in Manitoba, the conditions in subsection (3) of section 2.6 of Multilateral Instrument 45-102 *Resale of Securities* (“MI 45-102”) are satisfied, and, for the purposes of determining the period of time that the Trust and ProspEx have been reporting issuers under section 2.6 of MI 45-102, the period of time that Esprit was a reporting issuer in at least one of the jurisdictions listed in Appendix B of MI 45-102 immediately prior to the Arrangement may be included; and
 - 6.1.2.2 in Québec, the conditions provided under sections 60 and 62 of the *Securities Act* (Québec) are satisfied.
- 6.2 The Continuous Disclosure Requirements shall not apply to AmalgamationCo for so long as:
 - 6.2.1 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;
 - 6.2.2 the Trust sends concurrently to all holders of Exchangeable Shares and Post-Arrangement Entitlements all disclosure material furnished to holders of Trust Units under the Continuous Disclosure Requirements;
 - 6.2.3 the Trust files with each Decision Maker copies of all documents required to be filed by it pursuant to NI 51-102;

2004 BCSECCOM 556

- 6.2.4 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;
- 6.2.5 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;
- 6.2.6 the Trust includes in all mailings of proxy solicitation materials to holders of Exchangeable Shares and Post-Arrangement Entitlements a clear and concise statement that explains the reason the mailed material relates solely to the Trust, indicates the Exchangeable Shares are the economic equivalent to the Trust Units, describes the voting rights associated with the Exchangeable Shares and the Post-Arrangement Entitlements;
- 6.2.7 the Trust includes in all mailings of disclosure material and proxy solicitation materials a Residency Declaration, together with a notice to holders of Post-Arrangement Entitlements that clearly and concisely explains that holders of Post-Arrangement Entitlements who provide the Trust with a completed Residency Declaration may exchange Post-Arrangement Entitlements for Class B Trust Units or Class A Trust Units, as applicable, unless the issuance of Class A Trust Units would cause the aggregate number of issued and outstanding Class A Trust Units to exceed the Ownership Threshold, in which case Class B Trust Units will be delivered for sale on the TSX, with the net proceeds being remitted to the holder in lieu of the Class A Trust Units to which the holder would otherwise be entitled;
- 6.2.8 the Trust remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities of AmalgamationCo; and

2004 BCSECCOM 556

- 6.2.9 AmalgamationCo 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.
- 6.3 Other than in Québec, the requirements under Part 2 (Annual Filing Requirements) and Part 3 (Responsibilities of Reporting Issuers and Directors) of NI 51-101 shall not apply to AmalgamationCo for so long as:
- 6.3.1 the Trust files with each Decision Maker copies of all documents required to be filed by it pursuant to NI 51-101; and
- 6.3.2 AmalgamationCo is exempt from or otherwise not subject to the Continuous Disclosure Requirements.
- 6.4 Other than in British Columbia and Quebec, the requirements under MI 52-109 shall not apply to AmalgamationCo for so long as:
- 6.4.1 AmalgamationCo is not required to, and does not, file its own interim and annual filings (as those terms are defined under MI 52-109);
- 6.4.2 the Trust files in electronic format under the SEDAR profile of AmalgamationCo the:
- (i) interim filings,
 - (ii) annual filings;
 - (iii) interim certificates; and
 - (iv) annual certificates
- of the Trust, at the same time as such documents are required to be filed under the Legislation by the Trust; and

2004 BCSECCOM 556

6.4.3 AmalgamationCo is exempt from or otherwise not subject to the Continuous Disclosure Requirements.

_____(Name of Decision-Maker)

Chris Besko – Deputy Director

_____(Title)

Manitoba Securities Commission

_____(Name of Principal Regulator)