

2005 BCSECCOM 550

August 4, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - NI 51-102 *Continuous Disclosure Obligations*, s. 13.1 – Requirements in Part 6 - An issuer wants relief from the requirement to file an annual information form - 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 issuer has a previous decision exempting it from having to comply with other continuous disclosure obligations and permitting it to instead rely on its parent issuer's continuous disclosure; the issuer will comply with the conditions in the previous decision

National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*, Parts 2 and 3, s. 8.1 - A reporting issuer wants relief from the requirements contained in Part 2 (Annual Filing Requirements) and 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

National Instrument 51-102 *Continuous Disclosure Obligations*, Part 6, s. 13.1
National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*, Parts 2 and 3, s. 8.1

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba,
Ontario, New Brunswick, Nova Scotia, Newfoundland and Labrador,
Yukon, Northwest Territories and Nunavut (the Jurisdictions)

and

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

and

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In the Matter of
Navigo Energy Inc.
(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 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 in New Brunswick, Yukon, and Nunavut, the Filer be exempted from National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) and any comparable continuous disclosure requirements under the securities legislation of such Jurisdictions that have not yet been repealed or otherwise rendered ineffective as a consequence of the adoption of NI 51-102 (the NI 51-102 Relief);
 - 1.3 in British Columbia and Nova Scotia (the AIF Jurisdictions), the Filer be exempted from Part 6 (Annual Information Form) of NI 51-102 (the AIF Relief); and
 - 1.4 except in British Columbia, the Filer be exempted from the requirements contained in Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' 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
 - 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.

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Representations

4. The decision is based on the following facts represented by the Filer:
 - 4.1 The Filer was amalgamated under the *Business Corporation Act* (Alberta) on December 29, 2003.
 - 4.2 The head office and registered office of the Filer is located in Calgary, Alberta.
 - 4.3 The Filer is a reporting issuer in each of the Jurisdictions where such status exists, and is not in default of any of its obligations under the Legislation.
 - 4.4 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).
 - 4.5 Neither the Common Shares nor the Exchangeable Shares are listed or quoted on any marketplace.
 - 4.6 The Trust was established pursuant to a trust indenture dated November 12, 2003 under the laws of Alberta.
 - 4.7 The Trust is, for the purposes of the *Income Tax Act* (Canada), an unincorporated, open-end mutual fund trust.
 - 4.8 The head office of the Trust is located in Calgary, Alberta.
 - 4.9 The Trust is a reporting issuer in each of the Jurisdictions where such status exists, and is not in default of any of its obligations under the Legislation.
 - 4.10 Units of the Trust (Trust Units) are listed and posted for trading on the TSX.
 - 4.11 The Trust owns all of the issued and outstanding securities of the Filer and one Exchangeable Share.
 - 4.12 The unitholders of the Trust (Unitholders) are the sole beneficiaries of the Trust. Computershare Trust Company of Canada (the Trustee) is the trustee of the Trust. The Filer is the administrator of the Trust.

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- 4.13 The Exchangeable Shares are exchangeable into Trust Units having voting attributes equivalent to those of the Trust Units and, to the extent possible, are the economic equivalent of the Trust Units.
- 4.14 Holders of Exchangeable Shares will receive all disclosure that the Trust is required to send to holders of Trust Units under the Legislation.
- 4.15 The exchange rights attaching to the Exchangeable Shares are governed by a voting and exchange trust agreement among the Trust, the Filer, 1068251 Alberta Ltd. (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.
- 4.16 Under a support agreement among the Trust, the Filer and ExchangeCo, 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.
- 4.17 Pursuant to an MRRS decision document dated December 17, 2003 (the 2003 Decision), the Filer obtained relief from the following requirements under the Legislation:
 - 4.17.1 in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia and Newfoundland and Labrador, the requirements to issue a press release and file a report upon the occurrence of a material change, file an annual report (where applicable), file interim financial statements and audited annual financial statements; and
 - 4.17.2 in all of the Jurisdictions except the provinces of British Columbia and Nova Scotia the requirements to file management's discussion and analysis (MD&A) and an annual information form (AIF).
- 4.18 Under section 13.2 of NI 51-102, the Filer is exempt from the provisions of NI 51-102 that are substantially similar to the provisions that the Filer is exempt from under the 2003 Decision.
- 4.19 MI 52-109 requires every issuer to file certain certificates at the time of filing an AIF, annual financial statements and annual MD&A. As

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the Filer is not required to file continuous disclosure the required certification is not useful.

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 as follows:
 - 6.1 The NI 51-101 Relief is granted for so long as:
 - 6.1.1 the Trust files with each Decision Maker copies of all documents required to be filed by it pursuant to NI 51-101 (the NI 51-101 Documents) and concurrently with the filing of the NI 51-101 Documents, the Trust files in electronic form under the *System for Electronic Documents Analysis and Retrieval* (SEDAR) profile of the Filer either:
 - 6.1.1.1 the NI 51-101 Documents, or
 - 6.1.1.2 a notice that indicates:
 - 6.1.1.2.1 that the Filer has been granted an exemption from the requirements of Part 2 (Annual Filing Requirements) and Part 3 (Responsibilities of Reporting Issuers and the Directors) of NI 51-101,
 - 6.1.1.2.2 that the Trust has filed the NI 51-101 Documents, and
 - 6.1.1.2.3 where a copy of the NI 51-101 Documents can be found for viewing on SEDAR by electronic means;
 - 6.1.2 the Filer disseminates, or causes the Trust to disseminate on the Filer's behalf, a news release announcing the filing by the Trust of the information set out in Section 6.1.1 above and indicating where a copy of the filed information can be found for viewing on SEDAR by electronic means;

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- 6.1.3 the Filer is exempt from or otherwise not subject to the disclosure and certification requirements of NI 51-102 and MI 52-109 (the Continuous Disclosure Requirements) and the Filer and the Trust are in compliance with the 2003 Decision;
 - 6.1.4 if disclosure to which NI 51-101 applies is made by the Filer separately from the Trust, the disclosure includes a statement to the effect that the Filer is relying on an exemption from requirements to file information annually under NI 51-101 separately from the Trust, and indicates where disclosure under NI 51-101 filed by the Trust (or by the Filer, if applicable) can be found for viewing on SEDAR by electronic means; and
 - 6.1.5 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.
- 6.2 The NI 51-102 Relief is granted for so long as:
- 6.2.1 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 SEDAR;
 - 6.2.2 the Trust sends concurrently to all holders of Exchangeable Shares resident in the Jurisdictions 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 pursuant to NI 51-102 (the Trust Continuous Disclosure Documents);
 - 6.2.4 concurrently with the filing of the Trust Continuous Disclosure Documents, the Trust files in electronic format under the SEDAR profile of the Filer either,
 - 6.2.4.1 the Trust Continuous Disclosure Documents, or
 - 6.2.4.2 a notice that indicates that:

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- 6.2.4.2.1 the Filer has been granted an exemption from the Continuous Disclosure Requirements;
 - 6.2.4.2.2 the Trust has filed the Trust Continuous Disclosure Documents, and
 - 6.2.4.2.3 where a copy of the Trust Continuous Disclosure Documents can be found for viewing on SEDAR by electronic means;
- 6.2.5 the Trust is in compliance with the requirements in the securities legislation of the Jurisdictions 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;
- 6.2.6 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;
- 6.2.7 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 Exchangeable Shares are the economic equivalent of the Trust Units and describes any rights associated with the Exchangeable Shares;
- 6.2.8 the Trust remains a direct or indirect beneficial owner of all of the issued and outstanding voting securities of the Filer; and
- 6.2.9 the Filer does not issue any securities other than Exchangeable Shares, securities issued to the Trust or its affiliates or debt securities issued to credit unions, insurance companies or other financial institutions.
- 6.3 The AIF Relief is granted for so long as the Filer is exempt from or otherwise not subject to the NI 51-102 Requirements and the Filer and the Trust are in compliance with the 2003 Decision.
- 6.4 The MI 52-109 Relief is granted for so long as:

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- 6.4.1 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);
 - 6.4.2 the Trust files in electronic format under the SEDAR profile of the Filer the:
 - 6.4.2.1 interim financial statements required under section 4.3 of NI 51-102;
 - 6.4.2.2 annual financial statements required under section 4.2 of NI 51-102;
 - 6.4.2.3 certification of interim filings required under Part 3 of NI 52-109; and
 - 6.4.2.4 certification of annual filings required under Part 2 of NI 52-109
- of the Trust, at the same time as such documents are required to be filed on its own behalf under the Legislation; and
- 6.4.3 the Filer is exempt from or otherwise not subject to the Continuous Disclosure Requirements and the Filer and the Trust are in compliance with the 2003 Decision.

Glenda A. Campbell, Q.C., Vice-Chair
Alberta Securities Commission

Stephen R. Murison, Vice-Chair
Alberta Securities Commission