Headnote
Mutual Reliance Review System for Exemptive Relief Applications – registration and prospectus relief to allow units to be distributed under a distribution reinvestment plan by a trust that does not meet the definition of mutual fund. First trade relief such that the seasoning period that would otherwise apply is eliminated. Relief from continuous disclosure requirements in connection with a plan of arrangement.

Applicable Provisions
Securities Act, R.S.A., 2000, c.S-4, subs. 75, 110 and 144(1)
Multilateral Instrument 45-102 Resale of Securities, subs. 2.6(3)
National Instrument 51-102 Continuous Disclosure Obligations, sub. 13.1(1)

Citation: StarPoint Energy Trust et al, 2005 ABASC 4 **Date:** 20050112

In the Matter of
the Securities Legislation
of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec,
Prince Edward Island, Nova Scotia,
Newfoundland and Labrador and New Brunswick (the Jurisdictions)

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications
and
StarPoint Energy Trust and StarPoint Energy Ltd.

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 StarPoint Energy Trust (the Trust) and StarPoint Energy Ltd. (StarPoint)(StarPoint and the Trust being hereinafter collectively referred to as the Filer) for a decision under the securities legislation of the Jurisdictions (the Legislation) that:

> 1.1 the requirement contained in the Legislation to be registered to trade in a security and to file and obtain a receipt for a preliminary prospectus and a final prospectus (the Registration and Prospectus Requirements) shall not apply to distributions by the Trust of units of the Trust issued pursuant to a premium distribution, distribution reinvestment and optional trust unit purchase plan (the DRIP Plan);
>
> 1.2 with respect to the successor of StarPoint Energy Ltd. (AmalCo) on its amalgamation with StarPoint Acquisition Ltd. (AcquisitionCo) and E3 Energy

Inc. (E3) in those Jurisdictions in which it becomes a reporting issuer or the equivalent under the Legislation, the requirements contained in the Legislation to issue a news release and file a report with the Jurisdictions upon the occurrence of a material change, file an annual report, where applicable, file interim financial statements and audited annual financial statements with the Jurisdictions and deliver such statements to the securityholders of AmalCo, file and deliver an information circular or make an annual filing with the Jurisdictions in lieu of filing an information circular, file an annual information form, file a business acquisition report if required, and provide management's discussion and analysis of financial condition and results of operations, all as more particularly set out in National Instrument 51-102 Continuous Disclosure Obligations (NI 51-102) (the Continuous Disclosure Requirements) shall not apply to AmalCo (the Continuous Disclosure 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 (the Decision).

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. This Decision is based on the following facts represented by the Filer:

4.1 StarPoint was incorporated on July 22, 2003 under the laws of the Province of Alberta and StarPoint's head office is located in Calgary, Alberta.

4.2 The common shares of StarPoint are listed and posted for trading on the Toronto Stock Exchange (TSX) under the trading symbol SPN.

4.3 StarPoint is a reporting issuer in the provinces of Alberta, British Columbia, Saskatchewan, Ontario, Québec, Nova Scotia, New Brunswick and Newfoundland and Labrador.

4.4 To its knowledge, StarPoint is not in default of any of the requirements of the Legislation in any of the provinces in which it is a reporting issuer.

4.5 E3 was formed by amalgamation under the laws of Canada on July 6, 1987 and its head office is located in Calgary, Alberta.

4.6 E3 is a reporting issuer in Alberta, British Columbia, Ontario, Quebec and New Brunswick and its shares are listed for trading on the TSX under the trading symbol ETE.

4.7 StarPoint and E3 are entering into a plan of arrangement (the Arrangement) whereby they will be reorganizing the business of the StarPoint and E3 as an income trust called StarPoint Energy Trust (the Trust) and transferring certain assets into a separate public company.

4.8 As part of the Arrangement, exchangeable shares will be issued by AcquisitionCo to security holders of StarPoint and E3, which shares will be exchangeable into shares in the capital stock of AmalCo (the Exchangeable Shares).

4.9 The Trust is an open-ended, unincorporated investment trust governed by the laws of the Province of Alberta and created pursuant to a trust indenture dated December 6, 2004 between StarPoint and Olympia Trust Company (the Trust Indenture). The head and principal office of the Trust is located in Calgary, Alberta.

4.10 The Trust will not be a "mutual fund" under the Legislation as the holders of Units are not entitled to receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the Trust, as contemplated by the definition of "mutual fund" in the Legislation.

4.11 Pursuant to the terms of the Trust Indenture, the Trust is authorized to issue an unlimited number of transferable trust units (the Units) and an unlimited number of special voting units (the Special Voting Units). Each holder of Units (a Unitholder) is entitled to an equal fractional undivided beneficial interest in any distribution from the Trust (whether of income net realized capital gains or other amounts) and in any net assets of the Trust in the event of termination or winding up of the Trust. Each Unit entitles a Unitholder to one vote at meetings of Unitholders.

4.12 The Special Voting Units entitle the holders thereof to attend at meetings of Unitholders and to such number of votes at meetings of Unitholders as may be prescribed by the board of directors of AmalCo in the resolution authorizing the issuance of any such Special Voting Units. Except for the right to attend and vote at meetings of the Unitholders, the Special Voting Units shall not confer upon the holders thereof any other rights and the holders of Special Voting Units shall not be entitled to any distributions of any nature whatsoever from the Trust or have any beneficial interest in any assets of the Trust on termination of the Trust.

4.13 An application has been made to have the Units listed and posted for trading on the TSX upon the approval of the Arrangement.

4.14 The Trust intends to establish the DRIP Plan to enable eligible Unitholders, at their discretion, to automatically reinvest the distributable income of the Trust paid on their Units into additional Units ("DRIP Units") at a 5% discount to the Average Market Price (as defined below) of Units, on the applicable distribution payment date (the distribution reinvestment component of the DRIP Plan) or to exchange such Units for a cash payment equal to 102% of such distributions on such date (the premium distribution component of the DRIP Plan). In addition, at their discretion, the Unitholders who are enrolled in either of the two components of the DRIP Plan described above (the Participants) may purchase additional DRIP Units at the Average Market Price by making optional cash payments (OCPs) within certain specified limits.

4.15 Under the distribution reinvestment component of the DRIP Plan, all cash distributions in respect of Units registered in the name of or held under the DRIP Plan for the account of Participants enrolled in the distribution reinvestment component of the Plan will be applied by the trust company or other qualified person that is appointed as agent under the DRIP Plan (the "DRIP Agent"), on behalf of such Participants, towards the purchase from treasury, on the applicable distribution payment date, of that number of new Units equal to the aggregate amount of such distributions divided by 95% of the Average Market Price for the applicable Pricing Period (as defined in the DRIP Plan). DRIP Units purchased by the DRIP Agent for the account of Participants under the distribution reinvestment component of the DRIP Plan will be registered in the name of the DRIP Agent or its nominee and credited to the applicable Participants' accounts, and all cash distributions on Units so held under the DRIP Plan will be automatically reinvested in DRIP Units in accordance with the terms of the DRIP Plan and the current election of that Participant as between the distribution reinvestment component and premium distribution component.

4.16 Under the premium distribution component of the DRIP Plan, all cash distributions in respect of Units registered in the name of or held under the DRIP Plan for the account of Participants enrolled in the premium distribution component of the DRIP Plan will be applied by the DRIP Agent, on behalf of such Participants, towards the purchase from treasury, on the applicable distribution payment date, of that number of new Units equal to the aggregate amount of such distributions divided by 95% of the Average Market Price for the applicable Pricing Period.

4.17 In connection with the premium distribution component of the DRIP Plan, the DRIP Agent will pre-sell, for the account of Participants in the premium distribution component of the DRIP Plan, through a qualified investment dealer designated by the Trust (the Plan Broker), in one or more transactions on the Toronto Stock Exchange, a number of Units approximately equal to the number of Units to be purchased on the applicable distribution payment date with the reinvested distributions of Participants enrolled in the premium distribution component of the Plan. The DRIP Agent will receive from the Plan Broker, on the

applicable distribution payment date and for the account of such Participants (but subject to proration as described herein), the Premium Distribution (as defined in the DRIP Plan) in an amount equal to 102% of the reinvested distributions that such participants would have otherwise been entitled to receive on that distribution payment date. The Plan Broker will be entitled to retain for its own account the difference between the proceeds realized in connection with the pre-sales of Units and the cash payment to the DRIP Agent in an amount equal to 102% of the reinvested cash distributions.

4.18 Units issued to the DRIP Agent on behalf of Participants under the premium distribution component of the DRIP Plan will not be credited to such Participants' accounts under the DRIP Plan but will instead be delivered to the Plan Broker in exchange for the Premium Distribution on the applicable distribution payment date.

4.19 The Plan Broker's prima facie return under the premium distribution component of the DRIP Plan will be approximately 3% of the cash distributions reinvested thereunder (based on pre-sales of Units having a market value of approximately 105% of the such distributions and a fixed cash payment to the DRIP Agent, for the account of applicable Participants, of an amount equal to 102% of such distributions). The Plan Broker may, however, realize more or less than this prima facie amount, as the actual return will vary according to the prices the Plan Broker is able to realize on the pre-sales of Units. The Plan Broker bears the entire price risk of pre-sales in the market, as the DRIP Agent is entitled to receive, for the account of Participants who have elected to receive the Premium Distribution, a fixed cash payment equal to 102% of the reinvested amount.

4.20 All activities of the Plan Broker on behalf of the DRIP Agent that relate to pre-sales of Units for the account of Participants who enrol in the premium distribution component of the DRIP Plan will be in compliance with applicable Legislation and the rules and policies of the TSX (subject to any exemptive relief granted). The Plan Broker will also be a member of the Investment Dealers Association of Canada and will be registered under the Legislation of any Jurisdiction where the first trade in DRIP Units pursuant to the premium distribution component of the DRIP Plan makes such registration necessary.

4.21 Distributions due to Participants enrolled in either the distribution reinvestment component or the premium distribution component of the DRIP Plan will be applied by the DRIP Agent to the purchase of DRIP Units. Participants who elect to purchase additional DRIP Units through OCPs will pay such amounts to the DRIP Agent who will purchase additional DRIP Units from treasury on the applicable distribution payment date.

4.22 No commissions, service charges or brokerage fees will be payable by Participants in connection with the purchase of DRIP Units from the Trust. All administrative costs of the DRIP Plan will be paid by the Trust.

4.23 The Trust reserves the right to determine, for any distribution payment date, the number of DRIP Units that will be available for purchase under the DRIP Plan.

4.24 If, in respect of any distribution payment date, fulfilling the elections of all Participants under the DRIP Plan would result in the Trust exceeding the limit on new equity set by the Trust, then elections for the purchase of DRIP Units on that distribution payment date will be accepted (i) first, from Participants electing to reinvest distributions under the distribution reinvestment component of the DRIP Plan, (ii) second, from Participants electing to receive the Premium Distribution under the premium distribution component of the DRIP Plan, and (iii) third, from Participants electing to make OCPs. If the Trust is not able to accept all elections for a particular component of the DRIP Plan (including as a result of the Trust exceeding the aggregate annual limit on DRIP Units issuable pursuant to the OCP component of the DRIP Plan), then participation and purchases of DRIP Units in that component of the DRIP Plan on the applicable distribution payment date will be prorated among all Participants in that component of the DRIP Plan according to the number of their Units participating in the particular component or the amount of their OCPs, as the case may be.

4.25 The DRIP Agent will purchase DRIP Units directly from the Trust. If the Trust determines not to issue any equity through the DRIP Plan on a particular distribution payment date, or to the extent that the availability of DRIP Units is prorated as set forth above, then Participants will receive from the Trust the regular cash distributions which they would otherwise be entitled to receive on such date and which are not reinvested as a result of such determination or proration.

4.26 The acquisition price for DRIP Units purchased directly from the Applicant, in respect of a particular distribution payment date, will be based on the arithmetic average (calculated to four decimal places) of the daily volume weighted average trading prices of Units on the TSX for a defined period preceding such distribution payment date. Such trading prices will be appropriately adjusted for certain capital changes (including Unit subdivisions, Unit consolidations, certain rights offerings and certain distributions) (the "Average Market Price"). The acquisition price of DRIP Units under both the distribution reinvestment component and the premium distribution component of the DRIP Plan shall be 95% of the Average Market Price. The acquisition price of DRIP Units purchased with OCPs shall be the Average Market Price.

4.27 Participants may terminate their participation in the DRIP Plan by providing written notice to the DRIP Agent at any time and a Participant's participation in the DRIP Plan will be terminated automatically following receipt by the DRIP Agent of a written notice of the death of a participant. A notice of termination or a notice of a participant's death that is not received by the DRIP Agent by the

specified deadline preceding a distribution record date will not take effect until after the distribution payment date to which such record date relates.

4.28 The Trust reserves the right to restrict participation in the DRIP Plan by Unitholders that are resident in foreign jurisdictions or to whom a trade of DRIP Units would be subject to the laws of a foreign jurisdiction. Residents of any jurisdiction with respect to which the issue of DRIP Units under the DRIP Plan would not be lawful will not be able to participate in the DRIP Plan.

4.29 Legislation in certain of the Jurisdictions provides exemptions from the Registration and Prospectus Requirements for distribution reinvestment plans. Such exemptions are not available to the Trust in certain of the Jurisdictions, however, because those exemptions are generally with respect to the distribution of one or more of the following: (i) dividends; (ii) interest; (iii) capital gains; or (iv) earnings or surplus. The distributions that are paid to the Unitholders are royalty income in relation to the income that the Trust receives from AmalCo on oil- and gas-producing properties.

4.30 The distribution of DRIP Units by the Trust under the DRIP Plan cannot be made in reliance on existing exemptions from the Registration and Prospectus Requirements in any Jurisdictions other than Alberta, Saskatchewan and New Brunswick as the DRIP Plan involves the reinvestment of distributable income distributed by the Trust and not the reinvestment of dividends, interest or distributions of capital gains or out of earnings or surplus.

4.31 The distribution of DRIP Units by the Trust pursuant to the DRIP Plan cannot be made in reliance on existing registration and prospectus exemptions contained in the Legislation for dividend reinvestment plans of mutual funds, as the Trust is not a mutual fund as defined in the Legislation.

4.32 Legislation in some of the Jurisdictions provides exemptions from the Registration and Prospectus Requirements for distributions of securities on the making of OCPs provided, however, that in any financial year of an issuer the aggregate number of securities issued pursuant to this component of the plan does not exceed 2% of the issued and outstanding securities as at the commencement of each financial year. Initially, the Trust will have only one Unit issued and outstanding at the time of its establishment and therefore the relief would not be available for the Trust's first financial year.

4.33 Participants in the DRIP Plan must be existing Unitholders of the Trust and as such, have either received their Units pursuant to the Arrangement or purchased the Units through an exchange recognized by the securities regulatory authorities. Unitholders who received their Units pursuant to the Arrangement received a copy of the Information Circular, which provided prospectus level disclosure with respect to the Trust. In addition, as the Trust is a reporting issuer and is subject to the Continuous Disclosure Requirements, disclosure with respect

to the Trust is publicly available on SEDAR at www.sedar.com. As a result, all Unitholders have access to the information required to be filed pursuant to the Legislation for a reporting issuer.

4.34 Upon completion of the Arrangement, AmalCo will become a reporting issuer under the Legislation of Alberta, British Columbia, Ontario, Quebec, Newfoundland and Labrador, New Brunswick and Nova Scotia, due to the fact that its existence will continue following the exchange of securities in connection with the Arrangement which involves two existing reporting issuers, StarPoint and E3.

4.35 Upon becoming a reporting issuer under the Legislation, an issuer must comply with the Continuous Disclosure Requirements. However, application of the Continuous Disclosure Requirements to both the Trust and AmalCo would be costly but provide no real benefit to investors, for the following reasons. The Trust and AmalCo will be very closely integrated. The Exchangeable Shares provide a holder with a security in an issuer (AmalCo) all of whose common shares will be held by the Trust. The value of the Exchangeable Shares and Units is therefore entirely dependent on the assets and operations of only the Trust, on a consolidated basis. As a result, the only Continuous Disclosure Requirements relevant to a holder of Exchangeable Shares are Continuous Disclosure Requirements relating to the Trust. Holders of Exchangeable Shares effectively have a participating interest in the Trust and do not have a participating interest in AmalCo and, therefore, it is the information furnished under the Continuous Disclosure Requirements relating to the Trust that is directly relevant to the holders of both Exchangeable Shares and Units. Only the Trust, as the sole holder of the outstanding common shares of AmalCo, not the holders of Exchangeable Shares or Units, will have a direct participating interest in AmalCo.

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 except in Alberta, Saskatchewan and New Brunswick, the Registration and Prospectus Requirements shall not apply to distributions by the Trust of DRIP Units pursuant to the DRIP Plan, including pursuant to the making of OCPs, provided that:

6.1.1 no sales charge is payable by Participants in respect of the distributions;

6.1.2 the Trust has caused to be sent to each Participant not more than 12 months before the trade, a copy of the DRIP Plan which

contains a statement describing: (a) their right to withdraw from the DRIP Plan and to make an election to receive cash instead of DRIP Units on the making of a distribution of income by the Trust (the Withdrawal Right), and (b) instructions on how to exercise the Withdrawal Right;

6.1.3 for the financial year of the Trust ending December 31, 2005, the aggregate number of DRIP Units issuable pursuant to the making of OCPs does not exceed 2% of the Units issued and outstanding immediately after the date the Arrangement becomes effective, and, thereafter, the aggregate number of DRIP Units issuable pursuant to the making of OCPs in any financial year shall not exceed 2% of the aggregate number of Units outstanding at the start of that financial year; and

6.1.4 at the time of the trade or distribution, the Trust is a reporting issuer or the equivalent in at least one of the Jurisdictions and is not in default of any requirements of the Legislation;

6.2 Except in Québec, the first trade or resale of DRIP Units acquired pursuant to the DRIP Plan in a Jurisdiction shall be deemed to be a distribution or primary distribution to the public in the Jurisdictions, unless the conditions set out in paragraphs 2 through 5 of subsection 2.6(3) of Multilateral Instrument 45-102 Resale of Securities are satisfied;

6.3 In Québec, the first trade (alienation) of DRIP Units acquired pursuant to the DRIP Plan and this decision document may not occur without a prospectus or an exemption from the requirements of preparing a prospectus except if:

6.3.1 the Trust is and has been a reporting issuer in Québec for the four months immediately preceding the trade, including the period of time that StarPoint or E3 was a reporting issuer in Québec immediately before the Arrangement;

6.3.2 no extraordinary commission or other consideration is paid in respect of the trade;

6.3.3 no unusual effort is made to prepare the market or create a demand for the DRIP Units that are subject to the trade; and

6.3.4 if the selling security holder is an insider of the Trust, the selling security holder has no reasonable grounds to believe that the Trust is in default of securities legislation in Québec.

6.4 The Continuous Disclosure Requirements shall not apply to AmalCo for so long as:

6.4.1 the Trust is a reporting issuer in at least one of the jurisdictions listed in Appendix B of MI 45-102 and is an electronic filer under National Instrument 13-101 SEDAR;

6.4.2 the Trust concurrently sends to all holders of Exchangeable Shares resident in the Jurisdictions all disclosure material furnished to the Unitholders under the Continuous Disclosure Requirements;

6.4.3 the Trust complies with the requirements of the Legislation and of the TSX, and of any other market or exchange on which the Units are or come to be quoted or listed, in respect of making public disclosure of material information on a timely basis;

6.4.4 the Trust files with each Decision Maker copies of all documents required to be filed by it pursuant to NI 51-102;

6.4.5 AmalCo is in compliance with the requirements of the Legislation to issue a news release and file a report under the Legislation upon the occurrence of a material change in respect of the affairs of AmalCo that is not also a material change in the affairs of the Trust;

6.4.6 the Trust includes in all future mailings of proxy solicitation materials to holders of Exchangeable Shares a clear and concise statement explaining the reason for the mailed material being solely in relation to the Trust and not to AmalCo, such statement to include a reference to the similarities between the Exchangeable Shares and Units and the right to direct voting at meetings of the Unitholders;

6.4.7 the Trust remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities of AmalCo; and

6.4.8 AmalCo has not issued any securities, other than the Exchangeable Shares, securities issued to the Trust or its affiliates, or debt securities issued to banks, loan corporations, trust corporations,

treasury branches, credit unions, insurance companies or other financial institutions.

" original signed by"
Glenda A. Campbell, Q.C., Vice-Chair
Alberta Securities Commission

"original signed by"
Stephen R. Murison, Vice-Chair
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