

# 2005 BCSECCOM 152

COR#05/014

February 24, 2005

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – Securities Act s. 48 Dealer - Exemption from s. 34(1)(a) requirement to be registered as a dealer to trade securities and the obligations of dealers in Part 5 of the Act and rules - An issuer wants an exemption from the registration requirement to issue rights to shareholders of its parent corporation - The investors are existing shareholders of the parent corporation. The investors are familiar with the assets, directors and management of the issuer. The investors have received prospectus level disclosure on the issuer and assets. The rights are only offered to existing shareholders of the parent corporation. The rights are non-transferable and will not be listed for trading.

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 34(1)(a) and 48

**In the Matter of  
the Securities Legislation  
of the Provinces of British Columbia, Alberta, Saskatchewan,  
Manitoba and Ontario (collectively, the Jurisdictions)**

**and**

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

**and**

**In the Matter of Pine Cliff Energy Ltd. and Novitas Energy Ltd.  
(collectively, 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) exempting Pine Cliff Energy Ltd. (Pine Cliff) from the dealer registration requirements of the Legislation in respect of the issuance by Pine Cliff of rights (Rights) to acquire Common Shares of Pine Cliff (Common Shares) to

## 2005 BCSECCOM 152

the existing shareholders (Novitas Shareholders) of Novitas Energy Ltd. (Novitas) in the Jurisdictions as of the record date of the offering (the Requested Relief).

2. Under the Mutual Reliance Review System for Exemptive Relief Applications
  - 2.1 the Alberta Securities Commission is the principal regulator for this application; and
  - 2.2 this MRRS decision document evidence the decisions of each Decision Maker.

### **Interpretation**

3. Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

### **Representations**

4. This decision is based on the following facts represented by the Filer:
  - 4.1 Pine Cliff was incorporated under the laws of the Province of Alberta. Pine Cliff is authorized to issue, inter alia, an unlimited number of Common Shares. Pine Cliff has made application to have its Common Shares listed on the TSX Venture Exchange (the TSX-V). Pine Cliff is not currently a reporting issuer in any jurisdiction. The principal and registered office of Pine Cliff is in Calgary, Alberta.
  - 4.2 Novitas is a corporation organized under the laws of the Province of Alberta, with its principal office located in Calgary, Alberta and is a reporting issuer, not in default of any of its obligations of the Legislation, in the Jurisdictions.
  - 4.3 The common shares of Novitas have been listed on the TSX V since October, 2001.
  - 4.4 There are currently in excess of 30 registered and 600 beneficial shareholders of Novitas.
  - 4.5 Pine Cliff was incorporated at the initiation of Novitas, who subscribed for its initial 10 Common Shares, to hold interests in oil and gas properties in Western Canada. Pine Cliff was established for the purpose of facilitating a restructuring option for Novitas to increase shareholder value.

## 2005 BCSECCOM 152

- 4.6 An independent engineering report (the Engineering Report) has been finalized by Sproule Associates Limited with respect to the producing properties of Novitas and has been filed with each of the Decision Makers.
- 4.7 Pine Cliff will offer the Rights to acquire its Common Shares to the Novitas Shareholders in the Jurisdictions as of a specified record date.
- 4.8 The Rights are being issued on a one for one basis with no stand-by or additional subscription privilege.
- 4.9 The Rights are non-transferable, will not be listed for trading and no outside investors will be solicited.
- 4.10 Pine Cliff has filed a preliminary long form prospectus (the Preliminary Prospectus) with respect to the distribution of the Rights and the underlying Common Shares.
- 4.11 The Preliminary Prospectus discloses the risks associated with there not being a registered dealer involved in the offering as well as the risks associated with Pine Cliff's operations, lack of history and immediate prospects.
- 4.12 A summary of the Engineering Report as it relates to oil and gas properties to be acquired by Pine Cliff from Novitas has been included in the Preliminary Prospectus.
- 4.13 There will be no marketing activities based on and there will be no dissemination of the Preliminary Prospectus.
- 4.14 The Novitas Shareholders exercising the Rights will have full civil and statutory rights of action against Pine Cliff and against Novitas (in its capacity as a promoter).
- 4.15 Upon filing and obtaining a receipt for its final prospectus, Pine Cliff will become a reporting issuer in the Jurisdictions.
- 4.16 As of the record date of the offering, Novitas had approximately 37,609,234 common shares outstanding on a fully diluted basis. Accordingly, if every Novitas Shareholder elects to exercise its Rights to acquire Common Shares, there will be approximately 37,609,234 Common Shares of Pine Cliff outstanding at the completion of the offering.

## 2005 BCSECCOM 152

- 4.17 Pine Cliff is unable to rely on exemptions from the dealer registration requirements of the Legislation in relation to this offering because the Rights are not being granted by Pine Cliff to acquire its own securities or securities of a reporting issuer held by it, but rather the Rights are being granted directly by Pine Cliff to the Novitas Shareholders.

### **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 the Requested Relief is granted.

Jerry A. Bennis FCA  
Member  
Alberta Securities Commission

Thomas G. Cooke, Q.C.,  
Member  
Alberta Securities Commission