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September 28, 2007

Headnote

Mutual Reliance Review System for Exemptive Relief Applications

Securities Act, s. 84 – exemption from prospectus delivery requirements - A registered dealer wants relief from the requirement to deliver a prospectus - The issuer is conducting an at-the-market distribution using the shelf procedures in Part 9 of National Instrument 44-102 *Shelf Distributions* and on the conditions specified in the order; the issuer will issue a news release announcing the ATM distribution and file the distribution agreement on SEDAR; the news release will indicate that the shelf prospectus and supplement have been filed and will specify where and how purchasers may obtain a copy

National Instrument 44-101, s. 8.1 – exemption from short form prospectus form requirements - Disclosure – an issuer wants relief from the requirement to include in the prospectus a statement of purchasers’ statutory rights in the prescribed form - The issuer is conducting an at-the-market distribution using the shelf procedures in Part 9 of National Instrument 44-102 *Shelf Distributions* and on the conditions specified in the order; the issuer will provide an amended statement of rights in the prospectus so that the prospectus properly describes applicable rights and purchasers are not misled

National Instrument 44-102, s. 11.1 – exemption from shelf distribution form requirements - An issuer wants relief from the requirement to include in the prospectus an issuer’s certificate in the prescribed form - The issuer is conducting an at-the-market distribution using the shelf procedures in Part 9 and on the conditions specified in the order; the issuer will include in the prospectus an amended certificate stating that the prospectus constitutes full, true and plain disclosure as of the date of each distribution of the securities

Securities Act, s. 169 – confidentiality - An applicant wants to keep an application and order confidential for a limited amount of time after the order is granted - The record provides intimate financial, personal or other information; the disclosure of the information before a specific transaction would be detrimental to the person affected; the information will be made available after a specific date

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 83, 84, and 169

NI 44-101, s. 8.1

Form 44-101F1

NI 44-102, s. 11.1 and Appendix A

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

and

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

and

In the Matter of
Pengrowth Energy Trust (The Issuer), SG Americas Securities,
LLC (SGAS) and Firstenergy Capital Corp. (FCC) (SGAS
and FCC together, the Underwriters, and together with the Issuer, the Filers)

MRRS Decision Document

Background

1. The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application (the Application):
 - (a) from FCC for a decision under the securities legislation in each Jurisdiction (the Legislation) that the requirement that a dealer not acting as agent of the purchaser who receives an order or subscription for a security offered in a distribution to which the prospectus requirement applies deliver to the purchaser or its agent the latest prospectus and any amendment to the prospectus (the Prospectus Delivery Requirement), does not apply to FCC or any other Toronto Stock Exchange (TSX) participating organization retained by FCC to act as selling agent for FCC (such other TSX participating organization an FCC Selling Agent) in connection with the at-the-market distribution (the ATM Distribution) as defined in National Instrument 44-102 *Shelf Distributions* (NI 44-102) made by the Issuer pursuant to the Equity Distribution Agreement (as defined below);
 - (b) from the Issuer for a decision under the Legislation in each Jurisdiction that the requirement to include in a prospectus:

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- (i) a certificate of the Issuer in the form specified in section 1.1 of Appendix A to NI 44-102; and
- (ii) the statement respecting purchasers' statutory rights of withdrawal and remedies of rescission or damages in the form prescribed by item 20 of Form 44-101F1.

(the Prospectus Form Requirements) do not apply to a prospectus filed in connection with the ATM Distribution; and

- (c) from the Filers for a decision under the Legislation in each Jurisdiction that the Application and this decision (the Confidential Material) be kept confidential and not be made public until the earlier of (i) the date on which the Issuer enters into the Equity Distribution Agreement; (ii) the date the Filers advise the Decision Makers that there is no longer any need for the Confidential Material to remain confidential; and (iii) the date that is 90 days after the date of this decision.

2. Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Alberta Securities Commission (the Commission) is the principal regulator for the Application; and
- (b) 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.

Representations

The Issuer

- 4. The Issuer is an unincorporated trust established under the laws of the Province of Alberta. The principal office of the Issuer is located in Calgary, Alberta.
- 5. The Issuer owns, directly or indirectly, 90.9% of the outstanding common shares and 100% of the outstanding royalty units of Pengrowth Corporation, a corporation incorporated under the *Business Corporations Act* (Alberta) and

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100% of the outstanding common shares of Esprit Exploration Ltd., a corporation incorporated under the *Business Corporations Act* (Alberta).

6. The Issuer is a reporting issuer or equivalent under the Legislation of each of the Jurisdictions and is in compliance in all material respects with the applicable requirements of the Legislation.
7. Trust units (the Units) of the Issuer are listed on the TSX and the New York Stock Exchange (NYSE).

The Underwriters

8. Société Générale is a French limited liability company (Société Anonyme), registered in France and having the status of a bank. Société Générale is the most important constituent entity of the Société Générale Group (the Group). SGAS, a limited liability company formed under the laws of the State of Delaware, is a broker-dealer registered with the SEC under the 1934 Act and a member of the National Association of Securities Dealers, Inc. SGAS is part of the corporate and investment banking arm of the Group.
9. FCC is based in Calgary, Alberta and is registered as an investment dealer under the Legislation of all of the Jurisdictions.

Proposed ATM Distribution

10. The Issuer and Pengrowth Management Limited, the manager of the Issuer, are proposing to enter into an equity distribution agreement (the Equity Distribution Agreement) with the Underwriters relating to an ATM Distribution by the Issuer pursuant to the shelf prospectus procedures prescribed by Part 9 of NI 44-102.
11. Prior to making an ATM Distribution, the Issuer will have filed in connection with the ATM Distribution (i) an amended and restated base shelf prospectus (the Shelf Prospectus) in the Jurisdictions, (ii) an amendment to the registration statement on Form F-10 dated September 15, 2006 with the SEC under the multijurisdictional disclosure system, and (iii) a prospectus supplement describing the terms of the Equity Distribution Agreement (the Prospectus Supplement), both in the Jurisdictions and with the SEC.
12. The Issuer will issue a news release regarding entering into the Equity Distribution Agreement and file the agreement on SEDAR. The news release will indicate that the Shelf Prospectus and Prospectus Supplement have been

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filed on SEDAR and specify where and how purchasers may obtain a copy. A copy of the press release will also be posted on the Issuer's website.

13. Under the proposed Equity Distribution Agreement the Issuer may issue and sell Units in an amount not to exceed 10% of the aggregate market value of the outstanding Units calculated in accordance with Section 9.2 of NI 44-102 as at the last trading day of the month before the month in which the first trade under the ATM Distribution arrangement is made.
14. The Underwriters will, in turn, sell Units through methods constituting an at-the-market distribution, including sales made on the TSX through FCC, as underwriter, directly or through an FCC Selling Agent and directly on NYSE through SGAS as underwriter.
15. FCC will act as sole underwriter on behalf of the Issuer in connection with the sale of the Units on the TSX and will be the sole entity paid an underwriting fee or commission by the Issuer in connection with such sales. FCC will sign an underwriter's certificate in the Prospectus Supplement filed on SEDAR. FCC will effect the ATM Distributions on the TSX either itself or through an FCC Selling Agent. If the sales are effected through an FCC Selling Agent, the FCC Selling Agent will be paid a customary seller's commission for effecting the trades. A purchaser's rights and remedies under the Legislation against FCC as underwriter of an ATM Distribution through the TSX will not be affected by a decision to effect the sale directly or through an FCC Selling Agent.
16. The number of Units sold on the TSX pursuant to the ATM Distribution on any trading day will not exceed 25% of the trading volume of the Units on the TSX on that day.
17. The Equity Distribution Agreement will provide that, at the time of each sale of Units pursuant to an ATM Distribution, the Issuer will make a representation to the Underwriters that the prospectus contains full, true and plain disclosure of all material facts relating to the Issuer and the Units being distributed. The Issuer would therefore be unable to proceed with sales pursuant to an ATM Distribution when it is in possession of undisclosed information that would constitute a material fact or a material change in respect of the Units.
18. If after the Issuer delivers a sell notice to the Underwriters, the sale of the Units specified in the notice, taking into consideration prior sales, would constitute a material fact, the Issuer would have to suspend sales under the Equity Distribution Agreement until either: (i) it had filed a material change

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report or amended the prospectus; or (ii) circumstances had changed so that the sales would no longer constitute a material fact or material change.

19. In determining whether the sale of the number of Units specified in the sell notice would constitute a material fact or material change, the Issuer will take into account a number of factors, including, without limitation: (i) the parameters of the sell notice including the number of Units proposed to be sold; (ii) the percentage of the outstanding Units of that class that number represents; (iii) trading volume and volatility of Units; (iv) recent developments in the business, affairs and capital structure of the Issuer; and (v) prevailing market conditions generally.
20. In addition, SGAS will monitor closely the market's reaction to trades made under the ATM Distribution in order to evaluate the likely market impact of future trades. SGAS has experience and expertise in managing sell orders to limit downward pressure on the stock price. If SGAS has concerns as to whether a particular sell order placed by the Issuer may have a significant effect on the market price of the Units, SGAS will recommend against effecting the trade at that time. It is in the interest of both the Issuer and the Underwriters to minimize the market impact of sales under the ATM Distribution.
21. The underwriter's certificate signed by FCC included in the Prospectus Supplement will be in the form prescribed by section 2.2 of Appendix B to NI 44-102.

Disclosure of Securities Sold in ATM Distribution

22. The Issuer will file on SEDAR a report disclosing the number and average price of Units distributed over the TSX by the Issuer pursuant to the prospectus filed in connection with the ATM Distribution as well as gross proceeds, commission and net proceeds within seven calendar days after the end of the month with respect to sales during the prior month.
23. The Issuer will also disclose the number and average price of Units sold under the ATM Distribution as well as gross proceeds, commission and net proceeds in the ordinary course in its annual and interim financial statements and MD&A filed on SEDAR.

Prospectus Delivery Requirement

24. Pursuant to the Prospectus Delivery Requirement, the dealer effecting the trade of Units on the TSX on behalf of the Issuer as part of an ATM

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Distribution is required to deliver a prospectus to all investors who purchase such Units on the TSX.

25. The delivery of a prospectus is not practicable in the circumstances of an ATM Distribution as neither FCC nor an FCC Selling Agent effecting the trade will know the identity of the purchasers.
26. A purchaser is deemed to have relied upon a misrepresentation in a prospectus if it was a misrepresentation at the time of purchase, without regard to whether or not they received the prospectus.

Withdrawal Right

27. Pursuant to the Legislation, an agreement to purchase securities is not binding on the purchaser if the dealer receives, not later than midnight on the second day exclusive of Saturdays and holidays, after receipt by the purchaser of the latest prospectus or any amendment to the prospectus, a notice in writing that the purchaser does not intend to be bound by the agreement of purchase (the Withdrawal Right).
28. The Withdrawal Right is not workable in the context of an ATM Distribution because the prospectus will not be delivered as the identity of the purchasers is unknown.

Right of Rescission or Damages for Non-Delivery

29. Pursuant to the Legislation, a purchaser of securities has a right of rescission or damages against a dealer for non-delivery of the prospectus (the Right of Action for Non-Delivery).
30. The Right of Action for Non-Delivery is not workable in the context of an ATM Distribution because the prospectus will not be delivered.

Prospectus Form Requirements

31. Exemptive relief from the Prospectus Form Requirements for the Issuer's forward-looking certificate in the Shelf Prospectus is required to reflect that no pricing supplement will be filed subsequent to the Prospectus Supplement. Accordingly, the certificate prescribed by the Prospectus Form Requirements will be deleted and the following substituted therefor:

This short form prospectus, as supplemented, together with the documents incorporated in this prospectus by reference, will as of the

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date of distribution of the securities offered by this prospectus and the supplement(s), constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus and the supplement(s) as required by the securities legislation of each Jurisdiction. For the purpose of the Province of Quebec, this simplified prospectus, together with documents incorporated herein by reference and as supplemented by the permanent information record, will contain no misrepresentation that is likely to affect the value or the market price of the securities to be distributed.

32. Exemptive relief from the Prospectus Form Requirements is required to reflect the relief from the Prospectus Delivery Requirement. Accordingly, the Shelf Prospectus will provide that the disclosure under the heading "Purchasers' Statutory Rights" applies except as otherwise stated in a Prospectus Supplement and that the Prospectus Supplement will not include the language prescribed by the Prospectus Form Requirements and will instead include the following disclosure:

Securities legislation in the Jurisdictions provides purchasers with the right to withdraw from an agreement to purchase securities and with remedies for rescission or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment are not delivered to the purchaser, provided that the remedies are exercised by the purchaser within the time limit prescribed by securities legislation. However, purchasers of Units under the Issuer's at-the-market distribution will not have any right to withdraw from an agreement to purchase the Units and will not have remedies of rescission or damages for non-delivery of the Prospectus because the Prospectus relating to Units purchased by such purchaser will not be delivered as permitted under an MRRS decision document dated •, 2007.

Securities legislation in the Jurisdictions also provides purchasers with remedies for rescission or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment contain a misrepresentation, provided that the remedies are exercised by the purchaser within the time limit prescribed by securities legislation. Any remedies under securities legislation in the Jurisdictions that a purchaser of Units under the Issuer's at-the-market distribution may have against the Issuer or the Underwriter for rescission or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment contain a misrepresentation remain

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unaffected by the non-delivery of the Prospectus and the MRRS decision referred to above.

Purchasers should refer to the applicable provisions of the securities legislation and the MRRS decision document referred to above for the particulars of their rights or consult with a legal adviser.

Decisions

33. 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 decisions has been met.

34. The decision of the Decision Makers under the Legislation is that:

- (a) provided that the disclosure described in sections 22, 31 and 32 is made, the Prospectus Form Requirements do not apply in all Jurisdictions to the prospectus of the Issuer filed in connection with the ATM Distribution;
- (b) provided that the representations in sections 12, 14, 15 and 16 are complied with, FCC and each FCC Selling Agent are exempt from the Prospectus Delivery Requirement in all Jurisdictions and, as a result, the Withdrawal Right and the Right of Action for Non-Delivery will not apply to the ATM Distribution in all Jurisdictions;
- (c) the Confidential Materials will be kept confidential and not be made public until the earlier of (i) date on which the Issuer enters into an Equity Distribution Agreement with the Underwriters; and (ii) the date the Filers advise the Decision Makers that there is no longer any need for the Application and this decision to remain confidential; and (iii) the date that is 90 days after the date of this decision; and
- (d) this decision will terminate on the date that is 25 months after the date on which the Prospectus Supplement is filed in the Jurisdictions.

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Alberta Securities Commission

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Alberta Securities Commission