

# 2005 BCSECCOM 631

October 3, 2005

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-101, s. 8.1 - 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

National Instrument 51-102, s. 13.1 - 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 conditions in the previous decision

Multilateral Instrument 52-109, s. 4.5 - An issuer wants relief from the requirements in parts 2 and 3 of MI 52-109 to file annual and interim certificates - The issuer has applied for and received an exemption from filing interim and annual financial statements

## **Applicable British Columbia Provisions**

National Instrument 51-101, Parts 2 and 3, s. 8.1

National Instrument 51-102, ss. 6.1, 13.1

Multilateral Instrument 52-109, ss. 2.1, 3.1 and 4.5

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Manitoba,  
Ontario, 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

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and

In the Matter of  
the Baytex Energy Ltd. (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 Alberta, British Columbia and Nova Scotia (the AIF Jurisdictions), the Filer be exempted from Part 6 (Annual Information Form) of NI 51-102 Continuous Disclosure Obligations (the AIF Relief); and
  - 1.3 the Filer be exempted from 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 (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.

### **Representations**

4. The decision is based on the following facts represented by the Filer:

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- 4.1 The Filer amalgamated under the Business Corporations Act (Alberta) on September 2, 2003.
- 4.2 The head office and registered office of the Filer is in Calgary, Alberta.
- 4.3 As at February 28, 2005, the Filer had one common share issued and outstanding, which was owned by Baytex Energy Trust (the Trust), and 1,860,944 exchangeable shares (Exchangeable Shares) issued and outstanding.
- 4.4 Neither the common shares of the Filer nor the Exchangeable Shares are listed or quoted on any marketplace.
- 4.5 The Filer is a reporting issuer in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador.
- 4.6 The Trust was established pursuant to a trust indenture dated July 24, 2003 under the laws of Alberta.
- 4.7 The head office of the Trust is located in Calgary, Alberta.
- 4.8 The Unitholders are the sole beneficiaries of the Trust. Valiant Trust Company (the Trustee) is the trustee of the Trust. The Filer is the administrator of the Trust.
- 4.9 The Trust Units are listed and posted for trading on The Toronto Stock Exchange (the TSX).
- 4.10 The Trust is a reporting issuer in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador
- 4.11 The Exchangeable Shares are, to the extent possible, the economic equivalent of the Trust Units.
- 4.12 The Exchangeable Shares have voting attributes equivalent to those of the Trust Units.
- 4.13 Holders of Exchangeable Shares receive all disclosure materials that the Trust is required to send to holders of Trust Units under the Legislation.

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- 4.14 Pursuant to an MRRS decision document dated August 29, 2003 (the 2003 Decision), the Filer obtained relief from the following requirements under the Legislation:
- 4.14.1 in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, 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
  - 4.14.2 in all of the Jurisdictions except the provinces of British Columbia, Alberta and Nova Scotia the requirements to file management's discussion and analysis (MD&A) and an annual information form (AIF).
- 4.15 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.
- 4.16 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 the Filer is not required to file continuous disclosure the required certification is not useful.
- 4.17 NI 51-101 requires reporting issuers to file certain information with respect to the issuers' oil and gas activities. The Filer has applied to be exempted from the filing requirements under NI 51-101 as the Trust is required to file the same information.

### **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 51-101 Documents) and concurrently with the filing of

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the NI 51-101 Documents, the Trust files in electronic form and 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 Filer or 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;

6.1.3 the Filer is exempt from or otherwise not subject to the NI 51-102 Requirements and the AIF Requirement (collectively, 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 further 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

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- 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 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.
- 6.3 The MI 52-109 Relief is granted for so long as:
  - 6.3.1 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);
  - 6.3.2 the Trust files in electronic format and under the SEDAR profile of the Filer the:
    - 6.3.2.1 interim financial statements of the Trust required under section 4.3 of NI 51-102;
    - 6.3.2.2 annual financial statements of the Trust required under section 4.2 of NI 51-102;
    - 6.3.2.3 certification of interim filings of the Trust requires under Part 3 of NI 52-109; and
    - 6.3.2.4 certification of annual filings of the Trust required under Part 2 of NI 52-109at the same time as such documents are required to be filed by the Trust under the Legislation; and
- 6.3.3 the Filer is exempt from or otherwise not subject to the Continuous Disclosure Requirements.

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

James A. Millard, Q.C., Member  
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