

2003 BCSECCOM 595

Headnote

Mutual Reliance Review System for Exemptive Relief Application - application for relief from the registration and prospectus requirements in connection with the distribution and resale of units of the applicant trust pursuant to a distribution reinvestment plan - relief granted subject to conditions - first trade in additional units deemed a distribution unless made in compliance with MI 45-102

Applicable British Columbia Provisions

Securities Act, R.S.B.C.1996, c. 418, ss. 48 and 76

Multilateral Instrument 45-102 *Resale of Securities*

**IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH
COLUMBIA, SASKATCHEWAN, MANITOBA, ONTARIO, QUEBEC,
NEW BRUNSWICK, NOVA SCOTIA, PRINCE EDWARD ISLAND AND
NEWFOUNDLAND AND LABRADOR**

AND

**IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM
FOR EXEMPTIVE RELIEF APPLICATIONS**

AND

IN THE MATTER OF APF ENERGY TRUST

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador, (the "Jurisdictions") has received an application from APF Energy Trust (the "Trust") for a decision, pursuant to the securities legislation of the Jurisdictions (the "Legislation"), that the requirements 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 certain trades in units of the Trust issued pursuant to a distribution reinvestment plan;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for this application;

2003 BCSECCOM 595

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or in Quebec Commission Notice 14-101;

AND WHEREAS the Trust has represented to the Decision Makers that:

1. The Trust is an unincorporated open-end investment trust formed under the laws of the Province of Alberta and is governed by an amended and restated trust indenture dated January 3, 2003. The head office of the Trust is located at 2100, 144 - 4th Avenue S.W., Calgary, Alberta T2P 3N4.
2. The Trust was formed for the purposes of issuing trust units (the "Units") to the public and using the funds so raised to purchase royalties on oil and natural gas properties. The Trust's primary assets are royalties granted by APF Energy Inc. ("APF Energy") and APF Energy Limited Partnership on their respective oil and gas properties.
3. Computershare Trust Company of Canada is the trustee of the Trust and the holders of the Units are the sole beneficiaries of the Trust.
4. The Trust has been a reporting issuer or the equivalent under the Legislation since December 17, 1996 and is not in default of any requirements of the Legislation. The Trust is a "qualifying issuer" within the meaning of Multilateral Instrument 45-102 *Resale of Securities*.
5. The Trust is not 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.
6. The Trust is authorized to issue a maximum of 500,000,000 Units, each of which represents an equal undivided beneficial interest in the Trust. All Units share equally in all distributions from the Trust and all Units carry equal voting rights at meetings of holders of Units ("Unitholders"). As of July 25, 2003 there were 32,387,491 Units issued and outstanding. The Trust is also authorized to issue an unlimited number of special voting units ("Special Voting Units") entitling the holders ("Special Unitholders") to the number of votes at a meeting of Unitholders as is prescribed by the Board of Directors of APF Energy in the resolution authorizing issuance of the Special Voting Units. The Special Voting Units do not confer any other rights on the Special Unitholders. None of the Special Voting Units have been issued.

2003 BCSECCOM 595

7. The Units are listed and posted for trading on the Toronto Stock Exchange (the "TSX").
8. The Trust makes and expects to continue to make monthly cash distributions to its Unitholders in an amount per Unit equal to a *pro rata* share of all amounts received by the Trust in each month including, without limitation, dividends, interest or other distributions on securities held by the Trust, less: (i) costs and expenses of the Trust; (ii) all amounts which relate to the redemption of Units and which have become payable in cash by the Trust in the applicable distribution period; and (iii) any other interest expenses incurred by the Trust between distributions.
9. The Trust intends to establish a distribution reinvestment plan (the "Plan") pursuant to which eligible Unitholders may, at their option, direct that cash distributions paid by the Trust in respect of their existing Units ("Cash Distributions") be applied to the purchase of additional Units ("Additional Units") to be held for their account under the Plan (the "Distribution Reinvestment Option").
10. Alternatively, the Plan will enable eligible Unitholders who wish to reinvest their Cash Distributions to authorize and direct the trust company that is appointed as agent under the Plan (the "Plan Agent"), to pre-sell through a designated broker (the "Plan Broker"), for the account of the Unitholders who so elect, a number of Units equal to the number of Additional Units issuable on such reinvestment, and to settle such pre-sales with the Additional Units issued on the applicable distribution payment date in exchange for a premium cash payment equal to 102% of the reinvested Cash Distribution (the "Premium Distribution Option"). 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 such Units and the cash payment to the Plan Agent in an amount equal to 102% of the reinvested Cash Distributions.
11. Eligible Unitholders who have directed that their Cash Distributions be reinvested in Additional Units under either the Distribution Reinvestment Option or the Premium Distribution Option ("Participants") may also be able to directly purchase Additional Units under the Plan by making optional cash payments within the limits established thereunder (the "Cash Payment Option"). The Trust shall have the right to determine from time to time whether the Cash Payment Option will be available. The Cash Payment Option will only be available to Unitholders that are Participants.
12. All Additional Units purchased under the Plan will be purchased by the Plan Agent directly from the Trust on the relevant distribution payment date at a

2003 BCSECCOM 595

price determined by reference to the Average Market Price, being the arithmetic average of the daily volume weighted average trading prices of the Units on the TSX for a defined period prior to the distribution payment date.

13. Additional Units purchased under the Distribution Reinvestment Option or the Premium Distribution Option will be purchased at a 5% discount to the Average Market Price. Additional Units purchased under the Cash Payment Option will be purchased at the Average Market Price.
14. The Plan Broker's *prima facie* return under the Premium Distribution Option will be approximately 3% of the reinvested Cash Distributions (based on pre-sales of Units having a market value of approximately 105% of the reinvested Cash Distributions and a fixed cash payment to the Plan Agent, for the account of applicable Participants, of an amount equal to 102% of the reinvested Cash 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 risk of adverse changes in the market, as Participants who have elected the Premium Distribution Option are assured a premium cash payment equal to 102% of the reinvested Cash Distributions.
15. All activities of the Plan Broker on behalf of the Plan Agent that relate to pre-sales of Units for the account of Participants who elect the Premium Distribution Option 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 Additional Units pursuant to the Premium Distribution Option makes such registration necessary.
16. Unitholders who are resident in the United States will not be permitted under U.S. federal securities laws to participate in the Plan.
17. Participants may elect either the Distribution Reinvestment Option or the Premium Distribution Option in respect of their Cash Distributions. Eligible Unitholders may elect to participate in either the Distribution Reinvestment Option or the Premium Distribution Option at their sole option and are free to terminate their participation under either option, or to change their election, in accordance with the terms of the Plan.
18. Under the Distribution Reinvestment Option, Cash Distributions will be paid to the Plan Agent and applied by the Plan Agent to the purchase of Additional

2003 BCSECCOM 595

Units, which will be held under the Plan for the account of Participants who have elected to participate in that component of the Plan.

19. Under the Premium Distribution Option, Cash Distributions will be paid to the Plan Agent and applied by the Plan Agent to the purchase of Additional Units for the account of Participants who have elected to participate in that component of the Plan, but the Additional Units purchased thereby will be automatically transferred to the Plan Broker to settle pre-sales of Units made by the Plan Broker on behalf of the Plan Agent for the account of such Participants in exchange for a premium cash payment equal to 102% of the reinvested Cash Distributions.
20. Under the Cash Payment Option, a Participant may, through the Plan Agent, purchase Additional Units up to a specified maximum dollar amount per distribution period and subject to a minimum amount per remittance. The aggregate number of Additional Units that may be purchased under the Cash Payment Option by all Participants in any financial year of the Trust will be limited to a maximum of 2% of the number Units issued and outstanding at the start of the financial year.
21. No brokerage fees or service charges will be payable by Participants in connection with the purchase of Additional Units under the Plan.
22. Additional Units purchased and held under the Plan will be registered in the name of the Plan Agent (or its nominee) and credited to appropriate Participants' account, and all Cash Distributions on Units so held under the Plan will be automatically reinvested in Additional Units in accordance with the terms of the Plan and the current election of that Participant.
23. The Plan permits full investment of reinvested Cash Distributions and optional cash payments under the Cash Payment Option (if available) because fractions of Units, as well as whole Units, may be credited to Participants' accounts with the Plan Agent.
24. The Trust reserves the right to determine, for any distribution payment date, the amount of Unitholders' equity that may be issued pursuant to the Plan.
25. If, in respect of any distribution payment date, fulfilling all of the elections under the Plan would result in the Trust exceeding either the limit on Unitholders' equity set by the Trust or the aggregate annual limit on Additional Units issuable pursuant to the Cash Payment Option, then elections for the purchase of Additional Units on such distribution payment date will be accepted: (i) first, from Participants electing the Distribution Reinvestment

2003 BCSECCOM 595

Option; (ii) second, from Participants electing the Premium Distribution Option; and (iii) third, from Participants electing the Cash Payment Option (if available). If the Trust is not able to accept all elections in a particular category, then purchases of Additional Units on the applicable distribution payment date will be pro rated among all Participants in that category according to the number of Additional Units sought to be purchased.

26. If the Trust determines not to issue any Unitholders' equity through the Plan on a particular distribution payment date, then all Participants will receive the Cash Distribution announced by the Trust for that distribution payment date.
27. A Participant may terminate its participation in the Plan at any time by submitting a termination form to the Plan Agent, provided that a termination form received between a distribution record date and a distribution payment date will not become effective until after that distribution payment date.
28. The Trust reserves the right to amend, suspend or terminate the Plan at any time, provided that such action shall not have a retroactive effect that would prejudice the interests of the Participants. All Participants will be sent written notice of any such amendment, suspension or termination.
29. The distribution of Additional Units by the Trust under the Plan cannot be made in reliance on certain registration and prospectus exemptions contained in the Legislation as the Plan involves the reinvestment of distributable income distributed by the Trust and not the reinvestment of dividends or interest of the Trust.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers pursuant to the Legislation is that the trades of Additional Units by the Trust to Participants pursuant to the Plan shall not be subject to the Registration and Prospectus Requirements of the Legislation provided that:

- (a) at the time of the trade the Trust is a reporting issuer or the equivalent under the Legislation and is not in default of any requirements of the Legislation;

2003 BCSECCOM 595

- (b) no sales charge is payable in respect of the trade;
- (c) the Trust has caused to be sent to the person or company to whom the Additional Units are traded, not more than 12 months before the trade, a statement describing:
 - (i) their right to withdraw from the Plan and to make an election to receive Cash Distributions instead of Additional Units, and
 - (ii) instructions on how to exercise the right referred to in paragraph (i) above;
- (d) the aggregate number of Additional Units issued under the Cash Payment Option of the Plan in any financial year of the Trust shall not exceed 2% of the aggregate number of Units outstanding at the start of that financial year;
- (e) except in Québec, the first trade in Additional Units acquired pursuant to this Decision will be a distribution or primary distribution to the public unless the conditions in paragraphs 2 through 5 of subsection 2.6(3) of Multilateral Instrument 45-102 *Resale of Securities* are satisfied; and
- (f) in Québec, the alienation of Additional Units acquired pursuant to this Decision shall be deemed to be a distribution or primary distribution to the public unless all of the following are true:
 - (i) the Trust is and has been a reporting issuer in Québec for the 12 months preceding the alienation;
 - (ii) no unusual effort is made to prepare the market or to create a demand for the Additional Units that are the subject of the alienation;
 - (iii) no extraordinary commission or other consideration is paid in respect of the alienation;
 - (iv) if the seller of the Additional Units is an insider of the issuer, the seller has no reasonable grounds to believe that the Trust is in default of any requirement of the Legislation of Québec.

DATED this 27th day of August, 2003.

Robert W. Davis

Paul K. Bates