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August 26, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act, ss. 48 and 76 – registration and prospectus requirements - Trades by a non-mutual fund in connection with its distribution reinvestment plan - The issuer is an investment trust; under its plan, income of the trust can be distributed to its investors through the automatic issuance of additional units to the investors; investors can elect to receive cash in lieu of additional trust units; no fee is paid by investors to participate in the plan

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 48 and 76 - registration and prospectus requirements

In the Matter of
the Securities Legislation
of British Columbia, Manitoba, Ontario, Québec, Nova Scotia,
Prince Edward Island, Newfoundland and Labrador,
Northwest Territories, Yukon Territory and Nunavut
(the Jurisdictions)

and

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

and

In the Matter of Harvest Energy Trust
(the Filer)

MRRS Decision Document

Background

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 the distribution of trust units of the Filer (Units) pursuant to the provisions of a Premium Distribution™, Distribution Reinvestment and Optional Unit Purchase Plan as described below (the Plan) be exempt from the dealer registration requirement and the prospectus requirement of the Legislation (the Requested Relief).

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Under the Mutual Reliance Review System for Exemptive Relief Applications

- (a) the Ontario Securities Commission is the principal regulator for this application,
and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

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

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is an open-ended, unincorporated investment trust established under the laws of the Province of Alberta and governed by an amended and restated trust indenture dated January 1, 2004 between Valiant Trust Company, as trustee, and Harvest Operations Corp. (the Corporation). The head office of the Filer is located at Suite 2100, 330 – 5th Avenue S.W., Calgary, Alberta T2P 0L4.
2. The Corporation is responsible for the management and general administration of the affairs of the Filer, including without limitation the timing and terms of future offerings of Units, pursuant to the Trust Indenture and an administration agreement dated September 27, 2002.
3. The Filer is a reporting issuer or the equivalent under the Legislation in each of the Jurisdictions and, to the best of its knowledge, is not in default of any requirements of the Legislation.
4. The Filer is not a “mutual fund” as defined in the Legislation of the relevant Jurisdictions because the holders of Units (Unitholders) 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 Filer.

Trust Units

5. The Filer is authorized to issue an unlimited number of Units, each of which represents an equal fractional undivided beneficial interest in the Filer. All Units share equally in all distributions from the Filer and carry equal voting rights at meetings of Unitholders.

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6. The Units are listed and posted for trading on the Toronto Stock Exchange.
7. The Filer makes and expects to continue to make monthly distributions of its distributable income (if any) to its Unitholders on a pro rata basis. The distributable income of the Filer is a function of the amounts received by the Filer under certain royalties, other income and certain expenses.

Premium Distribution™, Distribution Reinvestment, and Optional Unit Purchase Plan

8. The Filer currently has in place a distribution reinvestment plan (the DRIP) and an optional unit purchase plan (the OTUPP). The DRIP enables eligible Unitholders to direct that the cash distributions paid or payable by the Filer in respect of their Units (Cash Distributions) be reinvested in additional Units from treasury at a price equal to 95% of the weighted average trading price of the Units (determined in accordance with DRIP). The OTUPP enables Unitholders who are enrolled in the DRIP to make optional cash payments to purchase additional Units directly from the Filer, at a price equal to 100% of the weighted average trading price of the Units (determined in accordance with OTUPP), without incurring commissions, service charges or brokerage fees.
9. In connection with the implementation of the DRIP and the OTUPP, the Filer obtained exemptive relief from the Registration and Prospectus Requirements in each of the Jurisdictions.
10. The board of directors of the Corporation has approved the implementation of the Plan, subject to receipt of necessary regulatory approvals. The Plan will retain (with some modifications) the features of the DRIP and the OTUPP, but will also offer eligible Unitholders who decide to reinvest their Cash Distributions the opportunity to participate, at their option, in the Premium Distribution™ Component (as defined below).
11. The Plan will enable eligible Unitholders who elect to participate in the Plan (Participants) to direct that their Cash Distributions be reinvested in additional Units (Additional Units), which will be held for their account under the Plan (the Distribution Reinvestment Component) or, if so directed by the Participant, used to settle the pre-sales described below in exchange for a cash payment equal to 102% of the reinvested Cash Distributions (the Premium Distribution™ Component). Participants will be able to elect as between the Distribution Reinvestment Component and the Premium Distribution™ Component.

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12. The Plan will supercede the DRIP and the OTUPP, and each Unitholder who is enrolled in the DRIP at the time that the Plan becomes effective will, subject to any contrary election made by the Unitholder, be automatically enrolled in the Distribution Reinvestment Component of the Plan.
13. Additional Units issued under the Distribution Reinvestment Component or Premium Distribution™ Component will be purchased directly from the Filer by the trust company or other qualified person or company that is appointed as agent under the Plan (the Plan Agent), for the account of Participants, on the relevant distribution payment date, at a price equal to 95% of the Average Market Price (as defined in the Plan). Additional Units so purchased and held under the Plan will be registered in the name of the Plan Agent (or its nominee) and credited to appropriate Participants' accounts.
14. The Plan will also enable Participants, at their option, to make optional cash payments to purchase Additional Units, via the Plan Agent, directly from the Filer on the applicable distribution payment date, otherwise than through the reinvestment of Cash Distributions, at a price equal to the Average Market Price (as defined in the Plan), subject to any minimum or maximum thresholds specified in the Plan (the Optional Unit Purchase Component).
15. Under the Premium Distribution™ Component, the Plan Agent will: (i) pre-sell through a qualified investment dealer (the Plan Broker), for the account of Participants enrolled in the Premium Distribution™ Component, a number of Units approximately equal to the number of Additional Units to be purchased on the applicable distribution payment date with the reinvested Cash Distributions of such Participants; and (ii) settle such pre-sales by delivering the Additional Units so purchased to the Plan Broker in exchange for a cash payment equal to 102% of the reinvested Cash Distributions.
16. 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 Plan Agent in an amount equal to 102% of the reinvested Cash Distributions. The Plan Broker's *prima facie* return for its services under the Premium Distribution™ Component 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 price risk of pre-sales in the market, as Participants enrolled in the

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Premium Distribution™ Component will be entitled to receive a cash payment equal to 102% of the reinvested Cash Distributions.

17. All activities of the Plan Broker on behalf of the Plan Agent that relate to pre-sales of Units for the account of Participants enrolled in the Premium Distribution™ Component will be in compliance with applicable Legislation and the rules and policies of the Toronto Stock Exchange (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™ Component makes such registration necessary.
18. From and after the effective time of a Unitholder's enrolment under the Plan, and until the Unitholder's participation in the Plan is terminated, all Cash Distributions on Units registered in the name of the Unitholder (including any Units that may become registered in the name of that Unitholder after the initial time of enrolment), or held for the Unitholder's account under the Plan, will be automatically reinvested in Additional Units in accordance with the terms of the Plan, and such Additional Units will either be held under the Plan or delivered to the Plan Broker according to the Unitholder's current election as between the Distribution Reinvestment Component and the Premium Distribution™ Component.
19. Participants will be free to terminate their participation in the Plan, or to change their election as between the Distribution Reinvestment Component and the Premium Distribution™ Component, by providing written notice to the Plan Agent in accordance with the terms of the Plan. A notice of change or termination received after the time specified in the Plan preceding a distribution record date will not be effective until after the distribution payment date to which that record date relates.
20. On termination of the Plan or a Participant's participation in the Plan, the Participant(s) will receive a certificate for all whole Units held for their account under the Plan, a cash payment for any fractional entitlement credited to their account, and the return of any uninvested cash payments made under the Optional Unit Purchase Component.
21. No commissions, brokerage fees or service charges will be payable by Participants in connection with the purchase of Additional Units from the Filer under the Plan, and the Filer will be responsible for any charges of the Plan Agent for administering the Plan.

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22. The Filer reserves the right to determine, for any distribution payment date, the number of Additional Units (if any) that will be available for purchase under the Plan. The Filer also reserves the right to suspend the availability of the Optional Unit Purchase Component from time to time.
23. If, in respect of any distribution payment date, fulfilling the elections of all Participants would result in the Filer exceeding the limit on Additional Units set by the Filer, then elections for the purchase of Additional Units on that distribution payment date will be accepted: (i) first, from Participants electing to reinvest Cash Distributions under the Distribution Reinvestment Component; (ii) second, from Participants electing to reinvest Cash Distributions under the Premium DistributionTM Component; and (iii) third, from Participants electing to purchase Additional Units under the Optional Unit Purchase Component (if available). If the Filer is not able to accept all elections within a particular component of the Plan, either because of the limit on Additional Units set by the Filer or the aggregate annual limit on Additional Units issuable under the Optional Unit Purchase Component, then purchases of Additional Units on the applicable distribution payment date will be pro rated among all Participants in that component according to the number of Additional Units that would, in the absence of any pro ration, have been purchased on behalf of each such Participant under the Plan.
24. If the Filer determines that no Additional Units will be available for purchase under the Plan for a particular distribution payment date, or to the extent that the availability of Additional Units is pro rated in accordance with the terms of the Plan, then Participants will receive whatever portion of their Cash Distributions is not reinvested under the Plan.
25. The Filer reserves the right to restrict participation in the Plan by any Unitholder that is resident in a foreign jurisdiction or to whom a trade of Additional Units under the Plan would be subject to the laws of a foreign jurisdiction. Residents of any jurisdiction with respect to which the issue of Additional Units under the Plan would not be lawful will not be allowed to participate in the Plan.
26. The Filer 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. The Filer will provide notice of any such amendment, suspension or termination in accordance with the terms of the Plan and applicable securities laws.
27. The distribution of Additional Units by the Filer under the Plan cannot be made in reliance on existing exemptions from the dealer registration

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requirement and the prospectus requirement contained in the Legislation of certain of the Jurisdictions for the reinvestment of dividends, interest or distributions of capital gains or out of earnings or surplus, as the Plan involves the reinvestment of cash distributions of the Filer that may not fall into any of these categories.

28. Additionally, the distribution of Additional Units by the Filer under the Plan cannot be made in reliance on existing exemptions from the dealer registration requirement and the prospectus requirement contained in the Legislation of certain of the Jurisdictions for distribution reinvestment plans of mutual funds, as the Filer is not a “mutual fund” as defined in the Legislation of the relevant Jurisdictions.

Decision

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.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that:

- (a) at the time of the trade the Filer 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;
- (b) no sales charge is payable by Participants in respect of the trade;
- (c) the Filer has caused to be sent to each Participant, not more than 12 months before the trade, notice of their right to withdraw from the Plan and instructions on how to exercise that right;
- (d) the aggregate number of Additional Units issued under the Optional Unit Purchase Component of the Plan in any financial year of the Filer 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 of Additional Units distributed under the Plan will be a distribution or primary distribution to the public under the Legislation unless the conditions in subsection 2.6(3) of Multilateral Instrument 45-102 *Resale of Securities* are satisfied; and
- (f) in Québec, the first trade of Additional Units distributed under the Plan will be a distribution unless:

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- (i) the Filer is and has been a reporting issuer in Québec for the four months immediately preceding the trade;
 - (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 trade;
 - (iii) no extraordinary commission or consideration is paid to a person or company in respect of the trade; and
 - (iv) if the selling securityholder of the Additional Units is an insider of the Filer, the selling securityholder has no reasonable grounds to believe that the Filer is in default of any requirement of the Legislation of Québec.
- (g) this decision will expire in a Jurisdiction on the date which is sixty (60) days from the date National Instrument 45-106 *Prospectus and Registration Exemptions* comes into force in that Jurisdiction.

Theresa McLeod
Commissioner
Ontario Securities Commission

Harold P. Hands
Commissioner
Ontario Securities Commission