

# **2003 BCSECCOM 408**

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Application - relief from registration and prospectus requirements in connection with the distribution of trust units pursuant to a distribution reinvestment and optional trust unit purchase plan - first trade relief for additional units not subject to a seasoning period

## **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 ALBERTA,  
BRITISH COLUMBIA, SASKATCHEWAN, MANITOBA, ONTARIO,  
QUEBEC, NEW BRUNSWICK, PRINCE EDWARD ISLAND,  
NEWFOUNDLAND AND LABRADOR, NOVA SCOTIA, THE YUKON  
TERRITORY, THE NUNAVUT TERRITORY AND THE NORTHWEST  
TERRITORIES**

**AND**

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

**AND**

**IN THE MATTER OF PARAMOUNT ENERGY TRUST**

## **MRRS DECISION DOCUMENT**

1. WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Nova Scotia, the Yukon Territory, the Nunavut Territory and the Northwest Territories (the "Jurisdictions") has received an application from Paramount Energy Trust (the "Applicant") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirement 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 the distribution of trust units of the Applicant pursuant to a distribution reinvestment and optional trust unit purchase plan;

## 2003 BCSECCOM 408

2. AND WHEREAS any terms and conditions used herein that are defined in National Instrument 14-101 shall, unless otherwise defined herein, have the meanings as provided in that National Instrument;
3. AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "MRRS"), the Alberta Securities Commission is the principal regulator for this application;
4. AND WHEREAS the Applicant has represented to the Decision Makers that:
  - 4.1 the Applicant is an unincorporated trust established on June 28, 2002 under the laws of the Province of Alberta pursuant to a trust indenture, as amended (the "PET Trust Indenture"). The Applicant has been a reporting issuer, or the equivalent thereof, in each province and territory in Canada since February 3, 2003. The Applicant is not in default of any requirements of the Legislation. Computershare Trust Company of Canada is the trustee of the Applicant;
  - 4.2 the Applicant finances the operations of Paramount Operating Trust ("POT"), an unincorporated trust established on June 28, 2002 under the laws of the Province of Alberta pursuant to a trust indenture, as amended. POT is an operating oil and gas entity and the Applicant is the sole beneficiary of POT;
  - 4.3 Paramount Energy Operating Corp. (the "Administrator"), a wholly-owned subsidiary of the Applicant incorporated on June 28, 2002 under the Business Corporation Act (Alberta), provides certain operational, executive and financial services and governance functions to the Applicant and is the trustee of POT;
  - 4.4 under the PET Trust Indenture, the Applicant is authorized to issue an unlimited number of transferable redeemable trust units (the "Units") and an unlimited number of special voting units, of which, as at May 8, 2003, there were 39,638,376 Units issued and outstanding. Each holder of Units (a "Unitholder") is entitled to an equal undivided share of any distributions from the Applicant and upon cessation or winding-up of the Applicant, an equal undivided share of any amounts distributed. Each Unit entitles a Unitholder to one vote at meetings of Unitholders. If and when special voting units are issued, they will entitle the trustee thereof to such number of votes at meetings of Unitholders as may be prescribed by the board of directors of the Administrator. The Units are listed and posted for trading on the Toronto Stock Exchange (the "TSX");

## 2003 BCSECCOM 408

- 4.5 the Applicant has established a Dividend Reinvestment and Optional Trust Unit Purchase Plan (the "DRIP") to enable Unitholders, at their discretion, to automatically reinvest the distributable income of the Applicant paid on their Units (the "Distributable Income") into additional Units ("DRIP Units") as an alternative to receiving cash distributions, and as well, at their discretion, to purchase additional DRIP Units by making optional cash payments ("OCP's");
- 4.6 distributions due to participants enrolled in the DRIP ("DRIP Participants") will be paid to Computershare Trust Company of Canada in its capacity as agent under the DRIP (the "DRIP Agent") and will be applied to the purchase of DRIP Units. DRIP Participants who elect to purchase additional DRIP Units through OCP's will pay such amounts to the DRIP Agent who will purchase additional DRIP Units;
- 4.7 no commissions, service charges or brokerage fees will be payable by DRIP Participants in connection with the DRIP;
- 4.8 the DRIP Agent will purchase DRIP Units directly from the Applicant. In the event that the Administrator determines for whatever reason that DRIP Units will not be available from the Applicant for a particular distribution period, or also in the event of the OCP's the maximum number of Units have been issued for a particular period, then Distributable Income (together with, if applicable, any OCP's received) will be paid to DRIP Participants;
- 4.9 the acquisition price for DRIP Units purchased directly from the Applicant will be based on the weighted average price of the Units traded on the TSX on the ten trading days prior to a distribution date as described in the DRIP (the "Treasury Purchase Price"). The acquisition price for distribution reinvestments shall be 95% of the Treasury Purchase Price, and in the case of OCP's shall be 100% of the Treasury Purchase Price;
- 4.10 DRIP Participants may terminate their participation in the DRIP by providing written notice to the DRIP Agent no less than 5 business days prior to the applicable record date. Such notice, if actually received no later than 5 days prior to the applicable record date, will have effect for the distribution associated with that record date, and if not so received will have effect for the next following distribution;
- 4.11 Legislation in certain of the Jurisdictions provides exemptions from the Registration and Prospectus Requirements for distribution reinvestment

## 2003 BCSECCOM 408

plans. Such exemptions are not available to the Applicant in certain of the Jurisdictions because such exemptions are generally with respect to the distribution of one or more of the following: (i) dividends; (ii) interest; (iii) capital gains; or (iv) earnings or surplus. The distributions that are paid to the Unitholders are royalty income in relation to the income that the Applicant receives from POT on oil and gas properties;

4.12 Legislation in certain of the Jurisdictions provides for OCP's to be exempt from the Registration and Prospectus Requirements, however that Legislation places a restriction on such distributions to 2% of the issued and outstanding securities of the issuer as at the beginning of an issuer's financial year. The Applicant was formed in 2002 and established its financial year as the calendar year in keeping with many of its industry peers. As at January 1, 2003, which was prior to the completion of certain transactions which commenced the Applicant's operations, the Applicant had only one Unit issued and outstanding;

4.13 Legislation in certain of the Jurisdictions provides exemptions from the Registration and Prospectus Requirements for reinvestment plans of a "mutual fund". The Applicant 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 a part of the net assets of the Applicant, as contemplated by the definition of "mutual fund" in the Legislation.

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

6. AND WHEREAS 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;

7. THE DECISION of the Decision Makers under the Legislation is that:

7.1 the Registration and Prospectus Requirements contained in the Legislation shall not apply to distributions by the Applicant of DRIP Units under the DRIP, including pursuant to OCP's, provided that:

7.1.1 no sales charge is payable by DRIP Participants in respect of the distributions;

## **2003 BCSECCOM 408**

- 7.1.2 each DRIP Participant annually receives a notice of his or her right, and instructions on how to exercise such right, to withdraw from the DRIP;
- 7.1.3 for the 2003 financial year of the Applicant ending December 31, 2003, the aggregate number of DRIP Units issuable under OCP's of the DRIP does not exceed 792,768 Units, and, thereafter, the aggregate number of DRIP Units issuable by the Applicant in any financial year of the Applicant under OCP's of the DRIP does not exceed 2% of the issued and outstanding Units as at the commencement of that financial year; and
- 7.1.4 at the time of the trade, the Applicant is a reporting issuer or the equivalent under the Legislation and is not in default of any requirements of the Legislation; and
- 7.2 the first trade in DRIP Units acquired by DRIP Participants shall be a distribution or primary distribution to the public unless:
  - 7.2.1 at the time of the trade, the Applicant is a reporting issuer or the equivalent under the Legislation and is not in default of any requirements of the Legislation;
  - 7.2.2 no unusual effort is made to prepare the market or to create a demand for the DRIP Units;
  - 7.2.3 no extraordinary commission or consideration is paid to a person or company other than the vendor of the DRIP Units in respect of the trade;
  - 7.2.4 the vendor of the DRIP Units, if in a special relationship with the Applicant, has no reasonable grounds to believe that the Applicant is in default of any requirement of the Legislation; and
  - 7.2.5 the trade of the DRIP Units is not a control distribution as defined in the Legislation.

DATED this 9<sup>th</sup> day of June, 2003

Glenda A. Campbell, Q.C., Vice-Chair

Stephen R. Murison, Vice-Chair