

2005 BCSECCOM 158

March 1, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 48,76 Other - Exemption from s. 34(1)(a) requirement to be registered as a dealer for a trade and s. 61 requirement to file a prospectus for a distribution other than in connection with a corporate acquisition or reorganization; business associates; debt settlements; or employee investment plans and consultants - Trades by a non-mutual fund in connection with its distribution reinvestment plan - 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

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

and

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

and

In the Matter of Peyto Energy Trust (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 under the securities legislation of the Jurisdictions (the Legislation) for an exemption (the Requested Relief) from 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 prospectus (the Prospectus and Registration Requirements) with respect to certain trades in trust units of

2005 BCSECCOM 158

the Filer (Units) issued pursuant to a distribution reinvestment plan (the Plan).

2. Under the Mutual Reliance Review System for Exemptive Relief Applications (MRRS):
 - (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

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

Representations

4. This decision is based on the following facts represented by the Filer:
 - (a) the Filer is an open-ended investment trust formed under the laws of the Province of Alberta pursuant to a trust indenture dated May 22, 2003;
 - (b) the Filer is a reporting issuer in the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador. To its knowledge, the Filer is not in default of any requirements under the Legislation;
 - (c) the trustee of the Filer is Valiant Trust Company. The entire beneficial interest in the Filer is held by the holders of Units issued by the Filer;
 - (d) Peyto Exploration & Development Corp. (the Corporation), an indirect wholly-owned subsidiary of the Filer, manages and administers the Filer;
 - (e) the Units are listed and posted for trading on the Toronto Stock Exchange (the TSX);
 - (f) the head office and principal place of business of each of the Filer and the Corporation is located at Suite 2900, 450 – 1st Street S.W., Calgary, Alberta, T2P 5H1;

2005 BCSECCOM 158

- (g) the Filer currently makes and expects to continue to make monthly distributions of distributable income (Cash Distributions), if any, to the holders of Units (Unitholders). The distributable income of the Filer for any month is a function of the amounts received by the Filer pursuant to certain royalties, other income and certain expenses;
- (h) the Filer 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 Filer, as contemplated by the definition of "mutual fund" in the Legislation;

Distribution Reinvestment Plan

- (i) the Filer has authorized the establishment of the Plan pursuant to which eligible Unitholders may, at their option, purchase additional Units (Additional Units) of the Filer by directing that Cash Distributions be applied to the purchase of Additional Units (the Distribution Reinvestment Option);
- (j) Except as described below, a registered holder of Units is eligible to join the Plan at any time by completing an enrolment and authorization form and sending it to Valiant Trust Company (the Plan Agent);
- (k) A registered holder shall become a participant (a Participant) in the Plan in regard to the investment of distributions as of the first distribution record date following receipt by the Plan Agent of a duly completed enrolment and authorization form no later than five (5) business days prior to the distribution record date. Beneficial owners of Units which are registered through a nominee in the name of CDS & Co., or its nominee, must deliver such authorization form to CDS & Co. no later than five (5) business days prior to such distribution record date and also prior to such other deadline as may be set by CDS & Co. from time to time;
- (l) except as provided below, all Additional Units purchased under the Plan will be purchased by the Plan Agent directly from the Filer on the relevant distribution payment date at a price determined by reference to the Average Market Price (defined in the Plan as the arithmetic average of the daily volume weighted average trading prices of the Units on the TSX for the trading days from and

2005 BCSECCOM 158

including the second business day prior to the last distribution payment date to and including the third business day prior to the current distribution payment date on which at least a board lot of Units was traded such period not to exceed 20 trading days). Additional Units purchased under the Distribution Reinvestment Option will be purchased at a 5% discount to the Average Market Price;

- (m) at the discretion of the Corporation, Units purchased under the Distribution Reinvestment Option will either be acquired from treasury at 95% of Average Market Price or will be purchased at prevailing market prices through the facilities of the TSX following the distribution record date. Additional Units which are purchased through the facilities of the TSX will be acquired during the 20 business day period following the relevant distribution record date but will only be acquired at prices that are equal to or less than 115% of the volume weighted trading price of the Units on the TSX for the 10 trading days immediately preceding the date that Units are purchased;
- (n) 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 Units, which will be held under the Plan for the account of eligible Unitholders who have chosen to participate in the Plan;
- (o) no brokerage fees or service charges will be payable by Participants in connection with the purchase of Additional Units under the Plan;
- (p) Additional Units purchased and held under the Plan will be registered in the name of the Plan Agent or its nominee as agent for the Participants, and all cash distributions on Units so held for the account of a Participant will be automatically reinvested in Additional Units in accordance with the terms of the Plan and the election of the Participant;
- (q) the Plan permits full investment of reinvested Cash Distributions because fractions of Units, as well as whole Units, may be credited to Participants' accounts with the Plan Agent;

2005 BCSECCOM 158

- (r) the Filer reserves the right to determine for any distribution payment date how many Additional Units will be available for purchase under the Plan;
- (s) if, in respect of any distribution payment date, fulfilling all of the elections under the Plan would result in the Filer exceeding the limit on Additional Units set by the Filer, then elections for the purchase of Additional Units on such distribution payment date will be pro rated among all Participants in that category according to the number of Additional Units sought to be purchased;
- (t) if the Filer determines that no Additional Units will be available for purchase under the Plan for a particular distribution payment date, then all Participants will receive the Cash Distribution announced by the Filer for that distribution payment date;
- (u) a Participant may terminate its participation in the Plan at any time by submitting a termination form to the Plan Agent. A termination form received between a distribution record date and a distribution payment date will become effective after that distribution payment date;
- (v) 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 which would prejudice the interests of the Participants. All Participants will be sent written notice of any such amendment, suspension or termination; the Plan will not be available to Unitholders who are “non-residents” within the meaning of the *Income Tax Act* (Canada) and the regulations thereunder; and
- (w) Legislation in certain of the Jurisdictions provides exemptions from the Registration and Prospectus Requirements for trades undertaken pursuant to distribution reinvestment plans. Such exemptions are not available for trades under the Plan for technical reasons in certain of the Jurisdictions.

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 that the Requested Relief is granted, provided that:

2005 BCSECCOM 158

- (a) at the time of the trade or distribution the Filer is a reporting issuer or the equivalent under the Legislation and is not in default of any requirements of the Legislation;
- (b) no sales charge is payable in respect of the trade or distribution;
- (c) the Filer has caused to be sent to the Participant to whom the Units under the Plan are traded or distributed, not more than 12 months before the trade or distribution, a statement describing:
 - (i) their right to withdraw from the Plan and to make an election to receive cash instead of Units on the making of a distribution of income by the Filer (the Withdrawal Right), and
 - (ii) instructions on how to exercise the Withdrawal Right;
- (d) except in Québec, the first trade in Units acquired pursuant to this decision will be a distribution or primary distribution to the public unless the conditions in subsection 2.6(3) of Multilateral Instrument 45 - 102 - *Resale of Securities* are satisfied; and
- (e) in Québec, the alienation (or first trade) of Units acquired pursuant to this decision will be a distribution unless:
 - (i) the issuer is and has been a reporting issuer in Québec for the four (4) months preceding the alienation;
 - (ii) no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the alienation;
 - (iii) no extraordinary commission or other consideration is paid in respect of the alienation; and
 - (iv) if the seller of the securities is an insider of the issuer, the seller has no reasonable grounds to believe that the issuer is in default of any requirement of securities legislation.

Paul Moore
Commissioner
Ontario Securities Commission

Wendell S. Wigle
Commissioner
Ontario Securities Commission