2004 BCSECCOM 115

Headnote
Mutual Reliance Review System for Exemptive Relief Applications- 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 – previous MRRS decision revoked due to changes in the distribution reinvestment plan

Applicable British Columbia Provisions
Securities Act, R.S.B.C. 1996, c. 418, ss. 48, 76 and 171
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

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 (the "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;

AND WHEREAS the Alberta Securities Commission, on behalf of the Jurisdictions, issued a decision document dated June 9, 2003 under the System (the "Original MRRS Decision"), which provided relief from the Registration and Prospectus Requirements in connection with a predecessor plan to the Plan;

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 Applicant has represented to the Decision Makers that:

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 of the Jurisdictions 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.

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.

3. Paramount Energy Operating Corp. (the "Administrator"), a wholly-owned subsidiary of the Applicant incorporated on June 28, 2002 under the *Business Corporations Act* (Alberta), provides certain operational, executive and financial services and governance functions to the Applicant. The Administrator is also the trustee of POT.

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 December 16, 2003, there were 44,638,376 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").

5. The Applicant has established the Plan 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"). Under the OCP component of the Plan, a DRIP Participant (defined below) may purchase DRIP Units of up to a maximum of $100,000 per financial year and a minimum of $2,000 per remittance. OCP cash payments may be submitted monthly, quarterly or annually by DRIP Participants, with up to the full $100,000 maximum annual amount for a participant being available in one OCP purchase if the DRIP Participant wishes, and if a sufficient number of Units are available under the OCP component of the Plan.

6. Distributions due to participants enrolled in the Plan ("DRIP Participants") will be paid to Computershare Trust Company of Canada in its capacity as agent under the Plan (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.

7. No commissions, service charges or brokerage fees will be payable by DRIP Participants in connection with the Plan.

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.

9. The acquisition price for DRIP Units purchased directly from the Applicant will be based on the arithmetic average of the daily volume weighted average trading prices of the Units on the TSX for the ten trading days immediately preceeding a distribution payment date as described in the Plan (the "Treasury Purchase Price"). The acquisition price for distribution reinvestments and for OCPs, will be 94% of the Treasury Purchase Price.

10. DRIP Participants may terminate their participation in the Plan by providing written notice to the DRIP Agent no less than 3 business days prior to the applicable record date. Such notice, if actually received no later than 3 business 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.

11. Legislation in certain of the Jurisdictions provides exemptions from the Registration and Prospectus Requirements for distribution reinvestment plans. Such exemptions are not available to the Applicant in certain of the Jurisdictions because those 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-producing properties.

12. 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 some of the Legislation.

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 Maker with the jurisdiction to make the Decision has been met;

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

(A) The Original MRRS Decision is hereby revoked;

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

(i) no sales charge is payable by DRIP Participants in respect of the distributions;

(ii) each DRIP Participant annually receives a notice of his or her right, and instructions on how to exercise such right, to withdraw from the Plan;

(iii) the aggregate number of DRIP Units issuable by the Applicant in any financial year of the Applicant under OCP's of the Plan does not exceed 2% of the issued and outstanding Units as at the commencement of that financial year; and

(iv) 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

(C) Except in Québec, the first trade of DRIP Units acquired pursuant to the Plan in a Jurisdiction shall be deemed a distribution or primary distribution to the public under the Legislation, unless the conditions set out in subsection 2.6(3) of Multilateral Instrument 45-102 *Resale of Securities* are satisfied;

(D) in Québec, the first trade (alienation) of DRIP Units acquired pursuant to the Plan shall be a distribution or primary distribution to the public unless:

(i) at the time of the first trade, the Applicant is a reporting issuer in Québec and is not in default of any of the requirements of securities legislation in Québec;

(ii) no unusual effort is made to prepare the market or to create a demand for the DRIP Units;

(iii) no extraordinary commission or other consideration is paid to a person or company other than the vendor of the DRIP Units in respect of the first trade; and

(iv) 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 securities legislation in Québec.

DATED February 13, 2004.

Paul M. Moore Suresh Thakrar