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Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Trust exempt from prospectus and registration requirements in connection with issuance of units to existing unitholders under a distribution reinvestment plan and optional trust unit purchase plan, subject to certain conditions - first trade relief provided for units acquired pursuant to this decision, subject to certain conditions

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 ONTARIO,
BRITISH COLUMBIA, SASKATCHEWAN, MANITOBA, QUEBEC,
NOVA SCOTIA, NEW BRUNSWICK, 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 PETROFUND ENERGY TRUST

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of the provinces of Ontario, British Columbia, Saskatchewan, Manitoba, Quebec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador (the “Jurisdictions”) has received an application from Petrofund Energy Trust (the “Trust”) for a decision pursuant to 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 prospectus (the “Registration and Prospectus Requirements”) shall not apply to the distribution of trust units of the Trust (the “Units”) pursuant to the Trust's distribution reinvestment 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;

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AND WHEREAS, unless otherwise defined, the terms herein shall have the meanings 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 open-ended investment trust created on December 18, 1988 under the laws of the Province of Ontario. Computershare Trust Company of Canada is the trustee of the Trust.
2. The Trust is a royalty trust that acquires and manages producing oil and gas properties in Western Canada.
3. The Trust is not a “mutual fund” as defined in the Legislation because the holders of Units (the “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 a part of the net assets of the Trust as contemplated in the definition of “mutual fund” in the Legislation.
4. The authorized capital of the Trust consists of an unlimited number of Units.
5. The Trust is a reporting issuer or the equivalent thereof in each of the Jurisdictions and is not in default of any requirements of the Legislation.
6. The Units are listed and posted for trading on the Toronto Stock Exchange (the “TSX”) under the symbol PTF.UN and the American Stock Exchange (“AMEX”) under the symbol PTF.
7. The Trust makes monthly cash distributions to Unitholders. Cash distributions are paid on the last business day of each calendar month to Unitholders of record on the tenth business day preceding the payment date.
8. Pursuant to the Plan, Unitholders resident in Canada may, at their option, acquire additional Units (“DRIP Units”) by re-investing the cash distributions paid on their Units. The Plan also provides Unitholders resident in Canada the option to purchase additional Units (in addition to the DRIP Units) by making optional cash payments (“Cash Payment Option”). The DRIP Units and the Units issued pursuant to the Cash Payment Option are sometimes collectively referred to as the “Plan Units”). Any Unitholder resident in Canada holding in excess of 100 Units may participate in the Plan. The ability to participate in the Cash Payment Option is subject to a minimum of \$100 per calendar quarter and a maximum of \$5,000 per calendar quarter.

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9. The Plan is not available to Unitholders who are residents of the United States or other foreign jurisdictions.
10. The Trust will disclose in its renewal Annual Information Form for the year ended December 31, 2003 that only Unitholders resident in Canada holding in excess of 100 Trust Units may participate in the Plan.
11. Distributions due to participants in the Plan (“Plan Participants”) are paid to Computershare Trust Company of Canada in its capacity as plan agent under the Plan (the “Plan Agent”) and applied to purchase DRIP Units.
12. DRIP Units are purchased through the facilities of the TSX or are purchased directly from the Trust.
13. The acquisition price of DRIP Units purchased through the facilities of the TSX shall, in respect of any cash distribution date, be equal to the average acquisition price at which the Units are acquired through the facilities of the TSX for the purpose of the Plan during the period commencing on the cash distribution date and ending no later than that date which is 10 trading days following such cash distribution date. The acquisition price of DRIP Units purchased directly from the Trust shall, in respect of any cash distribution date, be equal to the weighted average price at which Units of the Trust have traded on the TSX during the 10 trading days following the cash distribution date however, to date, no DRIP Units have been purchased directly from the Trust.
14. Units issued under the Cash Payment Option are purchased directly from the Trust at the weighted average price at which Units of the Trust have traded on the TSX during the 10 trading days following the cash distribution date.
15. No commissions, service charges or brokerage fees are payable by Plan Participants in connection with the Plan.
16. Plan Participants may terminate their participation in the Plan at any time by written notice to the Plan Agent.
17. The Trust may amend, modify, suspend or terminate the Plan at any time, provided that such action shall have no retroactive effect which would prejudice the interests of Plan Participants.
18. The Legislation in certain of the Jurisdictions provides exemptions (the “Existing Exemptions”) from the Registration and Prospectus Requirements for trades made pursuant to certain reinvestment plans. However, the Existing

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Exemptions are not available for the issue of DRIP Units pursuant to the Plan as they are limited to plans that provide for the reinvestment of one or more of the following: (i) dividends; (ii) interest; (iii) distributions of capital gains; or (iv) distributions out of earnings or surplus. The distributions to Unitholders are distributions of the distributable income of the Trust and do not likely fall within any of these categories.

19. Legislation in some of the Jurisdictions exempts trades made under the reinvestment plans of mutual funds from the Registration and Prospectus Requirements. Such exemptions are not, however, available to the Trust because it is not a “mutual fund” as defined under the Legislation.

AND WHEREAS under the System, the MRRS Decision Document evidences the decision of each of the Decision Makers (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 Plan Units by the Trust to Plan 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;
- (b) no sales charge is payable by Plan Participants in respect of the trade;
- (c) the Trust has caused to be sent to the person or company to whom the Plan 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 instead of Plan Units on the making of a distribution of income by the Trust; and
 - (ii) instructions on how to exercise the right referred to in (i);
- (d) in the financial year during which the trade takes place, the aggregate number of Plan Units issued pursuant to the Cash Payment Option shall

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not exceed two (2%) percent of the aggregate number of Units outstanding at the commencement of such financial year;

- (e) except in Quebec, the first trade or resale of Plan Units acquired pursuant to the Plan in a Jurisdiction shall be deemed to be a distribution or primary distribution to the public under the Legislation unless the conditions set out in paragraphs 1 through 5 of subsection 2.6(3) of Multilateral Instrument 45-102 *Resale of Securities* are satisfied at the time of such first trade or resale; and
- (f) in Quebec, the first trade (alienation) of Plan Units acquired pursuant to the Plan shall be deemed to be a distribution or primary distribution to the public unless:
 - (i) at the time of the first trade, the Trust is, and has been for the 12 months preceding the alienation, a reporting issuer in Quebec;
 - (ii) no unusual effort is made to prepare the market or to create a demand for the Plan Units that are the subject of the alienation;
 - (iii) no extraordinary commission or other consideration is paid to a person or company other than the vendor of the Plan Units in respect of the first trade; and
 - (iv) the vendor of the Plan Units, if in a special relationship with the Trust, has no reasonable grounds to believe that the Trust is in default of any requirement of the securities legislation in Quebec.

DATED this 25th day of February 2004.

Paul M. Moore

Robert W. Davis