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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – open-end investment trust – trades of trust units to existing unit holders under a distribution reinvestment plan exempt from prospectus and registration requirements – relief subject to conditions

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 45(2)(11), 48, 74(2)(10) and 76
Multilateral Instrument 45-102

**IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH
COLUMBIA, SASKATCHEWAN, MANITOBA, ONTARIO, QUEBEC,
NEW BRUNSWICK, NOVA SCOTIA, PRINCE EDWARD ISLAND,
NEWFOUNDLAND AND LABRADOR, THE NORTHWEST
TERRITORIES, THE YUKON AND NUNAVUT**

AND

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

AND

IN THE MATTER OF VIKING ENERGY ROYALTY TRUST

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, the Yukon and Nunavut (the “Jurisdictions”) has received an application from Viking Energy Royalty Trust (the “Trust”) for a decision, pursuant to the securities legislation of the Jurisdictions (the “Legislation”), that 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 final prospectus (the “Registration and Prospectus Requirements”) shall not apply to certain trades in units of the Trust issued pursuant to a premium distribution, 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;

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AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 – *Definitions* or Québec Commission Notice 14-101;

AND WHEREAS the Trust has represented to the Decision Makers that:

1. The Trust is an open-end investment trust formed under the laws of the Province of Alberta and is governed by an amended and restated trust indenture dated as of July 1, 2003 between Computershare Trust Company of Canada (the “Trustee”) and Viking Holdings Inc. (“VHI”). The head office of the Trust is located at 400, 330 - 5th Avenue S.W., Calgary, Alberta T2P 0L4.
2. The Trust's purpose is to acquire, hold or invest in securities, royalties or other interests in entities that derive their value from petroleum and natural gas and energy related assets and to issue trust units (the “Units”) to the public. Pursuant to an amended and restated royalty agreement dated as of July 1, 2003 between VHI and the Trustee and an amended and restated royalty agreement dated as of July 1, 2003 between VHI, in its capacity as trustee of Viking Holdings Trust (“VHT”) and the Trustee, the Trust receives 99% of the net production revenues attributable to VHI and VHT's petroleum and natural gas properties. The Trust also receives interest and principal payments with respect to a debt instrument issued to the Trust by VHT and unsecured subordinated notes issued by Viking Energy Ltd. (“VEL”) and distributions from VHT. VHT receives cash flow from payments received from a royalty granted by VEL, interest and principal payments with respect to debt instruments issued to VHT by VEL and partnership income received from the Sedpex Partnership.
3. Computershare Trust Company of Canada is the trustee of the Trust and the holders of the Units (the “Unitholders”) are the sole beneficiaries of the Trust.
4. The Trust has been a reporting issuer or the equivalent under the Legislation since December, 1996 and, to the best of its knowledge, is not in default of any requirements of the Legislation.
5. The Trust 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 Trust, as contemplated by the definition of “mutual fund” in the Legislation.
6. The Trust is authorized to issue an unlimited number of Units, each of which represents an equal fractional undivided beneficial interest in the Trust. All

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Units share equally in all distributions from the Trust and all Units carry equal voting rights at meetings of Unitholders. As of May 27, 2004, there were 97,627,957 Units issued and outstanding.

7. The Units are listed and posted for trading on the Toronto Stock Exchange (the "TSX").
8. The Trust makes and expects to continue to make monthly cash distributions to its Unitholders in an amount per Unit equal to a pro rata share of all amounts and income received by the Trust in each month, less: (i) expenses of the Trust; and (ii) any other amounts required to be deducted, withheld or paid by the Trust.
9. The Trust currently has in place a distribution reinvestment and optional trust unit purchase plan (the "Old DRIP") which enables eligible Unitholders who elect to participate in the Old DRIP to direct that cash distributions paid by the Trust in respect of their existing Units ("Cash Distributions") be automatically applied to the purchase of additional Units ("Additional Units") either from treasury or, at the discretion of the Trust, through the facilities of the TSX (the "Distribution Reinvestment Option").
10. The Old DRIP also entitles Unitholders who have elected to participate in the Distribution Reinvestment Option to make, at their discretion, additional cash payments ("Optional Cash Payments") which are invested in Additional Units on the same basis as Cash Distributions are reinvested pursuant to the Distribution Reinvestment Option (the "Cash Payment Option"); provided that purchases under the Old DRIP which are effected by means of the reinvestment of Cash Distributions are purchased at a 5% discount to the Treasury Purchase Price or the Market Purchase Price (each as defined in the Old DRIP) while purchases effected by means of Optional Cash Payments are purchased at the Treasury Purchase Price or the Market Purchase Price.
11. At the time the Old DRIP was implemented, the Trust obtained exemptive relief from the Registration and Prospectus Requirements in those Jurisdictions where such relief was necessary.
12. The Trust intends to establish the Plan, which will retain (with some minor modifications) the Distribution Reinvestment Option and Cash Payment Option but will also enable eligible Unitholders who decide to reinvest Cash Distributions to authorize and direct the trust company that is appointed as agent under the Plan (the "Plan Agent"), to pre-sell through a designated broker (the "Plan Broker"), for the account of the Unitholders who so elect, a number of Units approximately equal to the number of Additional Units

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issuable on such reinvestment, and to settle such pre-sales with the Additional Units issued on the applicable distribution payment date in exchange for a cash payment equal to 102% of the reinvested Cash Distributions (the "Premium Distribution Option"). 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.

13. The Cash Payment Option will only be available to Unitholders that have elected to have their Cash Distributions reinvested in Additional Units under the Distribution Reinvestment Option or the Premium Distribution Option ("Participants"). In addition, the Trust shall have the right to determine from time to time whether the Cash Payment Option will be available.
14. The Plan will supersede the Old DRIP. All Unitholders who are enrolled in the Old DRIP at the time that the Plan becomes effective will, subject to any contrary elections made by such Unitholders, be automatically enrolled in the Distribution Reinvestment Option of the Plan.
15. All Additional Units purchased under the Plan will be purchased by the Plan Agent directly from the Trust on the relevant distribution payment date at a price determined by reference to the Average Market Price (as defined in the Plan), being the arithmetic average of the daily volume weighted average trading prices of the Units on the TSX for a defined period not exceeding 20 trading days preceding the applicable distribution payment date.
16. Additional Units purchased under the Distribution Reinvestment Option or the Premium Distribution Option will be purchased at a 5% discount to the Average Market Price. Additional Units purchased under the Cash Payment Option will be purchased at the Average Market Price.
17. The Plan Broker's prima facie return under the Premium Distribution Option 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 who have elected the Premium Distribution Option are entitled to receive a cash payment equal to 102% of the reinvested Cash Distributions.

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18. All activities of the Plan Broker on behalf of the Plan Agent that relate to pre-sales of Units for the account of Participants who elect the Premium Distribution Option will be in compliance with applicable Legislation and the rules and policies of the TSX (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 Option makes such registration necessary.
19. Residents of any foreign jurisdiction with respect to which the issue of Additional Units under the Plan would not be lawful may not participate in the Plan.
20. Participants who choose to participate in the Plan may elect either the Distribution Reinvestment Option or the Premium Distribution Option in respect of their Cash Distributions and are free to terminate their participation under either option, or to change their election as between the Distribution Reinvestment Option and the Premium Distribution Option, in either case by providing written notice to the Plan Agent, in accordance with the terms of the Plan.
21. Additional Units purchased by the Plan Agent for the account of Participants under the Distribution Reinvestment Option will be held under the Plan for the account of such Participants.
22. Additional Units purchased by the Plan Agent for the account of Participants under the Premium Distribution Option will be transferred to the Plan Broker to settle pre-sales of Units made by the Plan Broker on behalf of the Plan Agent for the account of such Participants in exchange for a cash payment equal to 102% of the reinvested Cash Distributions.
23. Under the Cash Payment Option, a Participant may, through the Plan Agent, purchase Additional Units subject to any minimum or maximum thresholds specified in the Plan. The aggregate number of Additional Units that may be purchased under the Cash Payment Option by all Participants in any financial year of the Trust will be limited to a maximum of 2% of the number Units issued and outstanding at the start of the financial year.
24. No commissions, brokerage fees or service charges will be payable by Participants in connection with the purchase of Additional Units under the Plan.

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25. Additional Units purchased and held under the Plan will be registered in the name of the Plan Agent (or its nominee) and credited to the appropriate Participants' accounts, and all Cash Distributions on Units so held under the Plan will be automatically reinvested in Additional Units in accordance with the terms of the Plan and the current election of that Participant as between the Distribution Reinvestment Option and the Premium Distribution Option.
26. The Plan permits full investment of reinvested Cash Distributions and optional cash payments under the Cash Payment Option (if available) because fractions of Units, as well as whole Units, may be credited to Participants' accounts (although, in the case of beneficial Unitholders, the crediting of fractional Units may depend on the policies of a Participant's broker, investment dealer, financial institution or other nominee through which the Participant holds Units).
27. The Trust reserves the right to determine, for any distribution payment date, the number of Additional Units that will be available for purchase under the Plan.
28. If, in respect of any distribution payment date, fulfilling all of the elections under the Plan would result in the Trust exceeding either the limit on Additional Units set by the Trust or the aggregate annual limit on Additional Units issuable pursuant to the Cash Payment Option, then elections for the purchase of Additional Units on such distribution payment date will be accepted: (i) first, from Participants electing the Distribution Reinvestment Option; (ii) second, from Participants electing the Premium Distribution Option; and (iii) third, from Participants electing the Cash Payment Option (if available). If the Trust is not able to accept all elections in a particular category, then purchases of Additional Units on the applicable distribution payment date will be pro rated among all Participants in that category according to the number of Additional Units sought to be purchased.
29. If the Trust 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 prorated in accordance with the terms of the Plan, then Participants will receive the usual Cash Distribution for that distribution payment date.
30. A Participant may terminate its participation in the Plan at any time by submitting a termination form to the Plan Agent, provided that a termination form received between a distribution record date and a distribution payment date will not become effective until after that distribution payment date.

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31. The Trust 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 Trust will provide notice of any such amendment, suspension or termination in accordance with the terms of the Plan and applicable securities laws.
32. The distribution of Additional Units by the Trust under the Plan cannot be made in reliance on existing registration and prospectus exemptions contained in the Legislation as the Plan involves the reinvestment of distributable income distributed by the Trust and not the reinvestment of dividends, interest or distributions of capital gains or out of earnings or surplus.
33. The distribution of Additional Units by the Trust pursuant to the Plan cannot be made in reliance on existing registration and prospectus exemptions contained in the Legislation for dividend reinvestment plans of mutual funds, as the Trust is not a mutual fund as defined in 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 Makers with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers pursuant to the Legislation is that the Registration and Prospectus Requirements shall not apply to the distribution by the Trust of Additional Units pursuant to the Plan provided that:

- (a) at the time of such distribution, the Trust is a reporting issuer or the equivalent in a jurisdiction listed in Appendix B of Multilateral Instrument 45-102 *Resale of Securities* (“MI 45-102”) and is not in default of any requirements of the Legislation;
- (b) no sales charge is payable by Participants in respect of the trades made pursuant to such distribution;
- (c) the Trust has caused to be sent to the person or company to whom the Additional 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 Distributions instead of Additional Units, and

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- (ii) instructions on how to exercise the right referred to in paragraph (c)(i) above;
- (d) the aggregate number of Additional Units issued under the Cash Payment Option of the Plan in any financial year of the Trust shall not exceed 2% of the aggregate number of Units outstanding at the start of that financial year;
- (e) except in Quebec, the first trade of Additional Units will be a distribution or primary distribution to the public under the Legislation unless the conditions in subsection 2.6(3) of MI 45-102 are satisfied; and
- (f) in Québec, the first trade in Additional Units will be a distribution or primary distribution to the public under the Legislation unless:
 - (i) at the time of such first trade, the Trust is a reporting issuer in Québec and has been a reporting issuer in Quebec for the four months preceding the trade and is not in default of any of the requirements of securities legislation of Québec;
 - (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 other consideration is paid in respect of the first trade; and
 - (iv) if the selling securityholder of the Additional Units is an insider of the Trust, the selling securityholder has no reasonable grounds to believe that the Trust is in default of any requirement of the securities legislation of Québec.

DATED this 29th day of June, 2004.

Paul M. Moore, Q. C.

Paul K. Bates