

# **2003 BCSECCOM 774**

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Application - royalty 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

**IN THE MATTER OF THE SECURITIES LEGISLATION OF  
BRITISH COLUMBIA, SASKATCHEWAN, MANITOBA, ONTARIO,  
QUÉBEC, NEW BRUNSWICK, NOVA SCOTIA, PRINCE EDWARD  
ISLAND, AND NEWFOUNDLAND AND LABRADOR**

**AND**

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

**AND**

**IN THE MATTER OF ARC ENERGY TRUST**

## **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland and Labrador (collectively, the "Jurisdictions") has received an application from ARC Energy Trust ("ARC") for a decision, under 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 to obtain a receipt for a preliminary prospectus and a prospectus (the "Registration and Prospectus Requirements") shall not apply to certain trades in trust units of ARC ("Units") issued pursuant to ARC's distribution reinvestment and optional trust unit purchase plan (the "Plan");

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

AND WHEREAS ARC has represented to the Decision Makers that:

1. ARC is an unincorporated royalty trust created by a declaration of trust dated May 7, 1996, as amended and restated as of May 16, 2003.
2. The authorized capital of ARC consists of an unlimited number of Units.
3. ARC became a reporting issuer under the Legislation in July 1996 when it obtained a receipt for a prospectus in connection with its initial public offering and continues to be a reporting issuer under the Legislation not in default of any requirements of the Legislation.
4. The Units are listed and posted for trading on the Toronto Stock Exchange (the "TSX").
5. Under the distribution policy adopted by ARC, ARC distributes on the 15th day (or if such date is not a business day, on the next business day) following the end of each month (the "Distribution Date"), the distributable income of ARC to the holders of Units (the "Unitholders") of record as of the last day of the month preceding the distribution (the "Record Date"). The distributable income includes the amount of royalty income or other income received by the Trust less the Trust's share of Crown royalties and direct expenses of the Trust.
6. Pursuant to the Plan, Unitholders (other than those resident in the United States or those who are citizens of the United States) ("Eligible Unitholders") may, at their option, invest cash distributions paid on their Units in new Units. The Plan also enables Eligible Unitholders to make additional cash investments through optional cash payments ("Optional Cash Payments") which are invested in new Units on the same basis as distributions are invested under the Plan. Any Eligible Unitholder may contribute by way of Optional Cash Payment a minimum of \$500 and a maximum of \$3,000 in respect of each Distribution Date.

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7. Distributions due to participants in the Plan ("Plan Participants") are paid to Computershare Trust Company of Canada in its capacity as agent under the Plan (the "Plan Agent") and applied to purchase new Units.
8. The new Units are purchased through the facilities of the TSX or, at the discretion of ARC Resources Ltd. ("ARC Resources"), directly from ARC. ARC Resources is a corporation incorporated under the laws of the Province of Alberta. ARC Resources is a reporting issuer in all Provinces of Canada. Under the terms of ARC's trust indenture, ARC has delegated all decision-making and management functions relating to the issuance of Units to ARC Resources.
9. Subject to the right of ARC Resources to elect to issue Units from treasury as described in paragraph 10 below, the average market price (the "Market Purchase Price") at which the participants purchase new Units with cash distributions on their Units is based upon the average price for which Units are acquired through the facilities of the TSX for the purposes of the Plan following the Distribution Date.
10. In the event that ARC Resources elects not to purchase any Units through the facilities of the TSX in respect to any Distribution Date, but to issue new Units from treasury, the price at which the new Units are issued will be 95% of the weighted average price of all Units traded on the TSX on the 10 trading days preceding a Cash Distribution Date (the "Treasury Purchase Price").
11. The price of new Units purchased with Optional Cash Payments will also be the Treasury Purchase Price.
12. Units purchased under the Plan are registered in the name of the Plan Agent, as agent for the Plan Participants.
13. No commissions, service charges or brokerage fees are payable by Plan Participants in connection with the Plan.
14. Plan Participants may terminate their participation in the Plan at any time by written notice to the Plan Agent. A notice received at least 3 business days prior to a Record Date will be effective for the following Distribution Date.

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

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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 the Registration and Prospectus Requirements shall not apply to the trades of Units by ARC to the Plan Agent for the account of Participants pursuant to the Plan provided that:

- (a) at the time of the trade ARC 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;
- (c) ARC has caused to be sent to the person or company to whom the 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 Units on the making of a distribution of income by ARC, and
  - (ii) instructions on how to exercise the right referred to in paragraph (c)(i);
- (d) the aggregate number of Units issued under the Cash Payment Option of the Plan in any financial year of ARC shall not exceed 2% of the aggregate number of Units outstanding at the start of that financial year;
- (e) 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
- (f) in Québec, the first trade in 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 12 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;

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- (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.

DATED November 7, 2003.

Paul M. Moore

Suresh Thakrar