

# 2005 BCSECCOM 233

April 4, 2005

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-102, s. 13.1 - Continuous Disclosure Obligations - An issuer wants relief from the requirement to include prospectus-level disclosure in an information circular to be circulated in connection with an arrangement, reorganization, acquisition or amalgamation - Alternate financial information will be provided about the issuer that is consistent with the financial information required in the continuous disclosure context for significant acquisitions; information will be provided about the parties to the transaction sufficient for shareholders to assess the transaction as a whole

## Applicable British Columbia Provisions

National Instrument 51-102, s. 13.1 - *Continuous Disclosure Obligations*  
Form 51-102F5, s. 14.2

In the Matter of  
the Securities Legislation  
of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Quebec,  
Newfoundland and Labrador, New Brunswick and Nova Scotia (the Jurisdictions)

and

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

and

In the Matter of Crispin Energy Inc.

## MRRS Decision Document

## Background

1. The local securities regulatory authority or regulator (the “Decision Maker”) in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, Newfoundland and Labrador, New Brunswick and Nova Scotia (the “Jurisdictions”) has received an application from Crispin Energy Inc. (the “Filer”) seeking:
  - 1.1 a decision under the securities legislation (the “Legislation”) of the Jurisdictions, other than Québec, exempting Crispin from the requirement to file certain financial statements prescribed by item

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14.2 of Form 51-102F5 Information Circular of National Instrument 51-102 *Continuous Disclosure Obligations* (“NI 51-102”); and

- 1.2 in Québec, a revision of the general order that will provide the same result as the exemption in 1.1 above.
2. Under Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Alberta Securities Commission is the principal regulator of this application.
3. Under the System, this MRRS Decision Document evidences the decision of each Decision Maker (the “Decision”).

### **Interpretation**

4. Unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions*.

### **Representations**

5. This Decision is based on the following facts represented by the Filer:
  - 5.1 The Filer was continued under the *Business Corporations Act* (Alberta) (the “ABCA”).
  - 5.2 The principal office of the Filer is located at Suite 1800, 407 – 2nd Street S.W., Calgary, Alberta T2P 2Y3.
  - 5.3 The Filer is a reporting issuer in British Columbia, Alberta, and Ontario.
  - 5.4 The authorized capital of the Filer consists of an unlimited number of common shares which are listed and traded on the Toronto Stock Exchange (the “TSX”).
  - 5.5 The Filer and Pengrowth Energy Trust (the “Trust”) entered into an arrangement agreement (the “Arrangement Agreement”) dated February 17, 2005 under which the Trust will indirectly acquire all of the issued and outstanding common shares of the Filer (the “Crispin Shares”) pursuant to a plan of arrangement (the “Arrangement”) under the ABCA.
  - 5.6 The Trust was created under the laws of the Province of Alberta and is governed by an amended and restated trust indenture dated

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July 27, 2004 between Pengrowth Corporation (“Pengrowth”) and Computershare Trust Company of Canada, as trustee.

- 5.7 The principal office of the Trust is located at Suite 2900, 111 – 5<sup>th</sup> Avenue S.W., Calgary, Alberta, T2P 3Y6.
- 5.8 The Trust is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland.
- 5.9 The authorized capital of the Trust consists of an unlimited number of Class A trust units and Class B trust units.
- 5.10 The Class A trust units are listed and traded on the TSX and the New York Stock Exchange. The Class B trust units are listed and traded on the TSX.
- 5.11 Under the Arrangement, shareholders of the Filer, who are residents in Canada, will receive for each Crispin Share held, 0.0725 of Class B trust unit of the Trust.
- 5.12 Under the Arrangement, shareholders of the Filer, who are residents outside of Canada, will receive for each Crispin Share held, 0.0512 of Class A trust unit of the Trust, subject to the condition that the number of Class A trust units issuable be limited to 25% of the number of Class B trust units.
- 5.13 In the event that the aggregate number of Class A trust units that would be issued exceeds 25% of the number of Class B trust units issued, then the number of Class A trust units to be issued to any shareholder of the Filer, subject to rounding, shall be determined by multiplying the total number of Class A trust units otherwise issuable to such shareholders by a fraction, the numerator of which is 25% of the number of Class B trust units issued to shareholders of the Filer, and the denominator of which is the aggregate number of Class A trust units otherwise issuable to all shareholders of the Filer rounded to six digits (the “Fraction”) and Pengrowth shall pay any holder of Crispin Shares who would, but for this restriction, have received Class A trust units, an amount of cash, rounded to the nearest one cent, equal to: (i) one (1.0) less the Fraction; (ii) multiplied by the total number of Class A trust units otherwise issuable to such shareholder; (iii) multiplied by 95% of the

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Pengrowth Class B weighted average trading price for the five trading days preceding the effective date of the Arrangement.

- 5.14 The information circular (the “Information Circular”) with respect to the special meeting of the shareholders of the Filer, to be held on April 29, 2005 for the purpose of approving the Arrangement, will contain (or to the extent permitted, will incorporate by reference) prospectus-level disclosure in respect of the Filer and the Trust and a detailed description of the Arrangement.
- 5.15 Pursuant to item 14.2 of Form 51-102F5 of NI 51-102, the Filer is required to provide disclosure (including financial statement disclosure) in the Information Circular for each entity, securities of which are being exchanged, issued or distributed, prescribed by the form of prospectus that the entity would be eligible to use for a distribution of securities in the Jurisdictions, in this case disclosure for the Trust prescribed by National Instrument 44-101 *Short Form Prospectus Distributions* (“NI 44-101”).
- 5.16 On May 31, 2004, Pengrowth, a subsidiary of the Trust, completed the acquisition (the “Asset Acquisition”) of certain oil and natural gas properties (the “Murphy Assets”) in Alberta and Saskatchewan from Murphy Oil Company Ltd., a subsidiary of Murphy Oil Corporation (“Murphy”), through the purchase of all the issued and outstanding shares of such company for an aggregate purchase price of \$550,500,000 and pursuant to a purchase and sale agreement dated April 7, 2004. The purchase price was paid in cash by Pengrowth.
- 5.17 On August 13, 2004, the Trust filed a business acquisition report (the “Business Acquisition Report”) under Part 8 of NI 51-102 announcing that it had completed the Asset Acquisition.
- 5.18 The Business Acquisition Report contained operating statements and an auditors' report of KPMG LLP regarding the Murphy Assets, unaudited pro forma consolidated statements of income of the Trust for the six months ended June 30, 2004 and the year ended December 31, 2003, and a compilation report of KPMG LLP giving effect to the Asset Acquisition.
- 5.19 The Asset Acquisition was a “significant acquisition” for the Trust under NI 44-101. The acquisition was 33% on the asset test and 32% on the income test.

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- 5.20 The Asset Acquisition was an acquisition of interests in oil and gas properties constituting a business, as provided in the Companion Policy to NI 44-101.
- 5.21 No separate historical audited financial statements exist in respect of the Murphy Assets.
- 5.22 The Murphy Assets did not constitute a reportable segment for Murphy.
- 5.23 Under prospectus requirements, the Filer would be required to include one year of financial statements for the Murphy Assets in the Information Circular. Nonetheless, the Filer proposes to include audited operating statements for the years ended December 31, 2003 and 2002, unaudited operating statements for the five months ended May 31, 2004 and 2003 and unaudited pro forma consolidated statement of income of the Trust and pro forma earnings per unit for the year ended December 31, 2004 in respect of the Murphy Assets in the Information Circular.
- 5.24 Such disclosure would satisfy the exemption requirements in Section 8.10 of NI 51-102 in connection with a business acquisition report and the exemption requirements of Section 5.3 of the Companion Policy to NI 44-101. Such disclosure will be the same as was provided in the Trust's December 20, 2004 Short Form Prospectus, except that the pro forma consolidated statements and pro forma earnings per unit will be updated to December 31, 2004.

### Decision

- 6. 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.
- 7. The Decision of the Decision Makers under the Legislation is that:
  - 7.1 other than Québec, an exemption from the requirements of item 14.2 of Form 51-102F5 *Information Circular* of NI 51-102 to provide in the Information Circular audited financial statements of income, retained earnings and cash flow and a full pro forma income statement and a balance sheet in respect of Murphy is granted provided that the Filer includes in the Information Circular

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- (a) the audited and unaudited statements of revenue and operating expenses in respect of the Murphy Assets that were previously disclosed in the Business Acquisition Report;
- (b) a pro forma income statement for the Trust for the year ended December 31, 2004 combining the Murphy Assets as if such acquisition had occurred on January 1, 2004;
- (c) pro forma earnings per trust unit based upon the statement referred to in sub-paragraph 7.1(b) directly above; and
- (d) the information related to the Murphy Properties (including reserves information prepared in accordance with National Instrument 51-101) which was included in Appendix “A” of the Business Acquisition Report; and

7.2 in Québec, the general order is revised and granted to provide the same result as the exemption in 7.1 above.

Agnes Lau, CA  
Deputy Director, Capital Markets