

# 2007 BCSECCOM 237

May 1, 2007

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications – National Instrument 51-101 Standards of Disclosure for Oil & Gas Activities, s. 8.1 – annual reporting requirements/directors' & officers' responsibilities - A reporting issuer wants relief from all the requirements of NI 51-101 - The issuer is a subsidiary of a trust; the issuer and the trust are both reporting issuers; the issuer is exempt from continuous disclosure obligations on the basis that the trust's disclosure record will be filed and delivered in place of the issuer's disclosure record; the trust is subject to NI 51-101 and will provide all of the disclosure required in Parts 2 and 3 of NI 51-101

## Applicable British Columbia Provisions

National Instrument 51-101 s. 8.1

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

and

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

and

In the Matter of  
Focus Limited Partnership (the Filer)

## MRRS Decision Document

## Background

1. The local securities regulatory authority or regulator (collectively, the Decision Makers) in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia and Newfoundland and Labrador (the Jurisdictions) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that in the Jurisdictions, the requirements contained in National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities (NI 51-101) shall not apply to the Filer.

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2. Pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the MRRS) established under National Policy 12-201:
  - (a) the Alberta Securities Commission is the principal regulator for this application; and
  - (b) this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

3. Defined terms contained in National Instrument 14-101 have the same meaning in this decision unless they are defined in this decision.

### **Representations**

4. The decision is based on the following facts represented by the Filer:
  - (a) Focus Energy Trust (the Trust) was established on August 23, 2002 under the laws of Alberta pursuant to a trust indenture.
  - (b) The Filer is a limited partnership established under the laws of Alberta pursuant to a limited partnership agreement dated June 2, 2006 (the LP Agreement). The general partner of the Filer is FET Management Ltd. (the General Partner). The Filer became a reporting issuer on July 27, 2006 in each of the Jurisdictions upon a completion of an arrangement pursuant to section 193 of the Business Corporations Act (Alberta) between the Trust, certain related entities of the Trust and Profico Energy Management Ltd. (the Arrangement) as the Filer's existence continued following the Arrangement and certain securities of the Filer were issued pursuant to the Arrangement.
  - (c) Pursuant to the LP Agreement, the Filer is authorized to issue class A limited partnership units (the FLP A Units) and class B limited partnership units (the FLP B Units). All of the issued and outstanding FLP A Units are owned directly or indirectly by the Trust. The FLP B Units were issued pursuant to the Arrangement to the former holders of common shares of Profico and as of March 15, 2007, there were 9,311,810 FLP B Units issued and outstanding. Neither the FLP A Units, nor the FLP B Units are listed or quoted on any marketplace.
  - (d) The head office and registered office of the General Partner are located in Calgary, Alberta.

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- (e) The Filer is engaged in the exploration, development and production of natural gas and crude oil in Western Canada.
- (f) The Filer is subject to the requirements of NI 51-101.
- (g) The Filer is an “exchangeable security issuer” as that term is defined in Section 13.3 of National Instrument 51-102 Continuous Disclosure Obligations (NI 51-102), and exempt from the requirements of NI 51-102 as it meets all the conditions in subsection 13.3(2) of NI 51-102.
- (h) In addition, the Filer satisfies all the conditions of subsection 13.3(2) of NI 51-102 even if the reference to “continuous disclosure documents” in clause 13.3(2)(d)(ii)(A) of NI 51-102 includes documents filed in accordance with NI 51-101.
- (i) Pursuant to section 4.3 of Multilateral Instrument 52-109 Certification of Disclosure in Issuers Annual and Interim Filings (MI 52-109), the Filer is also exempt from the requirements in MI 52-109 as long as it qualifies for the relief contemplated by, and is in compliance with the requirements and conditions set out in section 13.3 of NI 51-102.
- (j) The Filer is not in default of any of its obligations under the Legislation as a reporting issuer.
- (k) The Trust is a reporting issuer in each of the Jurisdictions. The Trust is subject to the requirements of NI 51-102, NI 51-101 and to MI 52-109 and is not in default of the Legislation in the Jurisdictions.

### **Decision**

- 5. 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.
- 6. The decision of the Decision Makers under the Legislation is that:
  - (a) The requirements under NI 51-101 shall not apply to the Filer so long as:
    - (i) the Filer is an “exchangeable security issuer”, as defined in subsection 13.3(1) of NI 51-102 and continues to satisfy all the requirements of subsection 13.3(2) of NI 51-102; and

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- (ii) for the purposes of subparagraph 6 (a)(i), the reference to “continuous disclosure documents” in clause 13.3(2)(d)(ii)(A) of NI 51-102 includes documents filed in accordance with NI 51-101.

Blaine Young  
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