

2005 BCSECCOM 424

June 16, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 48, 76 Corp Acquisitions & Reorgs - Exemption from the registration and prospectus requirements for corporate acquisitions and reorganizations - Trades in connection with a reorganization that is not a statutory arrangement or is not accompanied by an information circular and is not approved by the shareholders - The issuer will convert the securities held by certain securityholders to a new class of securities; the rights under the new securities are at least equal to the previous securities; information about the reorganization will be provided to securityholders before it takes place; the changes will have no adverse tax consequences for investors

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61 and 76

In the Matter of
the Securities Legislation of
British Columbia and New Brunswick (the Jurisdictions)

and

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

and

In the Matter of
Esprit Energy Trust (the Filer)

MRRS Decision Document

Background

- ¶ 1 The local securities regulatory authority or regulator (Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the dealer registration requirement and the prospectus requirement will not apply to trades in trust units (Trust Units) by the Filer to former holders of class A trust units (the Trades) in connection with a reclassification of the Filer's units (the Requested Relief).

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Under the Mutual Reliance Review System for Exemptive Relief Applications,

- (a) the British Columbia Securities Commission is the principal regulator for this application, and
- (b) this MRRS decision evidences the decision of the Decision Makers.

Interpretation

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

Representations

- ¶ 3 The decision is based on the following facts represented by the Filer:
1. the Filer was established under a trust indenture dated August 16, 2004, which was amended and restated on September 30, 2004 (the Trust Indenture);
 2. the Trust's head and principal office is in Calgary, Alberta;
 3. the Filer is, for the purposes of the *Income Tax Act* (Canada) (the Tax Act), an unincorporated, open-end mutual fund trust;
 4. the Filer's capital structure, which is intended to ensure that it continues to qualify as a mutual fund trust under the Tax Act, consists of an unlimited number of class A trust units and class B trust units with the following attributes:
 - (a) the class A trust units and class B trust units have the same rights to vote, receive distributions and participate in the assets of the Filer upon dissolution or wind-up,
 - (b) class A trust units have no residency restrictions and class B trust units may only be held by Canadian residents;
 - (c) at any one time, the number of class A trust units outstanding cannot exceed 80% of the number of class B trust units outstanding;
 5. as of May 25, 2005, 18,285,053 class A trust units and 46,127,867 class B trust units were outstanding;
 6. the class A trust units and class B trust units trade on the Toronto Stock Exchange;

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7. the Filer is a reporting issuer in the Jurisdictions and has been for more than four months;
8. the Filer has filed all of the information that it has been required to file as a reporting issuer in the Jurisdictions and is not in default of the Legislation in the Jurisdictions;
9. the Filer became a reporting issuer as a result of an arrangement with Esprit Exploration Ltd. (Esprit) and others, under which the shareholders of Esprit became holders of the Filer's units (the Arrangement);
10. the Filer intends to reclassify the class A trust units and the class B trust units into a single class of Trust Units;
11. the Filer will effect the reclassification by:
 - (a) amending the terms of the class B trust units in the Trust Indenture to remove the residency restrictions and renaming them Trust Units, and
 - (b) exchanging the class A trust units for Trust Units;
12. the Trust Units are the economic equivalent of the class A trust units;
13. the reclassification of the current units into Trust Units will not affect the rights of the holders of class A trust units and class B trust units to vote, receive distributions and participate in the distribution of the assets of the Filer upon dissolution;
14. the Trust Indenture provides that the Trust Indenture can be amended without unitholder approval for the following purposes, among others:
 - (a) ensuring continuing compliance with applicable laws, including the Tax Act, and
 - (b) for any purpose, if the trustees of the Filer are of the opinion that the amendment is not prejudicial to the unitholders and is necessary or desirable, and as long as a vote by the unitholders is not specifically required under the Trust Indenture;
15. the amendment provisions were reproduced in full both in the information circular sent in relation to the Arrangement, and in the Filer's 2004 AIF dated March 15, 2005 and Revised 2004 AIF dated March 31, 2005;

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16. the Filer will comply with the amendment provisions in the Trust Indenture in completing the reclassification; and
17. there are no exemptions from the dealer registration requirement and prospectus requirement available under the Legislation for the Trades.

Decision

- ¶ 4 The Decision Makers are 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 under the Legislation is that the Requested Relief is granted provided that the first trade in the Trust Units acquired under a Trade will be deemed to be a distribution unless the conditions in section 2.6 of Multilateral Instrument 45-102 *Resale of Securities* are satisfied.

Martin Eady, CA
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British Columbia Securities Commission