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December 15, 2004

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 48,76 Other - Exemption from s. 34(1)(a) requirement to be registered as a dealer for a trade and s. 61 requirement to file a prospectus for a distribution other than in connection with a corporate acquisition or reorganization; business associates; debt settlements; or employee investment plans and consultants - Trades by a non-mutual fund in connection with its distribution reinvestment plan - Issuer is an investment trust; under its plan, income of the trust can be distributed to its investors through the automatic issuance of additional units to the investors; investors can elect to receive cash in lieu of additional trust units; no fee is paid by investors to participate in the plan

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, MANITOBA, ONTARIO, QUEBEC, NOVA SCOTIA, PRINCE EDWARD ISLAND 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 ACCLAIM ENERGY TRUST (THE FILER)

MRRS Decision Document

Background

1. The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer under the securities legislation of the Jurisdictions (the Legislation), for an exemption (the Requested Relief) from the requirements contained in the Legislation to be registered to trade in a security and to file and obtain the receipt for a preliminary prospectus and a prospectus (the Prospectus and Registration Requirements) with respect to certain trades in units of the Filer (Units) issued pursuant to a distribution reinvestment and optional trust unit purchase plan (the Plan).

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2. Under the Mutual Reliance Review System for Exemptive Relief Applications (MRRS)
 - (a) the Ontario 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-Definitions* have the same meaning in this decision unless they are otherwise defined in this decision.

Representations

4. This Decision is based on the following facts represented by the Filer:
 - (a) The Filer is an open-end unincorporated trust established under the laws of Alberta pursuant to the amended and restated trust indenture dated April 20, 2001 as amended as of May 31, 2003.
 - (b) The Filer is a reporting issuer in each of the provinces of Canada. To its knowledge, the Filer is not in default of any requirements under the Legislation.
 - (c) Acclaim Energy Inc. (the “Manager”) is a wholly-owned subsidiary and the manager of the Filer pursuant to an administration agreement dated April 20, 2001.
 - (d) The head office and principal place of business of each of the Filer and the Manager is located at 1900, 255 – 5th Avenue S.W., Calgary, Alberta, T2P 3G6.
 - (e) The Filer currently makes and expects to continue to make monthly cash distributions (“Cash Distributions”) to the holders of Units (“Unitholders”), which is dependent upon the amount of distributable cash generated from the Filer's assets.
 - (f) The Filer 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

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the whole or in part of the net assets of the Filer, as contemplated by the definition of “mutual fund” in the Legislation.

Distribution Reinvestment and Trust Unit Purchase Plan

- (g) The Filer has authorized the establishment of the Plan pursuant to which Unitholders may elect to (i) reinvest their cash distributions in new Units (the “Distribution Reinvestment Option”), and (ii) acquire new Units by making optional cash payments (the “Cash Payment Option”).
- (h) Except as described below, a registered holder of Units is eligible to join the Plan at any time by completing an enrollment and authorization form and sending it to Computershare Trust Company of Canada (the “Plan Agent”).
- (i) A registered holder shall become a participant (a “Participant”) in the Plan in regard to the investment of distributions as of the first distribution record date (a “Record Date”) following receipt by the Plan Agent of a duly completed enrollment and authorization form no later than five (5) business days prior to the Record Date. Beneficial owners of Units which are registered through a nominee in the name of CDS & Co., or its nominee, must deliver such authorization form to CDS & Co. no later than five (5) business days prior to such Record Date and also prior to such other deadline as may be set by CDS & Co. from time to time.
- (j) Under the Cash Payment Option, Participants in the Plan may make further payments of not less than \$2,000 per remittance and not more than \$100,000 per calendar year by forwarding a certified cheque or money order to the Plan Agent in Canadian dollars payable to the Plan Agent together with an optional cash payment form.
- (k) The number of Units which may be issued each fiscal year pursuant to the Cash Payment Option will not be more than 2% of the number of issued and outstanding Units.
- (l) The Plan is not available to persons who are “non-residents” within the meaning of the *Income Tax Act* (Canada) and the regulations thereunder.

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- (m) Cash distributions payable on the Units registered in the Plan, will be applied automatically on each Cash Distribution Date to the purchase of Units either from treasury or, at the discretion of the Manager, through the facilities of the TSX following the Cash Distribution Date.
- (n) Optional cash payments to the Plan will be applied to the purchase of additional new Units on the Cash Distribution Date following Record Dates where a completed enrollment and authorization form and optional cash payment form has been received.
- (o) Where the Trust issues Units from treasury under this Plan, the price of such Units to Participants shall be (i) in the case of investment by the Cash Payment Option, the weighted average closing price of the Units on the TSX for each of the ten (10) trading days immediately preceding the Cash Distribution Date (the "Treasury Purchase Price"), and (ii) in the case of investment by the Distribution Reinvestment Option, 95% of the Treasury Purchase Price.
- (p) Where the Manager determines to apply cash distributions or optional cash payments, or both, to the purchase of Units through the facilities of the TSX, the price of such Units to Participants will be equal to the average price of all Units acquired through the facilities of the TSX for the purposes of this Plan during the period beginning on the Cash Distribution Date and ending on the date that is three (3) business days prior to the next applicable Record Date. Where the Plan Agent is unable, or is directed by the Manager not to purchase sufficient Units through the TSX, additional Units will be issued from treasury to Participants at a price equal to the average price of all Units acquired through the TSX as described in the foregoing sentence.
- (q) There is no charge to Participants for reinvesting distributions. The Plan Agent's fees for handling the reinvestment of distributions will be paid by the Manager. There will be no brokerage charges with respect to Units either issued directly from treasury or purchased in the open market.
- (r) Participation in the Plan may be terminated by duly completing a termination request form and delivering it to the Plan Agent, signed by the registered holder or his or her agent.

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- (s) Legislation in certain of the Jurisdictions provides exemptions from the Registration and Prospectus Requirements for distribution reinvestment plans. Such exemptions are not available for trades under the Plan for technical reasons in certain of 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 the Requested Relief is granted, provided that:
 - (a) at the time of the trade the Filer 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) the Filer has caused to be sent to the person or company to whom the Units under the Plan 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 applicable distribution payment date (the "Withdrawal Right"), and
 - (ii) instructions on how to exercise the Withdrawal Right;
 - (d) the aggregate number of Units issued under the Cash Payment Option of the Plan in any financial year of the Filer 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 alienation (or first trade) in Units acquired pursuant to this Decision will be a distribution unless:

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- (i) the issuer is and has been a reporting issuer in Québec for the 4 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;
- (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.

Suresh Thakrar
Commissioner
Ontario Securities Commission

Paul K. Bates
Commissioner
Ontario Securities Commission