

## **2002 BCSECCOM 403**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – relief from the registration and prospectus requirements to allow an open-ended investment trust to issue units to existing unitholders under a distribution reinvestment plan subject to conditions – first trade relief for additional units subject to conditions

### **Applicable British Columbia Provisions**

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

Multilateral Instrument 45-102 *Resale of Securities*, s. 2.6(3), (4)

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

**AND**

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

**AND**

### **IN THE MATTER OF PROVIDENT 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, Newfoundland and Labrador, Yukon, Nunavut and Northwest Territories (the "Jurisdictions") has received an application from Provident Energy Trust ("Provident") for a decision, pursuant to 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 obtain a receipt for a preliminary prospectus and a prospectus (the "Registration and Prospectus Requirements") shall not apply to certain trades in units of Provident issued pursuant to a distribution reinvestment plan;

**AND WHEREAS** pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System") the Ontario Securities Commission is the principal regulator for this application;

**AND WHEREAS** Provident has represented to the Decision Makers that:

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1. Provident is an unincorporated open-ended investment trust formed under the laws of the Province of Alberta pursuant to a Trust Indenture dated January 25, 2001, as amended pursuant to a Supplemental Trust Indenture dated as of March 5, 2001 (the "Trust Indenture").
2. Provident has been a reporting issuer in Alberta, British Columbia, Ontario, Québec, Saskatchewan and Manitoba for more than 12 months and is currently a reporting issuer in each of the Provinces of Canada. To its knowledge Provident is not in default of any requirements under the legislation of any of the Jurisdictions.
3. Provident is a "qualifying issuer" within the meaning of Multilateral Instrument 45-102 *Resale of Securities*.
4. The trustee of Provident is Computershare Trust Company of Canada. The entire beneficial interest in Provident is held by the holders of trust units ("Units") issued by Provident.
5. The Units are listed and posted for trading on The Toronto Stock Exchange (the "TSE") and the American Stock Exchange.
6. Provident currently makes and expects to continue to make monthly distributions of distributable income, if any, to the holders of Units ("Unitholders"). The distributable income of Provident for any month is a function of the amounts received by Provident pursuant to certain royalties, other income and certain expenses.
7. Provident 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 the whole or in part of the net assets of Provident, as contemplated by the definition of "mutual fund" in the Legislation.
8. Provident intends to establish a plan (the "Plan") pursuant to which eligible Unitholders may, at their option, purchase additional Units ("Additional Units") of Provident by directing that Cash Distributions be applied to the purchase of Additional Units (the "Distribution Reinvestment Option") or by making optional cash payments (the "Cash Payment Option").
9. The Plan also enables eligible Unitholders who wish to reinvest cash distributions paid on their existing Units ("Cash Distributions") to authorize and direct Computershare Trust Company of Canada, in its capacity as agent

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under the Plan (in such capacity, the "Plan Agent"), to presell through a designated broker (the "Plan Broker") that number of Additional Units issuable on such reinvestment for the account of such Unitholders who so elect and to transfer the Additional Units to the Plan Broker for the purposes of settling such presales in exchange for a cash payment equal to 102% of the reinvested Cash Distributions (the "Premium Distribution Option"). The Plan Broker will be entitled to retain for its own account the difference between the proceeds realized in connection with presales of such Units and the cash payment equal to 102% of reinvested Cash Distributions.

10. All Additional Units purchased under the Plan will be purchased by the Plan Agent directly from Provident on the relevant distribution payment date at a price determined by reference to the Average Market Price (defined in the Plan as the arithmetic average of the daily volume weighted average trading prices of the Units on the TSE for the trading days from and including the second business day following the distribution record date to and including the second business day prior to the distribution payment date on which at least a board lot of Units was traded such period not to exceed 20 trading days).
11. Additional Units purchased under the Distribution Reinvestment Option or the Premium Distribution Option will be purchased at a 5% discount to the Average Market Price. Additional Units purchased under the Cash Payment Option will be purchased at the Average Market Price.
12. Under the Premium Distribution Option the Plan Broker's *prima facie* return will be approximately 3% of the reinvested Cash Distributions (based on presales of Units having a market value of approximately 105% of the reinvested Cash Distributions and a cash payment to the Plan Agent for the account of applicable Unitholders of 102% of the reinvested Cash Distributions). The Plan Broker may, however, realize more or less than this *prima facie* amount, as the actual return will depend on intervening movements in the market price of the Units. We note in this regard that the Plan Broker bears the entire risk of adverse changes in the market, as Participants under the Premium Distribution Option are assured a premium cash payment equal to 102% of the reinvested Cash Distributions.
13. All activities of the Plan Broker on behalf of the Plan Agent which relate to the presales of Units for the account of Unitholders who elect the Premium Distribution Option will be in compliance with applicable Legislation and the rules and policies of the TSE (subject to any exemptive relief granted). The Plan Broker will also be a member of the Investment Dealers Association of Canada.

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14. Eligible Unitholders who choose to participate in the Plan ("Participants") may elect either the Distribution Reinvestment Option or the Premium Distribution Option in respect of their Cash Distributions. The Cash Payment Option is available to eligible Unitholders who elect to reinvest their Cash Distributions under either the Distribution Reinvestment Option or the Premium Distribution Option. Eligible Unitholders may elect to participate in the Premium Distribution Option at their sole option and are free to terminate their participation in the Premium Distribution Option in accordance with the terms of the Plan.
15. Under the Distribution Reinvestment Option, Cash Distributions will be paid to the Plan Agent and applied by the Plan Agent to the purchase of Additional Units, which will be held under the Plan for the account of appropriate Participants.
16. Under the Premium Distribution Option, Cash Distributions will be paid to the Plan Agent and applied by the Plan Agent to the purchase of Additional Units for the account of applicable Participants, but the Additional Units purchased thereby will be automatically transferred to the Plan Broker to settle presales of Units made by the Plan Broker on behalf of the Plan Agent for the account of such Participants in exchange for a cash payment equal to 102% of the reinvested Cash Distributions.
17. Under the Cash Payment Option, a Participant may, through the Plan Agent, purchase Additional Units up to a stipulated maximum dollar amount per month and subject to a minimum amount per remittance. The aggregate number of Additional Units that may be purchased under the Cash Payment Option by all Participants in any financial year of Provident will be limited to a maximum of 2% of the number Units issued and outstanding at the start of the financial year.
18. No brokerage fees or service charges will be payable by Participants in connection with the purchase of Additional Units under the Plan.
19. Additional Units purchased and held under the Plan will be registered in the name of the Plan Agent or its nominee as agent for the Participants, and all cash distributions on Units so held for the account of a Participant will be automatically reinvested in Additional Units in accordance with the terms of the Plan and the election of the Participant.
20. The Plan permits full investment of reinvested Cash Distributions and optional cash payments because fractions of Units, as well as whole Units, may be credited to Participants' accounts with the Plan Agent.

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21. Provident reserves the right to determine for any distribution payment date how many Additional Units will be available for purchase under the Plan.
22. If, in respect of any distribution payment date, fulfilling all of the elections under the Plan would result in Provident exceeding either the limit on Additional Units set by Provident or the aggregate annual limit on Additional Units issuable pursuant to the Cash Payment Option, then elections for the purchase of Additional Units on such distribution payment date will be accepted: (i) first, from Participants electing the Distribution Reinvestment Option; (ii) second, from Participants electing the Cash Payment Option; and (iii) third, from Participants electing the Premium Distribution Option. If Provident is not able to accept all elections in a particular category, then purchases of Additional Units on the applicable distribution payment date will be pro rated among all Participants in that category according to the number of Additional Units sought to be purchased.
23. If Provident determines that no Additional Units will be available for purchase under the Plan for a particular distribution payment date, then all Participants will receive the Cash Distribution announced by Provident for that distribution payment date.
24. A Participant may terminate its participation in the Plan at any time by submitting a termination form to the Plan Agent. A termination form received between a distribution record date and a distribution payment date will become effective after that distribution payment date.
25. Provident reserves the right to amend, suspend or terminate the Plan at any time, provided that such action shall not have a retroactive effect which would prejudice the interests of the Participants. All Participants will be sent written notice of any such amendment, suspension or termination.
26. Pending receipt of the appropriate U.S. regulatory approvals, the Plan will not be available to Unitholders who are residents of the United States. Provident expects to seek such approvals and expects to be able to make the Plan available to residents of the United States later in 2002;

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

**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;

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**AND WHEREAS** the Decision of the Decision Makers pursuant to the Legislation is that the trades of Additional Units by Provident to the Plan Agent for the account of Participants pursuant to the Plan shall not be subject to the Registration and Prospectus Requirements of the Legislation provided that:

1. at the time of the trade Provident is a reporting issuer or the equivalent under the Legislation and is not in default of any requirements of the Legislation;
2. no sales charge is payable in respect of the trade;
3. Provident has caused to be sent to the person or company to whom the Additional Units are traded, not more than 12 months before the trade, a statement describing:
  - (a) 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 Provident, and
  - (b) instructions on how to exercise the right referred to in paragraph 6.3.1 above;
4. the aggregate number of Additional Units issued under the Cash Payment Option of the Plan in any financial year of Provident shall not exceed 2% of the aggregate number of Units outstanding at the start of that financial year;
5. except in Québec, the first trade in Additional Units acquired pursuant to this Decision will be a distribution or primary distribution to the public unless the conditions in subsections 2.6(3) or (4) of Multilateral Instrument 45-102 Resale of Securities are satisfied; and
6. in Québec, the first trade in Additional Units acquired pursuant to this Decision will be a distribution unless:
  - (a) the issuer is and has been a reporting issuer in Québec for the 12 months preceding the alienation;
  - (b) no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the alienation;
  - (c) no extraordinary commission or other consideration is paid in respect of the alienation;

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- (d) 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;
- 7. disclosure of the initial distribution of Additional Units pursuant to this Decision is made to the relevant Jurisdictions by providing particulars of the date of the distribution of such Additional Units, the number of such Additional Units and the purchase price paid or to be paid for such Additional Units in:
  - (a) an information circular or take-over bid circular filed in accordance with the Legislation; or
  - (b) a letter filed with the Decision Maker in the relevant Jurisdiction by a person or company certifying that the person or company has knowledge of the facts contained in the letter;
- 8. when Provident distributes such Additional Units for the first time Provident will provide disclosure to the relevant Jurisdictions which sets forth the date of such distribution, the number of such Additional Units and the purchase price paid for such Additional Units, and thereafter not less frequently than annually, unless the aggregate number of Additional Units so distributed in any month exceeds 1 % of the aggregate number of Units outstanding at the beginning of the month in which the Additional Units were distributed, in which case the disclosure required under this paragraph shall be made in each relevant Jurisdiction (other than Québec) in respect of that month within ten days of the end of such month.

**DATED** this 3rd day of May, 2002.

Howard I. Wetston

H. Lorne Morphy