

2004 BCSECCOM 601

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, QUÉBEC, NOVA SCOTIA,
NEWFOUNDLAND AND LABRADOR, PRINCE EDWARD ISLAND,
YUKON, NUNAVUT AND NORTHWEST TERRITORIES**

AND

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

AND

IN THE MATTER OF BAYTEX ENERGY TRUST

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Manitoba, Ontario, Québec, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Nunavut and Northwest Territories (the “Jurisdictions”) has received an application from Baytex Energy Trust (the “Trust”) for a decision, under 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 the Trust (“Trust Units”) issued pursuant to a distribution reinvestment plan (the “DRIP”);

2004 BCSECCOM 601

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, unless otherwise defined, the terms herein have the meanings set out in National Instrument 14-101 *Definitions*;

AND WHEREAS the Trust has represented to the Decision Makers that:

1. the Trust is an open-ended investment trust formed under the laws of the province of Alberta pursuant to an amended and restated trust indenture dated September 2, 2003 (the “Trust Indenture”) between Baytex Energy Ltd. (“Baytex”) and Valiant Trust Company;
2. Valiant Trust Company is the trustee of the Trust (“the Trustee”);
3. the head and principal office of the Trust is located at Suite 2200, 205 - 5th Avenue S.W., Calgary, Alberta T2P 2V7;
4. the Trust is actively engaged through Baytex in the business of crude oil and natural gas exploitation, development, acquisition and production in the provinces of Alberta, British Columbia and Saskatchewan;
5. the Trust currently makes and expects to continue to make monthly distributions of distributable income (“Cash Distributions”), if any, to the holders of Units (“Unitholders”). The distributable income of the Trust for any month is a function of the amounts received by the Trust pursuant to certain royalties, other income and certain expenses;
6. an unlimited number of Trust Units may be created and issued pursuant to the Trust Indenture;
7. each Trust Unit entitles the holder thereof to one vote at any meeting of the holders of Trust Units and represents an equal fraction undivided beneficial interest in any distribution from the Trust (whether of net income, net realized capital gains or other amounts) and in any net assets of the Trust in the event of termination or winding-up of the Trust;
8. all Trust Units rank among themselves equally and ratably without discrimination, preference or priority;

2004 BCSECCOM 601

9. each Trust Unit is transferable, is not subject to any conversion or pre-emptive rights and entitles the holder thereof to acquire the Trust to retain any or all of the Trust Units held by such holder;
10. the Trust is a reporting issuer or the equivalent thereof in each of the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and has been so since September 2, 2003;
11. the Trust is not in default of any requirements of the Legislation;
12. the Trust Units are listed and posted for trading on the Toronto Stock Exchange (the "TSX") under the symbol BTE.UN;
13. the Trust 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 the Trust, as contemplated by the definition of "mutual fund" in the Legislation;
14. the Trust has authorized the establishment of the DRIP pursuant to which eligible Unitholders may, at their option, purchase additional Units ("Additional Units") of the Trust by directing that Cash Distributions be applied to the purchase of Additional Units;
15. except as provided in paragraph 16 below, all Additional Units purchased under the DRIP will be purchased by Valiant Trust Company (the "DRIP Agent") directly from the Trust on the relevant distribution payment date at a price determined by reference to the Average Market Price (defined in the DRIP as the arithmetic average of the daily volume weighted average trading prices of the Units on the TSX 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);
16. at the discretion of Baytex, Additional Units purchased under the DRIP will either be acquired from treasury at 95% of Average Market Price or will be purchased at prevailing market prices through the facilities of the TSX following the distribution record date. Additional Units which are purchased through the facilities of the TSX will be acquired during the 20 business day period following the relevant distribution record date but will only be acquired at prices that are equal to or less than 115% of the volume weighted trading price of the Units on the TSX for the 10 trading days immediately preceding the date that Units are purchased;

2004 BCSECCOM 601

17. Cash Distributions will be paid to the DRIP Agent and applied by the DRIP Agent to the purchase of Additional Units, which will be held under the DRIP for the account of eligible Unitholders who have chosen to participate in the DRIP ("Participants");
18. no commissions, brokerage fees or service charges will be payable by Participants in connection with the purchase of Additional Units under the DRIP;
19. Additional Units purchased and held under the DRIP will be registered in the name of the DRIP 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 DRIP and the election of the Participant;
20. the DRIP permits full investment of reinvested Cash Distributions because fractions of Units, as well as whole Units, may be credited to Participants' accounts with the DRIP Agent;
21. the Trust reserves the right to determine for any distribution payment date how many Additional Units will be available for purchase under the DRIP;
22. if, in respect of any distribution payment date, fulfilling all of the elections under the DRIP would result in the Trust exceeding the limit on Additional Units set by the Trust, then purchases of Additional Units on the applicable distribution payment date will be prorated among all Participants in that category according to the number of Additional Units sought to be purchased;
23. if the Trust determines that no Additional Units will be available for purchase under the DRIP for a particular distribution payment date, then all Participants will receive the Cash Distribution announced by the Trust for that distribution payment date;
24. a Participant may terminate its participation in the DRIP at any time by submitting a termination form to the DRIP Agent. A termination form received between a distribution record date and a distribution payment date will become effective after that distribution payment date;
25. Baytex reserves the right to amend, suspend or terminate the DRIP 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; and

2004 BCSECCOM 601

26. the DRIP will not be available to Unitholders who are residents of the United States;

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;

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

1. at the time of the trade the Trust is a reporting issuer or the equivalent in a jurisdiction listed in Appendix B of Multilateral Instrument 45-102 *Resale of Securities* (MI 45-102) and is not in default of any requirements of the Legislation;
2. no sales charge is payable by Unitholders in respect of the trade;
3. the Trust 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:
 - 3.1 their right to withdraw from the DRIP and to make an election to receive Cash Distributions instead of Units on the applicable distribution payment date (the “Withdrawal Right”), and
 - 3.2 instructions on how to exercise the Withdrawal Right;
4. except in Québec, the first trade in Additional Units shall be deemed to be a distribution or primary distribution to the public under the Legislation unless the conditions in subsection (3) of section 2.6 of MI 45-102 are satisfied; and
5. in Québec, the first trade in Additional Units shall be deemed to be a distribution unless:
 - 5.1 the Trust is a reporting issuer in Québec and has been a reporting issuer in Québec for the 4 months preceding the first trade;

2004 BCSECCOM 601

- 5.2 no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the alienation;
- 5.3 no extraordinary commission or other consideration is paid to a person or company in respect of the first trade;
- 5.4 if the seller of the securities is an insider of the Trust, the seller has no reasonable grounds to believe that the Trust is in default of any requirement of securities legislation.

DATED September 17, 2004.

Robert L. Shirriff

Wendell S. Wigle