

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - registration and prospectus relief to allow units of a trust to be issued to employees, directors and officers of two private companies that carry out the business of the trust.

Applicable Alberta Statutory Provisions

Securities Act, R.S.A., 2000, c.S-4, ss. s. 75, 110, 144(1) and 144(2).

IN THE MATTER OF
THE SECURITIES LEGISLATION
OF ALBERTA AND SASKATCHEWAN

AND

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

AND

IN THE MATTER OF APF ENERGY TRUST, APF ENERGY INC.
AND APF ENERGY MANAGEMENT INC.

MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in Alberta and Saskatchewan (the "Jurisdictions") has received an application from APF Energy Trust ("APF Trust"), APF Energy Inc. ("APF Energy") and APF Energy Management Inc. ("APF Management") (collectively, the "Applicants") 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 (the "Registration Requirement") and to file and obtain a receipt for a preliminary prospectus and a prospectus (the "Prospectus Requirement") shall not apply to trades of rights to acquire units of APF Trust to employees, officers and directors of APF Energy and APF Management under a Trust Unit Incentive Rights Plan (the "Plan");
2. AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System") the Alberta Securities Commission is the principal regulator for this application;
3. AND WHEREAS the Applicants represented to the Decision Makers that:
 - 3.1 APF Trust is an unincorporated open-ended investment trust created under the laws of Alberta, by trust indenture. The Trust Company of Bank of Montreal has been

appointed as trustee of APF Trust;

- 3.2 APF Trust has been a reporting issuer in the Jurisdictions since December 17, 1996 by virtue of obtaining a final receipt for a prospectus (the "Prospectus");
- 3.3 APF Trust is authorized to issue 500 million Trust units (ATrust Units@), of which there are 18,788,880 Trust Units currently issued and outstanding;
- 3.4 the Trust Units are listed and posted for trading on The Toronto Stock Exchange (the AExchange@);
- 3.5 APF Energy is organized under the laws of Alberta. Its shares are not listed on any stock exchange and it is not a reporting issuer in any jurisdiction;
- 3.6 APF Energy was incorporated for the purpose of acquiring, developing, exploiting and disposing of oil and natural gas properties and granting a royalty (the ARoyalty@) on such properties to APF Trust;
- 3.7 APF Energy is a wholly-owned subsidiary of APF Management. All of the outstanding shares of APF Management are owned by directors and officers of APF Management or their immediate families;
- 3.8 the shares of APF Management are not listed on any stock exchange and it is not a reporting issuer in any jurisdiction;
- 3.9 APF Management, through management agreements with APF Trust and APF Energy:
 - 3.9.1 manages the oil and gas properties of APF Energy on behalf of APF Energy;
 - 3.9.2 acts as the manager of APF Trust and its assets (being the Royalty); and
 - 3.9.3 administers and regulates the day to day operations of APF Energy and APF Trust;
- 3.10 under a royalty agreement (the "Royalty Agreement") between APF Energy and APF Trust, APF Trust is entitled, through the Royalty, to receive royalty income from APF Energy which is derived from APF Energy's interests in petroleum or natural gas rights and to distribute the Royalty to the unitholders of APF Trust;
- 3.11 under a unanimous shareholders' agreement, the unitholders of APF Trust are entitled to elect a majority of the Board of Directors of APF Energy (the "Board"). APF Trust does not directly have any officers, directors or employees. The directors of APF Energy serve a corporate governance function with respect to APF Trust;

- 3.12 APF Trust and APF Energy have implemented the Plan which provides for the issuance of rights to acquire Trust Units (**ARights@**) to employees (**AAPF Employees@**), directors (**AAPF Directors@**), and officers (**AAPF Officers@**) of APF Energy and APF Management and their affiliates (APF Employees, APF Directors and APF Officers to be collectively referred to as the "APF Service Providers");
 - 3.13 the aggregate number of Trust Units that may be available for issuance, from time to time, under the Plan (together with all Trust Units that are available for issuance on exercise of options currently issued under a Trust Unit Incentive Option Plan of APF Trust (the **AOriginal Plan@**)) shall not exceed 800,000 Trust Units, and the number of such Trust Units available for issuance to any one person shall not exceed 5% of the issued and outstanding Trust Units. There are currently 347,040 options outstanding under the Original Plan. No new options will be issued under the Original Plan;
 - 3.14 the unitholders of APF Trust approved the implementation of the Plan at an annual and special meeting held June 6, 2001;
 - 3.15 for any Rights granted under the Plan, the initial exercise price per Trust Unit shall be determined from time to time by the Board. However, the Plan currently complies and will continue to comply with the applicable rules of the Exchange;
 - 3.16 the APF Service Providers perform essentially the same services as they would if they were employees, directors and officers of APF Trust;
 - 3.17 the APF Service Providers have access to the same information that they would have if they were employees, directors, and officers of APF Trust;
 - 3.18 as APF Trust is a reporting issuer in the Jurisdictions and the Trust Units are publicly traded, there is a base of information with respect to APF Trust in the public domain to permit the APF Service Providers to make informed investment decisions;
 - 3.19 there will be no requirement or obligation by APF Trust for an APF Service Provider to participate in the Plan or exercise a Right granted under the Plan; and
 - 3.20 the Applicants are not able to rely on the exemptions contained in the Legislation to permit the issuance of the Rights to the APF Service Providers;
4. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the **ADecision@**);
 5. 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;

6. THE DECISION of the Decision Makers under the Legislation is that the Registration Requirement and Prospectus Requirement shall not apply to the issuance of Rights to APF Employees, provided that the first trade in Trust Units acquired on exercise of Rights issued under this Decision in a Jurisdiction shall be deemed a distribution under the Legislation of such Jurisdiction unless the conditions in subsections (3) or (4) of section 2.6 of Multilateral Instrument 45-102 *Resale of Securities* (AMI 45-102") are satisfied;
7. AND THE FURTHER DECISION of the Decision Makers under the Legislation is that the Registration Requirement and Prospectus Requirement shall not apply to the issuance of Rights to APF Directors and APF Officers, provided that the first trade in Trust Units acquired on exercise of Rights issued under this Decision in a Jurisdiction shall be deemed a distribution under the Legislation of such Jurisdiction unless the conditions in subsections (2) or (3) of section 2.5 of MI 45-102 are satisfied.

DATED this 19th day of February, 2002.

“original signed by”
Eric T. Spink, Vice-Chair

“original signed by”
Glenda A. Campbell, Q.C., Vice-Chair