

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - registration and prospectus relief to allow units of a trust to be issued to officers and employees of the private company retained to manage the trust and corporate entities that carry on the business of the trust.

## **Applicable Alberta Statutory Provisions**

Securities Act, R.S.A., 2000, c.S-4, as amended, 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 ENERPLUS RESOURCES FUND  
AND ENERPLUS GLOBAL ENERGY MANAGEMENT COMPANY

### **MRRS DECISION DOCUMENT**

1. WHEREAS the local securities regulatory authority or regulator (the **ADecision Maker@**) in Alberta and Saskatchewan (the **AJurisdictions@**) has received an application from Enerplus Resources Fund (the **AFund@**) and Enerplus Global Energy Management Company (**AEGEM@**) (collectively, the **AApplicants@**) for a decision under the securities legislation of the Jurisdictions (the **ALegislation@**) that the issuance by the Fund of trust units and options, rights and other securities to acquire trust units to officers and employees of EGEM under a purchase, rights incentive or option plan is not subject to the registration and prospectus requirements contained in the Legislation;
2. AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the **ASystem@**) the Alberta Securities Commission is the principal regulator for this application;
3. AND WHEREAS the Applicants have represented to the Decision Makers that:
  - 3.1 the Fund is an investment trust created pursuant to a Trust Indenture dated July 7, 1986, as most recently amended and restated on June 21, 2001 (the **ATrust Indenture@**), between Enerplus Resources Corporation (**AERC@**), EnerMark Inc. (**AEnerMark@**) and CIBC Mellon Trust Company, as trustee;
  - 3.2 the Fund is a reporting issuer in each province of Canada and is a qualified issuer under Multilateral Instrument 45-102 *Resale of Securities* (**AMI 45-102"**);

- 3.3 as it is a trust, the Fund does not directly employ any officers, directors or employees;
- 3.4 the body responsible for the overall management of the business and affairs of the Fund (as well as its operating entities, EnerMark and ERC) is the board of directors of EnerMark, a majority of which are elected by the public unitholders of the Fund (the **Unitholders**);
- 3.5 the Fund is authorized to issue an unlimited number of trust units (the **Trust Units**) under the Trust Indenture;
- 3.6 as at November **30**, 2001, there were **69,469,476** Trust Units issued and outstanding;
- 3.7 the Trust Units are listed on The Toronto Stock Exchange and the New York Stock Exchange (collectively, the **Exchanges**);
- 3.8 the sole business of the Fund is to hold, and receive cash distributions in respect of, all of the shares of EnerMark and ERC (collectively, and together with any other future operating entities of the Fund, the **Operating Entities**), royalty interests granted by the Operating Entities and payments of interest and principal on debt instruments issued by EnerMark to the Fund. The cash distributions received by the Fund are distributed on a monthly basis to the Unitholders;
- 3.9 both EnerMark and ERC are private companies incorporated under the laws of Alberta and are not reporting issuers under the Legislation. No securities of either EnerMark or ERC are listed or quoted for trading on any exchange or trading system;
- 3.10 all of the shares of EnerMark are owned by the Fund and all of the shares of ERC are owned by EnerMark;
- 3.11 EnerMark and ERC are active crude oil and natural gas companies operating in the provinces of Alberta, British Columbia and Saskatchewan which acquire and manage crude oil and natural gas properties for the benefit of the Fund;
- 3.12 each of EnerMark and ERC has officers and directors but does not directly employ the majority of the employees who run their respective operations. The significant majority of the operations of EnerMark and ERC are managed by EGEM;
- 3.13 EGEM is a private company continued under the laws of Nova Scotia, is extra-provincially registered in the Jurisdictions, and is an indirect wholly-owned subsidiary of El Paso Energy Corporation of Houston, Texas;
- 3.14 EGEM is not a reporting issuer under the Legislation. In connection with the merger of the Fund and EnerMark Income Fund on June 21, 2001, EGEM succeeded Enerplus Energy Services Ltd. (**AEES**) as the manager of the Fund and its Operating Subsidiaries. Prior to the merger, EES was a wholly owned subsidiary of EGEM, but

as part of the internal reorganization of the Fund conducted in connection with the merger, EES was acquired by and amalgamated with EnerMark and EGEM succeeded EES as the manager of the Fund and its Operating Entities;

- 3.15 under an amended and restated management, advisory and administration agreement dated June 21, 2001 (the **AManagement Agreement@**), EGEM has been retained to manage the crude oil and natural gas properties and operations of the Operating Entities and to generally administer the affairs of the Operating Entities;
- 3.16 under the Management Agreement, EGEM manages the Fund and its assets and administers the day to day activities of the Fund. The management and administrative activities of EGEM are subject to the overall supervision of the board of directors of EnerMark;
- 3.17 most of the day to day business operations of the Operating Entities and the Fund are performed by the officers and employees of EGEM. All of such officers and employees are resident in one of the Jurisdictions in which this application is made;
- 3.18 the Fund does not directly appoint or employ any officers or employees. The Operating Entities have officers, directors, and a small number of employees, but do not directly employ the majority of the employees who are responsible for conducting the business and operations of the Operating Entities;
- 3.19 the majority of the individuals who are responsible for carrying on the business and operations and managing the assets of the Operating Entities for the benefit of the Fund, which in turn creates increased value for the Unitholders, are employed by EGEM;
- 3.20 the Fund intends to offer Trust Units or options, rights or other securities entitling the holder to acquire Trust Units (the **ATrust Options@**) to officers (the **AEGEM Officers@**) and employees (the **AEGEM Employees@**) of EGEM or any successor to EGEM as manager of the Fund and manager of the Operating Entities (the EGEM Officers and EGEM Employees to be collectively referred to as the **AEGEM Optionees@**), who are resident in the Jurisdictions, through a trust unit option plan, trust unit rights incentive plan, purchase plan or similar type of plan or arrangement (a **APlan@**);
- 3.21 any Plan adopted by the Fund will be adopted in accordance with the applicable rules of the Exchanges, is subject to the approval of the Exchanges and, where required by such Exchanges, ratification of the Unitholders;
- 3.22 exemptions are available in the Legislation to permit the issuance of options and securities to officers and employees of an issuer or an affiliate of an issuer without the need for registration or a prospectus (the "Officer and Employee Exemptions"). However, EGEM is not an **Aaffiliate@** of the Fund or the Operating Entities, and as such, the Applicants could not rely on the Officer and Employee Exemptions to issue Trust Units or Trust Options to the EGEM Optionees;
- 3.23 the EGEM Optionees have access to all of the information that they would have if they were officers or employees of the Fund or the Operating Entities, as they are

responsible for operation of the properties on behalf of the Operating Entities and management of the Fund;

- 3.24 participation in any Plan or the exercise of an option granted under a Plan is entirely within the discretion of the EGEM Optionee. There will be no requirement by the Fund or the Operating Entities for an EGEM Optionee to participate in any Plan or exercise an option or right granted under any Plan but rather a Plan will merely be intended to provide an opportunity for an EGEM Optionee to participate in the Fund in recognition of the EGEM Optionee's past services in relation to EGEM, the Fund and the Operating Entities;
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. IT IS THE DECISION of the decision makers under the Legislation that the issuance by the Fund of Trust Units or Trust Options to EGEM Optionees under a Plan are not subject to the registration and prospectus requirements contained in the Legislation;
7. IT IS FURTHER THE DECISION of the Decision Makers under the Legislation that the first trade of any Trust Units acquired under a Plan by EGEM Officers, including those Trust Units acquired by the exercise of any Trust Options acquired under a Plan, shall be a distribution unless:
- 7.1 the Fund is and has been a reporting issuer in a jurisdiction listed in Appendix B to MI 45-102 for the four months immediately preceding the trade;
- 7.2 at least four months have elapsed from the date the Trust Units or Trust Options were issued or granted by the Fund (the **ADistribution Date@**);
- 7.3 for Trust Units issued on exercise of Trust Options after the four month period referred to in paragraph 7.2, any certificate representing those Trust Units carries a legend stating:
- A**Unless permitted under securities legislation, the holder of the Trust Units shall not trade the Trust Units before [insert the date that is four months and one day after the Distribution Date]@.
- 7.4 the trade is not a control distribution within the meaning of MI 45-102;
- 7.5 no unusual effort is made to prepare the market or to create a demand for the Trust Units;

- 7.6 no extraordinary commission or consideration is paid to a person or company in respect of the trade;
- 7.7 if the selling Trust Unit holder is an insider or officer of the Fund, the selling Trust Unit holder has no reasonable grounds to believe that the issuer is in default of the Legislation.
8. IT IS FURTHER THE DECISION of the Decision Makers under the Legislation that the first trade of any Trust Units acquired under a Plan by EGEM Employees, including those Trust Units acquired by the exercise of any Trust Options acquired under a Plan, shall be a distribution unless:
- 8.1 the Fund is and has been a reporting issuer in a jurisdiction listed in Appendix B to MI 45-102 for the four months immediately preceding the trade;
- 8.2 the trade is not a control distribution within the meaning of MI 45-102;
- 8.3 no unusual effort is made to prepare the market or to create a demand for the Trust Units;
- 8.4 no extraordinary commission or consideration is paid to a person or company in respect of the trade;
- 8.5 if the selling Trust Unit holder is an insider or officer of the Fund, the selling Trust Unit holder has no reasonable grounds to believe that the issuer is in default of the Legislation.

DATED this 4<sup>th</sup> day of January, 2002.

Aoriginal signed by@  
Eric T. Spink, Vice-Chair

Aoriginal signed by@  
Jerry A. Bennis, FCA, Member