

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – investment trust exempt from prospectus and registration requirements in connection with issuance of units to existing unit holders pursuant to distribution reinvestment plan whereby distributions of income are reinvested in additional units of the trust, subject to certain conditions – first trade in additional units deemed a distribution unless made in compliance with certain conditions which do not include a seasoning requirement.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S. 5, as am., ss. 25, 53 and 74(1).

Multilateral Instrument Cited

Multilateral Instrument 45-102 *Resale of Securities*

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

AND

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

AND

**IN THE MATTER OF NCE STRATEGIC ENERGY FUND
MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Yukon, Nunavut and Northwest Territories (the "Jurisdictions") has received an application from NCE Strategic Energy Fund (the "Fund") for a decision, pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the requirement 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 final prospectus (the "Registration and Prospectus Requirements") shall not apply to certain trades in units of the Fund ("Trust Units") which may be distributed to the holders of Trust Units ("Unitholders") in connection with the automatic reinvestment of certain distributions.

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

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

1. The Fund is an unincorporated investment trust established under the laws of the Province of Ontario by a trust agreement dated as of February 14, 2002.
2. The Fund is not a "mutual fund" as defined in the Legislation because the Unitholders 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 Fund as contemplated in the definition of "mutual fund" in the Legislation.
3. On April 11, 2002 the Fund became a reporting issuer or the equivalent thereof in each province and territory in Canada upon obtaining a receipt for its final prospectus dated April 11, 2002 (the "Prospectus"). As of the date hereof, the Fund is not in default of any requirements under the Legislation.

4. The beneficial interests in the Fund are divided into Trust Units which are a single class of limited voting units. The Fund is authorized to issue an unlimited number of Trust Units. Trust Units represent a Unitholder's proportionate undivided beneficial interest in the Fund.
5. The Trust Units are listed on The Toronto Stock Exchange.
6. The manager of the Fund is NCE Strategic Energy Management Corp. (the "Manager") which was incorporated pursuant to the *Business Corporations Act* (Ontario) on February 8, 2002 for the purpose of managing and administering the Fund.
7. The investment objectives of the Fund are to provide investors with superior rates of return, principally in the form of capital appreciation, and a cost-effective method of reducing investment risk through a diversification strategy focused on investment opportunities within the Canadian energy sector which have prospects for high growth in the near to medium term.
8. The Fund's fiscal year-end is December 31. Pursuant to the Trust Agreement, at least 25% of the net realized taxable capital gains, if any, arising from any sales of the Fund's investments during any calendar year and at least 50% of the Fund's net income, if any, earned during any calendar year will be payable to the Unitholders of record on December 31 of such calendar year and will be distributed annually in cash on or prior to January 31 of the next year, and the Fund, in its sole discretion, may return capital and/or make cash distributions of net income and net realized taxable capital gains to the Unitholders from time to time (the "Distributions"). In addition, the Fund may make additional distributions in each year to Unitholders of record on December 31 in order to ensure there will be no income tax payable by the Fund under the *Income Tax Act* (Canada) (the "Additional Distributions") and such Additional Distributions will be made to Unitholders on or prior to January 31 of the next year.
9. The Additional Distributions will be automatically reinvested, on each Unitholder's behalf, in additional Trust Units, unless a Unitholder requests during the month of November, that the Additional Distributions payable to him or her in respect of the current year be paid in cash. Each of such Trust Unit will be issued at the closing price of the Trust Units on the last trading day of such year (the "Automatic Reinvestment Provision"). To the extent that a Unitholder would otherwise be entitled to receive a fractional Trust Unit, the Fund will distribute cash in lieu thereof.
10. No commissions, service charges or brokerage fees will be payable by Unitholders in connection with the acquisition of Trust Units pursuant to the Automatic Reinvestment Provision.
11. All Additional Distributions made to Unitholders who are not residents of Canada will be paid in cash and will not be reinvested.

12. The Unitholders do not have the option of making cash payments to purchase Trust Units under the Automatic Reinvestment Provision.
13. The distribution of the Trust Units by the Fund pursuant to the Automatic Reinvestment Provision cannot be made in reliance on certain registration and prospectus exemptions contained in the Legislation as the Automatic Reinvestment Provision involves the reinvestment of income distributed by the Fund and not the reinvestment of dividends or interest by the Fund.
14. The distribution of the Trust Units by the Fund pursuant to the Automatic Reinvestment Provision cannot be made in reliance on registration and prospectus exemptions contained in the Legislation for distribution reinvestment plans of mutual funds, as the Fund is not a "mutual fund" as defined in the Legislation.
15. The Fund is not a qualifying issuer as defined in Multilateral Instrument 45-102 *Resale of Securities* (MI 45-102).

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

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers pursuant to the Legislation is that the trades of Trust Units by the Fund to the Unitholders pursuant to the Automatic Reinvestment Provision shall not be subject to the Registration and Prospectus Requirements of the Legislation provided that:

- (a) at the time of the trade the Fund 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 distributions;
- (c) the Fund has sent, or has caused to be sent to each Unitholder prior to November 1st in each calendar year, a statement describing:
 - (i) the right to elect not to participate in the Automatic Reinvestment Provision and to instead receive the Additional Distribution payable to the Unitholder in respect of such calendar year in cash; and
 - (ii) instructions on how to exercise the right referred to in paragraph (i);
- (d) except in Quebec, the first trade in Trust Units acquired pursuant to this Decision in a Jurisdiction will be deemed a distribution or primary

distribution to the public under the Legislation unless the conditions in paragraphs 2 through 5 of subsection 2.6(4) of MI 45-102 are satisfied;

- (e) in Quebec, the first trade (alienation) in Trust Units acquired pursuant to this Decision will be deemed to be a distribution or a primary distribution to the public unless:
 - (i) at the time of the first trade, the Fund is a reporting issuer in Quebec;
 - (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;
 - (iv) the vendor of the securities, if in a special relationship with the Fund, has no reasonable grounds to believe that the Fund is in default of any requirement of securities legislation in Quebec; and
- (f) disclosure of the distribution of the Trust Units to Unitholders is made to the relevant Jurisdictions by providing the particulars of the date of the distribution of such Trust Units, the number of such Trust Units and the purchase price paid or to be paid for such Trust Units in:
 - (i) an information circular or take-over bid circular filed in accordance with the Legislation; or
 - (ii) 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,

when the Fund distributes such Trust Units for the first time and, thereafter, not less frequently than annually, unless the aggregate number of Trust Units so traded in any month exceeds 1% of the Trust Units outstanding at the beginning of the month in which the Trust Units were traded, in which case a separate report shall be filed in each relevant Jurisdiction in respect of that month within ten days of the end of such month.

DATED July 10, 2002.

“Robert Korthals”

“Harold P. Hands”