

DATE: December 15, 2004

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
BRITISH COLUMBIA, MANITOBA, ONTARIO, QUEBEC, NOVA SCOTIA, PRINCE  
EDWARD ISLAND AND NEWFOUNDLAND AND LABRADOR (THE  
JURISDICTIONS)**

**AND**

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

**AND**

**IN THE MATTER OF  
ACCLAIM ENERGY TRUST (THE FILER)**

**MRRS DECISION DOCUMENT**

**Background**

1. The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer under the securities legislation of the Jurisdictions (the Legislation), for an exemption (the Requested Relief) from the requirements contained in the Legislation to be registered to trade in a security and to file and obtain the receipt for a preliminary prospectus and a prospectus (the Prospectus and Registration Requirements) with respect to certain trades in units of the Filer (Units) issued pursuant to a distribution reinvestment and optional trust unit purchase plan (the Plan).

2. Under the Mutual Reliance Review System for Exemptive Relief Applications (MRRS)

(a) the Ontario Securities Commission is the principal regulator for this application; and

(b) this MRRS decision document evidences the decision of each Decision Maker.

**Interpretation**

3. Defined terms contained in National Instrument 14-101-Definitions have the same meaning in this decision unless they are otherwise defined in this decision.

**Representations**

4. This Decision is based on the following facts represented by the Filer:

(a) The Filer is an open-end unincorporated trust established under the laws of Alberta pursuant to the amended and restated trust indenture dated April 20, 2001 as amended as of May 31, 2003.

(b) The Filer is a reporting issuer in each of the provinces of Canada. To its knowledge, the Filer is not in default of any requirements under the Legislation.

(c) Acclaim Energy Inc. (the "Manager") is a wholly-owned subsidiary and the manager of the Filer pursuant to an administration agreement dated April 20, 2001.

(d) The head office and principal place of business of each of the Filer and the Manager is located at 1900, 255 – 5th Avenue S.W., Calgary, Alberta, T2P 3G6.

(e) The Filer currently makes and expects to continue to make monthly cash distributions ("Cash Distributions") to the holders of Units ("Unitholders"), which is dependent upon the amount of distributable cash generated from the Filer's assets.

(f) The Filer 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 Filer, as contemplated by the definition of "mutual fund" in the Legislation.

### **Distribution Reinvestment and Trust Unit Purchase Plan**

(g) The Filer has authorized the establishment of the Plan pursuant to which Unitholders may elect to (i) reinvest their cash distributions in new Units (the "Distribution Reinvestment Option"), and (ii) acquire new Units by making optional cash payments (the "Cash Payment Option").

(h) Except as described below, a registered holder of Units is eligible to join the Plan at any time by completing an enrollment and authorization form and sending it to Computershare Trust Company of Canada (the "Plan Agent").

(i) A registered holder shall become a participant (a "Participant") in the Plan in regard to the investment of distributions as of the first distribution record date (a "Record Date") following receipt by the Plan Agent of a duly completed enrollment and authorization form no later than five (5) business days prior to the Record Date. Beneficial owners of Units which are registered through a nominee in the name of CDS & Co., or its nominee, must deliver such authorization form to CDS & Co. no later than five (5) business days prior to such Record Date and also prior to such other deadline as may be set by CDS & Co. from time to time.

(j) Under the Cash Payment Option, Participants in the Plan may make further payments of not less than \$2,000 per remittance and not more than \$100,000 per

calendar year by forwarding a certified cheque or money order to the Plan Agent in Canadian dollars payable to the Plan Agent together with an optional cash payment form.

(k) The number of Units which may be issued each fiscal year pursuant to the Cash Payment Option will not be more than 2% of the number of issued and outstanding Units.

(l) The Plan is not available to persons who are "non-residents" within the meaning of the Income Tax Act (Canada) and the regulations thereunder.

(m) Cash distributions payable on the Units registered in the Plan, will be applied automatically on each Cash Distribution Date to the purchase of Units either from treasury or, at the discretion of the Manager, through the facilities of the TSX following the Cash Distribution Date.

(n) Optional cash payments to the Plan will be applied to the purchase of additional new Units on the Cash Distribution Date following Record Dates where a completed enrollment and authorization form and optional cash payment form has been received.

(o) Where the Trust issues Units from treasury under this Plan, the price of such Units to Participants shall be (i) in the case of investment by the Cash Payment Option, the weighted average closing price of the Units on the TSX for each of the ten (10) trading days immediately preceding the Cash Distribution Date (the "Treasury Purchase Price"), and (ii) in the case of investment by the Distribution Reinvestment Option, 95% of the Treasury Purchase Price.

(p) Where the Manager determines to apply cash distributions or optional cash payments, or both, to the purchase of Units through the facilities of the TSX, the price of such Units to Participants will be equal to the average price of all Units acquired through the facilities of the TSX for the purposes of this Plan during the period beginning on the Cash Distribution Date and ending on the date that is three (3) business days prior to the next applicable Record Date. Where the Plan Agent is unable, or is directed by the Manager not to purchase sufficient Units through the TSX, additional Units will be issued from treasury to Participants at a price equal to the average price of all Units acquired through the TSX as described in the foregoing sentence.

(q) There is no charge to Participants for reinvesting distributions. The Plan Agent's fees for handling the reinvestment of distributions will be paid by the Manager. There will be no brokerage charges with respect to Units either issued directly from treasury or purchased in the open market.

(r) Participation in the Plan may be terminated by duly completing a termination request form and delivering it to the Plan Agent, signed by the registered holder or his or her agent.

(s) Legislation in certain of the Jurisdictions provides exemptions from the Registration and Prospectus Requirements for distribution reinvestment plans. Such exemptions are not available for trades under the Plan for technical reasons in certain of the Jurisdictions.

## **Decision**

5. 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 Requested Relief is granted, provided that:

(a) at the time of the trade the Filer 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 trade;

(c) the Filer has caused to be sent to the person or company to whom the Units under the Plan are traded, not more than 12 months before the trade, a statement describing:

(i) their right to withdraw from the Plan and to make an election to receive cash instead of Units on the applicable distribution payment date (the "Withdrawal Right"), and

(ii) instructions on how to exercise the Withdrawal Right;

(d) the aggregate number of Units issued under the Cash Payment Option of the Plan in any financial year of the Filer shall not exceed 2% of the aggregate number of Units outstanding at the start of that financial year;

(e) except in Québec, the first trade in Units acquired pursuant to this Decision will be a distribution or primary distribution to the public unless the conditions in subsection 2.6(3) of Multilateral Instrument 45-102 Resale of Securities are satisfied; and

(f) in Québec, the alienation (or first trade) in Units acquired pursuant to this Decision will be a distribution unless:

(i) the issuer is and has been a reporting issuer in Québec for the 4 months preceding the alienation;

(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) 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;

(v) disclosure of the initial distribution of Units pursuant to this Decision is made to the relevant Jurisdictions by providing particulars of the date of the distribution of such Units, the number of such Units and the purchase price paid or to be paid for such Units in:

(A) an information circular or take over bid circular filed in accordance with the legislation; and

(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.

" Suresh Thakrar"  
Commissioner  
Ontario Securities Commission

"Paul K. Bates"  
Commissioner  
Ontario Securities Commission

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications. Issuer exempt from registration and prospectus requirements in connection with the distribution of the issuer's units pursuant to a distribution reinvestment plan. MRRS decision document formatted in accordance with revised Schedule A to National Policy 12-201 Mutual Reliance Review System for Exemptive Relief Applications.

### **Applicable Ontario Statutory Provisions**

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

### **Applicable National Policies and Instruments**

National Policy 12-201 Mutual Reliance Review System for Exemptive Relief Applications

National Instrument 14-101 Definitions