

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

AND

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

AND

IN THE MATTER OF CANADIAN PACIFIC LIMITED,  
CP SHIPS LIMITED, CANADIAN PACIFIC RAILWAY LIMITED,  
FORDING ARRANGEMENT INC. AND PANCANADIAN ENERGY CORPORATION

MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Newfoundland, Prince Edward Island, the Northwest Territories, the Yukon and Nunavut (the "Jurisdictions") has received an application from Canadian Pacific Limited ("CPL") for:

1.1 a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirement contained in the Legislation to file and obtain a receipt for a preliminary prospectus and prospectus (the "Prospectus Requirement") shall not apply to trades on an if, as and when issued basis of common shares of certain issuers that have been created in contemplation of an arrangement involving CPL;

1.2 a decision under the Legislation in Alberta, Ontario, Nova Scotia, British Columbia, Québec and Saskatchewan deeming certain issuers that have been created in contemplation of an arrangement involving CPL to be reporting issuers or the equivalent under the Legislation in Alberta, Ontario, Nova Scotia, British Columbia, Québec and Saskatchewan; and

1.3 a decision under the Legislation in Alberta, Ontario, Nova Scotia, British Columbia, Québec and Saskatchewan with respect to certain issuers that have been created in contemplation of an arrangement involving CPL providing relief

from the requirement under the Legislation that an offeror issue a news release, file a report and refrain from purchasing additional securities for a specified period of time when it acquires beneficial ownership of, or the power to exercise

control or direction over, an aggregate of 10% or more of the outstanding securities of a class of voting or equity securities of a reporting issuer, or securities convertible into such securities, and at certain times thereafter (the "Early Warning Requirements");

2. AND WHEREAS under 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 CPL has represented to the Decision Makers that:

3.1 CPL is a corporation incorporated under the *Canada Business Corporations Act* (the "CBCA");

3.2 the head office of CPL is in Calgary, Alberta;

3.3 the authorized capital of CPL includes an unlimited number of common shares ("CPL Common Shares");

3.4 as of June 30, 2001, there were 316,342,807 CPL Common Shares outstanding;

3.5 the CPL Common Shares are listed and posted for trading on The Toronto Stock Exchange (the "TSE") and the New York Stock Exchange (the "NYSE");

3.6 CPL is a reporting issuer or the equivalent in each Jurisdiction where such a concept exists and has been for a period in excess of twelve months;

3.7 CPL is subject to the reporting requirements under the *Securities Exchange Act of 1934* in the United States of America;

3.8 CPL has business interests in five main areas consisting of shipping, railroads, hotels, coal and oil and gas;

3.9 CPL's shipping interests are primarily held and operated through CP Ships Holdings Inc. ("CP Ships");

3.10 CPL's railroad interests are primarily held and operated through Canadian Pacific Railway Company ("CP Rail");

3.11 CPL's hotel interests are primarily held and operated through Canadian Pacific Hotels & Resorts Inc. ("CP Hotels");

3.12 CPL's coal interests are primarily held and operated through Fording Inc. ("Fording");

3.13 CPL directly or indirectly holds all of the outstanding voting and equity securities of CP Ships, CP Rail, CP Hotels and Fording;

3.14 CPL's oil and gas interests are primarily held and operated through PanCanadian Petroleum Limited ("PanCanadian");

3.15 PanCanadian is a corporation incorporated under the CBCA;

3.16 the head office of PanCanadian is in Calgary, Alberta;

3.17 the authorized capital of PanCanadian includes an unlimited number of common shares ("PanCanadian Shares");

3.18 the PanCanadian Shares are listed and posted for trading on the TSE;

3.19 as of June 30, 2001, there were 256,097,292 PanCanadian Shares outstanding;

3.20 CPL indirectly holds 218,122,712 PanCanadian Shares, representing approximately 85% of the outstanding PanCanadian Shares;

3.21 CPL proposes to conduct an arrangement under the provisions of the CBCA (the "Arrangement");

3.22 the purpose of the Arrangement will be to transfer the businesses represented by CPL's interests in CP Ships, CP Rail, CP Hotels, Fording and PanCanadian to the holders of CPL Common Shares;

3.23 part of the net effect of the Arrangement will be that:

3.23.1 holders of CPL Common Shares will exchange them with CPL for a specified number of:

3.23.1.1 common shares ("New Ships Shares") of CP Ships Limited ("New Ships"), a corporation whose successor by short form amalgamation will hold all of the voting and equity securities of CP Ships following the Arrangement;

3.23.1.2 common shares ("New Rail Shares") of Canadian Pacific Railway Limited ("New Rail"), a corporation whose successor by short form amalgamation will hold all of the voting and equity securities of CP Rail following the Arrangement;

3.23.1.3 common shares ("New Coal Shares") of Fording Arrangement Inc. ("New Coal"), a corporation whose successor by short form amalgamation will hold all of the voting and equity securities of Fording following the Arrangement;

3.23.1.4 common shares ("New Oil Shares") of PanCanadian Energy Corporation ("New Oil"), a corporation whose successor by short form amalgamation will hold all of the voting and equity securities of PanCanadian following the Arrangement; and

3.23.1.5 common shares of CPL of a new class to be created in connection with the Arrangement ("New CPL Shares"), which corporation will continue to hold all of the outstanding voting and equity securities of CP Hotels following the Arrangement;

3.23.2 holders of PanCanadian Shares, other than CPL, will exchange them for a specified number of New Oil Shares;

3.24 the Arrangement is subject to the approval of the holders of CPL Common Shares and the Court of Queen's Bench of Alberta;

3.25 a special meeting of the holders of CPL Common Shares and the holders of certain other CPL securities (the "CPL Meeting") will be held on or about September 26, 2001 to approve the Arrangement;

3.26 an information circular (the "CPL Circular") prepared in accordance with the Legislation will be provided to the holders of CPL Common Shares and the holders of certain other CPL securities in connection with the CPL meeting;

3.27 the CPL Circular will contain prospectus level disclosure concerning the Arrangement, the assets and operations of CPL, CP Ships, CP Rail, CP Hotels, Fording and PanCanadian and the proposed assets and operations of New Ships, New Rail, New Coal and New Oil;

3.28 that portion of the Arrangement dealing with the exchange of PanCanadian Shares for New Oil Shares is subject to the approval of the holders of PanCanadian Shares. In the event that such approval is not obtained, holders of PanCanadian Shares will retain them, holders of CPL Common Shares will receive the specified number of New Oil Shares and New Oil will hold the PanCanadian Shares currently held by CPL;

3.29 a special meeting of the holders of PanCanadian Shares (the "PanCanadian Meeting") will be held on or about September 26, 2001 to approve that portion of the Arrangement dealing with the exchange of PanCanadian Shares for New Oil Shares;

3.30 an information circular (the "PanCanadian Circular") prepared in accordance with the Legislation will be provided to the holders of PanCanadian Shares in connection with the PanCanadian Meeting;

3.31 the PanCanadian Circular will contain prospectus level disclosure concerning that portion of the Arrangement dealing with the exchange of PanCanadian Shares for New Oil Shares, the assets and operations of PanCanadian and the proposed assets and operations of New Oil;

3.32 the completion of the Arrangement is conditional upon, among other things, the receipt of all necessary regulatory approvals, including the receipt of such exemptive relief as may be necessary under the Legislation to ensure that the New Ships Shares, New Rail Shares, New Coal Shares, New Oil Shares and New CPL Shares (collectively, the "New Shares") to be issued under the Arrangement are not subject to any hold period in any of the Jurisdictions;

3.33 if all necessary approvals of the Arrangement are obtained and all conditions to the Arrangement are satisfied, CPL anticipates that the Arrangement will become effective on or about October 1, 2001;

3.34 the TSE has granted conditional listing approval to the New Shares of each class to be issued under the Arrangement and the NYSE has cleared New Ships, New Rail, New Coal and New Oil to file original listing applications, with the listing of the New Shares to be subject to the fulfilment of the usual and customary conditions;

3.35 the TSE and NYSE have advised CPL that they intend to establish markets (the "When Issued Markets") to permit if, as and when issued trading of the New Shares of each class to be issued to holders of CPL Common Shares under the Arrangement;

3.36 the When Issued Markets will permit market participants to purchase and sell any of the classes of New Shares prior to the completion of the Arrangement and the actual issuance of the New Shares thereunder;

3.37 CPL anticipates that trading on the When Issued Markets will commence on or about August 15, 2001;

3.38 the NYSE has advised CPL that the commencement of trading on the When Issued Market to be established by the NYSE will be conditional upon the Securities and Exchange Commission declaring effective registration statements

(the "Registration Statements") concerning New Ships, New Rail, New Coal and New Oil filed under the *Securities Act of 1933* in the United States of America;

3.39 the Registration Statements will not contain any material information that is not contained in the CPL Circular or PanCanadian Circular, as applicable, or disclosed by a press release issued by CPL or PanCanadian, as applicable;

3.40 provided that the Arrangement becomes effective, trading on the When Issued Markets will cease on the date that the New Shares to be issued under the Arrangement begin regular trading on the TSE and NYSE;

3.41 in the event that the Arrangement does not become effective, CPL understands that trading on the When Issued Markets will cease at the discretion of the TSE and NYSE;

3.42 the completion and settlement of any trade of New Shares on the When Issued Markets to be established respectively by the TSE and NYSE will be conditional upon the completion of the Arrangement without any material change, as adjudged by the TSE in the case of the When Issued Market to be established by the TSE or the NYSE in the case of the When Issued Market to be established by the NYSE, and the issuance of the New Shares thereunder;

3.43 if the Arrangement becomes effective on October 1, 2001, CPL anticipates that the TSE and NYSE will require the settlement of all trades of New Shares made on the When Issued Markets on October 9, 2001;

3.44 any insider of CPL who makes any trade of New Shares on the When Issued Markets will file a report of such trade in the applicable Jurisdictions in the same manner as they would be required to do under the Legislation with respect to a trade of CPL Common Shares;

3.45 any insider of PanCanadian who makes any trade of New Oil Shares on the When Issued Markets will file a report of such trade in the applicable Jurisdictions in the same manner as they would be required to do under the Legislation with respect to a trade of PanCanadian Shares;

3.46 New Ships, New Rail, New Coal and New Oil will not conduct any trade or distribution of securities prior to the effective date of the Arrangement other than those contemplated under, and required for, the completion of the Arrangement;

3.47 in the event that the Arrangement does not become effective for any reason, CPL will promptly file applications with the Decision Makers in Alberta, Ontario, Nova Scotia, British Columbia, Québec and Saskatchewan for an order or decision deeming New Ships, New Rail, New Coal and New Oil to have ceased to be reporting issuers or the equivalent under the Legislation in Alberta, Ontario, Nova Scotia, British Columbia, Québec and Saskatchewan;

3.48 some or all of the trades in New Shares on the When Issued Markets would be subject to the Prospectus Requirement in each of the Jurisdictions;

3.49 until the Arrangement becomes effective, there will be 1 New Ships Share, 1 New Rail Share, 1 New Coal Share, 1 New Oil Share and no New CPL Shares outstanding. As the Early Warning Requirements apply to any offeror that acquires beneficial ownership of, or the power to exercise control or direction over, an aggregate of 10% or more of the outstanding securities of a class of voting or equity securities of a reporting issuer, or securities convertible into such securities, the Early Warning Requirements would apply to any party that acquired any New Shares of any class in the When Issued Markets;

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

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 trades in New Shares on the When Issued Markets shall not be subject to the Prospectus Requirement if:

6.1 in the event that the seller of the securities is an insider or officer of CPL, they have no reasonable grounds to believe that CPL is in default of any requirement of the Legislation;

6.2 in the event that the seller of the securities is an insider or officer of PanCanadian and the trade is a trade of New Oil Shares, they have no reasonable grounds to believe that PanCanadian is in default of any requirement of the Legislation;

6.3 no unusual effort is made to prepare the market or create a demand for the security;

6.4 no extraordinary commission or consideration is paid to a person or company in respect of the trade;

6.5 except in Qu<sub>顛</sub>c, the trade is not a trade by:

6.5.1 a person or company or a combination of persons or companies holding a sufficient number of any securities of CPL so as to affect materially the control of CPL or more than 20% of the outstanding voting securities of CPL except where there is evidence showing that the holding of those securities does not affect materially the control of CPL; or

6.5.2 in the case of New Oil Shares, a person or company or a combination of persons or companies holding a sufficient number of any securities of PanCanadian so as to affect materially the control of PanCanadian or more than 20% of the outstanding voting securities of PanCanadian except where there is evidence showing that the holding of those securities does not affect materially the control of PanCanadian;

6.6 the CPL Circular and PanCanadian Circular have been available to the public on the System for Electronic Document Analysis and Retrieval for a period of not less than three hours prior to the commencement of trading on the When Issued Markets; and

6.7 at least two business days prior to the commencement of trading on the When Issued Markets:

6.7.1 the TSE and NYSE have issued bulletins announcing the creation of the When Issued Markets, advising as to the symbols under which each class of New Shares will trade and the terms and conditions to settlement;

6.7.2 CPL has disseminated by press release summary *pro forma* financial statements concerning each of New Ships, New Coal, New Rail, New Oil and New CPL following completion of the Arrangement; and

6.7.3 CPL has disseminated by press release full information concerning the number of New Shares of each class that will be outstanding upon the completion of the Arrangement, the ratio of New Shares of each class that will be issued for each CPL Common Share under the Arrangement and the circumstances in which the Early Warning Requirements, as contemplated in this Decision, will apply to the acquisition of New Shares of each class in the When Issued Markets;

provided that any other trade of New Shares made before the effective date of the Arrangement shall be deemed to be a distribution or primary distribution to the public under the Legislation of the Jurisdiction or Jurisdictions where the trade takes place;

7. THE FURTHER DECISION of the Decision Makers under the Legislation in Alberta, Ontario, Nova Scotia, British Columbia, Québec and Saskatchewan is that New Ships, New Rail, New Coal and New Oil are deemed to be reporting issuers or the equivalent under the Legislation in Alberta, Ontario, Nova Scotia, British Columbia, Québec and Saskatchewan;



8. THE FURTHER DECISION of the Decision Makers under the Legislation in Alberta, Ontario, Nova Scotia, British Columbia, Québec and Saskatchewan is that the Early Warning Requirements shall not apply to acquisitions of New Shares in the When Issued Markets provided that any offeror that acquires New Shares of any class in the When Issued Markets complies with the Early Warning Requirements as if the number of outstanding New Shares of that class for the purposes of calculating the applicable ownership percentage thresholds under the Early Warning Requirements were the number of New Shares of that class that will be outstanding upon the completion of the Arrangement;

DATED this 10<sup>th</sup> day of August, 2001.

"original signed by"  
Eric T. Spink, Vice-Chair

"original signed by"  
Thomas G. Cooke, Q.C., Member

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Relief under subsection 116(1) of the Act from the prospectus requirement under section 81 of the Act, under subsection 117(1) of the Act deeming certain issuers to be reporting issuers and under subsection 144(2)(c) of the Act from the early warning requirements under section 141 of the Act in connection with a proposal to permit if, as and when issued trading of certain securities to be issued under an arrangement.

Applicable Alberta Statutory Provisions

Securities Act, S.A., 1981, c.S-6.1, as amended - ss. 81, 116(1), 117(1), 141 and 144(2)(c)