

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - registration and prospectus relief to allow units to be distributed under a distribution reinvestment plan by a closed-end trust that does not meet the definition of mutual fund. First trade relief granted such that the seasoning period that would otherwise apply is eliminated.

**Applicable Alberta Statutory Provisions**

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

Multilateral Instrument 45-102 Resale of Securities, subs. 2.6(3)

**Citation:** Energy Plus Income Trust, 2004 ABASC 1111 **Date:** 20041123

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec,  
New Brunswick, Newfoundland & Labrador, Nova Scotia and  
Prince Edward Island (the Jurisdictions)

and

In the Matter of  
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of Energy Plus Income Trust (the Filer)

MRRS Decision Document

**Background**

1. The local securities regulatory authority or regulator (the Decision Maker) in the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the dealer registration requirement contained in the Legislation and the prospectus requirement contained in the Legislation shall not apply to the distribution of trust units of the Filer (Trust Units) to DRIP Participants (as defined below) under a distribution reinvestment plan (the DRIP)(the Requested Relief).

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

2.1 the Alberta Securities Commission is the principal regulator for this application; and

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

## **Interpretation**

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

## **Representations**

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

4.1 The Filer is a closed-end investment trust established under the laws of Alberta under a declaration of trust dated September 23, 2004 (the Declaration of Trust).

4.2 The Filer's head office is located in Calgary, Alberta.

4.3 The Filer became a reporting issuer in each of the Jurisdictions on October 27, 2004 when it obtained a Final Decision Document for its prospectus dated October 27, 2004. As of the date hereof, the Filer is not in default of any requirements under the Legislation.

4.4 Computershare Trust Company of Canada is the trustee of the Filer (in such capacity, the Trustee).

4.5 Under the Declaration of Trust, the Filer is authorized to issue an unlimited number of transferable, redeemable (once annually) Trust Units, of which there will be a minimum of 7,500,000 and a maximum of 25,000,000 Trust Units issued and outstanding on or about November 16, 2004 (the anticipated closing-date of the initial offering of the Filer).

4.6 The Filer is not a "mutual fund" as defined in the Legislation because the holders of Trust Units (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 Filer as contemplated in the definition of "mutual fund" contained in the Legislation.

4.7 The assets of the Filer consist of a portfolio of securities including units of oil and gas trusts and other resource securities, and instalment receipts in respect thereof, or other rights to acquire such securities (Portfolio Securities) in respect thereof, as well as cash and cash equivalents (collectively, the Portfolio).

4.8 The investment objectives of the Filer are to provide Unitholders with monthly cash distributions and to achieve total return on the portfolio over the term of the Trust that is greater than the total return provided by the S&P/TSX Capped Energy Trust Index over the same period.

4.9 Each Trust Unit represents an equal, fractional undivided beneficial interest in the net assets of the Filer, and entitles its holder to one vote at meetings of Unitholders and to participate equally with respect to any and all distributions made by the Filer, including distributions of net income and net realized capital gains, if any.

4.10 The Trust Units are listed on the Toronto Stock Exchange (the TSX) under the symbol "EPF.UN".

4.11 The Trust Units are available only in book-entry form whereby CDS & Co., a nominee of The Canadian Depository for Securities Limited, is the only registered holder of Trust Units.

4.12 Commencing on December 15, 2004, the Filer will distribute to Unitholders of record on November 30, 2004, the distributable income generated by the Portfolio during the previous month. The level of distributions paid by the Filer to the Unitholders will depend upon the distributions received from the Portfolio Securities included in the Portfolio, and as such is expected to fluctuate each month.

4.13 The Filer has established the DRIP to permit Unitholders, at their discretion, to automatically reinvest the distributable income paid on their Trust Units in additional Trust Units as an alternative to receiving cash distributions. In addition the DRIP will permit participants in the DRIP (DRIP Participants) to make additional optional cash payments (Optional Cash Payments) to acquire additional Trust Units, subject to a minimum of \$1,000 per optional cash payment and to a maximum of \$100,000 per year per DRIP Participant. (The Trust Units so acquired either by reinvestment or Optional Cash Payment are referred to as DRIP Units.)

4.14 Distributions due to DRIP Participants will be paid to Computershare Trust Company of Canada in its capacity as agent under the DRIP (in such capacity, the DRIP Agent) and applied to the purchase of DRIP Units.

4.15 The DRIP Agent's charges for administering the DRIP and all commissions, service charges, or brokerage fees in connection with the purchases in the market pursuant to the DRIP will be payable by the Filer. No commissions, service charges or brokerage fees will be payable by DRIP Participants in connection with the DRIP.

4.16 The DRIP Agent will purchase DRIP Units from the Filer at the arithmetic average of the daily volume weighted trading prices of the Trust Units on the TSX for the five consecutive business day period ending on the business day immediately preceding the applicable distribution date.

4.17 DRIP Participants may terminate their participation in the DRIP by providing 10 days' written notice to the DRIP Agent prior to the applicable record date.

4.18 The distribution of the DRIP Units by the Filer pursuant to the DRIP can be made in reliance on registration and prospectus exemptions contained in the Legislation of Alberta and Saskatchewan but not in reliance on registration and prospectus exemptions contained in the Legislation of the other Jurisdictions because the DRIP involves the reinvestment of distributable income and not the reinvestment of dividends, interest earnings or surplus of the Filer.

4.19 The distribution of the DRIP Units by the Filer pursuant to the DRIP cannot be made in reliance on registration and prospectus exemptions contained in the Legislation for distribution reinvestment plans for mutual funds, as the Filer is not considered to be a "mutual fund" as defined in the Legislation.

## **Decision**

5. 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.

6. The Decision of the Decision Makers under the Legislation is that:

6.1 except in Alberta and Saskatchewan, the Requested Relief is granted provided that:

6.1.1 at the time of the trade or distribution the Filer is a reporting issuer or the equivalent under the Legislation and is not in default of any requirements of the Legislation,

6.1.2 no sales charge is payable in respect of the trade,

6.1.3 the Filer has caused to be sent to the person or company to whom the DRIP Units are traded, not more than 12 months before the trade, a copy of the DRIP which contains a statement describing:

6.1.3.1 their right to withdraw from the DRIP and to make an election to receive cash instead of DRIP Units on the making of a distribution of income by the Filer (the Withdrawal Right), and

6.1.3.2 instructions on how to exercise the Withdrawal Right, and

6.1.4 the aggregate number of DRIP Units issued pursuant to the Optional Cash Payments in any financial year shall not exceed 2% of the aggregate number of Trust Units outstanding at the start of that financial year; and

6.2 the first trade of the DRIP Units shall be deemed to be a distribution or a primary distribution to the public in the Jurisdictions unless:

6.2.1 except in Quebec, the conditions in paragraphs 2 through 5 of subsection 2.6(3) of Multilateral Instrument 45-102 Resale of Securities are satisfied, and

6.2.2 in Quebec:

6.2.2.1 at the time of the first trade the Filer is a reporting issuer in Quebec and is not in default of any of the requirements of the Legislation in Quebec,

6.2.2.2 no unusual effort is made to prepare the market or to create a demand for the DRIP Units,

6.2.2.3 no extraordinary commission or consideration is paid to a person or company other than the vendor of the DRIP Units in respect of the trade, and

6.2.2.4 the vendor of the DRIP Units, if in a special relationship with the Filer, has no reasonable grounds to believe that the Filer is in default of any requirement of the Legislation.

" original signed by"  
Glenda A. Campbell, Q.C., Vice-Chair  
Alberta Securities Commission

“original signed by”  
Stephen R. Murison, Vice-Chair  
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