

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - relief from the registration and prospectus requirements in connection with a business combination involving two income trusts.

### **Applicable Alberta Statutory Provisions**

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

**Citation:** StarPoint Energy Trust et al, 2005 ABASC 471 **Date:** 20050607

In the Matter of  
the Securities Legislation of  
Alberta, Manitoba, Ontario, Québec, Nova Scotia, Newfoundland and Labrador, Prince Edward  
Island, Northwest Territories, Yukon and Nunavut (the Jurisdictions)

and

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

and

In the Matter of StarPoint Energy Trust and APF Energy Trust  
(collectively, the Filers)

### **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 StarPoint Energy Trust (StarPoint) and APF Energy Trust (APF) for a decision under the securities legislation of the Jurisdictions (the Legislation) that certain trades in trust units of StarPoint (Starpoint Units) issued in connection with a business combination (the Business Combination) and certain trades in trust units of APF (APF Units) are exempt from the dealer registration requirements and the prospectus requirements of the Legislation.

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

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 (collectively, 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 StarPoint and APF to the Decision Makers:

### 4.1 StarPoint

4.1.1 is an open-ended, unincorporated investment trust formed under the laws of the Province of Alberta on December 6, 2004 (the StarPoint Trust Indenture);

4.1.2 has its head office in Calgary, Alberta; and

4.1.3 has been a reporting issuer or the equivalent under the Legislation, if applicable, since January 7, 2005.

### 4.2 APF

4.2.1 is an open-ended, unincorporated investment trust formed under the laws of the Province of Alberta on October 10, 1996;

4.2.2 has its head and principal office in Calgary; and

4.2.3 has been a reporting issuer or its equivalent under the Legislation, if applicable, since December 17, 1996.

4.3 The StarPoint Units and the APF Units are listed on the Toronto Stock Exchange.

4.4 To effect the Business Combination, StarPoint, StarPoint Energy Ltd. (SPL), APF and APF Energy Inc. (APF Energy) entered into a combination agreement dated April 13, 2005 (the Combination Agreement).

4.5 Pursuant to the Business Combination, StarPoint will purchase from APF all of the assets of APF and will assume the liabilities and obligations of APF in exchange for the issuance by StarPoint to APF of StarPoint Units. The aggregate number of StarPoint Units to be issued to APF will be based on an exchange ratio of 0.63 per APF Unit issued and outstanding as of the closing date specified in the Combination Agreement, which is expected to be June 17, 2005 but in any event will be no later than July 31, 2005.

4.6 The APF Units (other than the one APF Unit which StarPoint will subscribe for prior to completion of the Business Combination) will be redeemed by APF in

exchange for StarPoint Units, which will be distributed to the APF Unitholders in accordance with the exchange ratio referred to in section 4.5.

4.7 Application has been made to the Toronto Stock Exchange to list the StarPoint Units to be issued pursuant to the Business Combination.

4.8 StarPoint and APF are unable to rely on the exemptions from the Registration and Prospectus Requirements of the Legislation of the Jurisdictions to effect the trades of StarPoint Units to be completed in connection with the Business Combination because the Business Combination is to be effected pursuant to the Combination Agreement rather than pursuant to a statutory procedure.

4.9 At a meeting (the APF Meeting) to be held on a date mutually agreed upon by StarPoint and APF, the holders of APF Units will be asked to approve the Business Combination, which will require the approval of at least 66 $\frac{2}{3}$ % of the votes cast by APF Unitholders present in person or by proxy.

4.10 An information circular prepared in connection with the APF Meeting will be delivered to APF Unitholders containing or incorporating by reference:

4.10.1 prospectus level disclosure regarding the business and affairs of StarPoint and APF;

4.10.2 a detailed description of the Business Combination;

4.10.3 pro forma information of StarPoint after giving effect to the Business Combination; and

4.10.4 a fairness opinion prepared by APF's financial advisor with respect to the Business Combination.

## **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 pursuant to the Legislation is that:

6.1 the Registration and Prospectus Requirements shall not apply to the trades or distributions of StarPoint Units and, except in Québec, APF Units pursuant to the Business Combination provided that:

6.1.1 at the time of the trade or distribution each of StarPoint and APF are a reporting issuers or the equivalent in Québec and a jurisdiction listed in Appendix B of Multilateral Instrument 45-102

Resale of Securities (MI 45-102) and is not in default of any requirements of the Legislation;

6.1.2 the Business Combination is described in an information circular (the Information Circular) in the required form;

6.1.3 the Information Circular is delivered to each APF Unitholder; and

6.1.4 the Business Combination is approved by at least 66 $\frac{2}{3}$ % of the votes cast by APF Unitholders present in person or represented by proxy at the meeting to approve the Business Combination; and

6.2 the first trade or alienation in StarPoint Units issued in connection with the Business Combination is a distribution or primary distribution to the public unless:

6.2.1 except in Québec, the conditions set out in subsection 2.6(3) of MI 45-102 are satisfied, and

6.2.2 in Québec:

6.2.2.1 at the time of the alienation, StarPoint is and has been a reporting issuer in Québec for the four months preceding the alienation;

6.2.2.2 no unusual effort is made to prepare the market or to create a demand for the securities;

6.2.2.3 no extraordinary commission or consideration is paid to a person or company in respect of the alienation; and

6.2.2.4 if the seller is an insider of StarPoint, the seller has no reasonable grounds to believe that StarPoint is in default of any requirement of the Legislation in Québec.

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

"original signed by"  
Stephen R. Murison, Vice Chair  
Alberta Securities Commission