

**Via Electronic Correspondence to Addressees Indicated in Schedule A**

March 28, 2007

The British Columbia Securities Commission  
Alberta Securities Commission  
Saskatchewan Financial Services Commission  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
Nova Scotia Securities Commission  
New Brunswick Securities Commission

Dear Sirs:

**Re: Comments on Proposed National Instrument 41-101 “General Prospectus Requirements”.**

We are moved to comment on Part 5 of the Proposed Rule requiring certificates from any “substantial beneficiaries of the offering” and certificates of trust issuers.

Freehold Royalty Trust (Freehold) is an open ended mutual fund trust listed on the Toronto Stock Exchange (FRU.UN). Freehold is included in the S&P/TSX Trust Index. The Trust is an oil & gas energy trust and celebrated its 10<sup>th</sup> anniversary in November 2006.

Freehold’s strategy is to acquire and hold royalties on oil and natural gas producing properties in Canada. Today approximately 78% of our oil and gas production volumes and 84% of our funds from operations are from royalty interests.

Our oil and gas production is very broadly diversified with royalty and other production derived from 23,000 oil and gas wells in British Columbia, Alberta, Saskatchewan, Manitoba and Ontario.

Royalties have been focus of our Trust for 10 years of its existence.

- Freehold issued its IPO in November 1996 to buy royalties and working oil and gas properties from our sponsor. To fund the acquisition of the original properties we issued 26.5 million Trust Units for sale proceeds of \$265,000,000.
- In 2001 we purchased additional royalties previously owned by Marathon Canada Ltd. for \$25.4, and issued, by prospectus, 3,300,000 Trust Units for gross proceeds of \$31.8 million.

- At time of purchase from Marathon Canada, Freehold had interests in over 13,000 oil and gas wells.
- In 2006 we purchased additional royalty interests in Western Canada from Canadian Natural Resources Ltd. (CNRL) for \$345 million issuing 13,505,000 Trust Units under prospectus dated May 3, 2005 for gross proceeds of approximately \$210 million. Coincidentally with the sale, we issued 3,858,520 Trust Units to CNRL for gross proceeds of \$60 million.
- Prior to purchase of Canadian Natural Resources Freehold had interests in approximately 1 million acres of land and over 17,000 oil and gas wells.

**Under the new Rule proposed as Part 5.13(1) of Schedule 1 Appendix B to National Instrument 41-101 “General Prospectus Requirement**

This new requirement that a “substantial beneficiary of an offering would be required to provide a certificate in support of the prospectus making them also liable for “full, true and plain disclosure of all material facts relating to the securities being distributed” will result in a definite and insurmountable hurdle for an existing Canadian issuer who wishes to use the proceeds of the issue to acquire oil and gas properties.

The need to include proforma information in a prospectus will result in the liability for the full, true and plain disclosure and including liability for all of the issuers pre issuance information and forecasts being extended to the seller of assets to such issuer. In the case of Freehold Royalty Trust in both its 2001 and 2005 sale of Trust Units under prospectus the sellers of the assets to be acquired would have to ensure that all the information regarding the issuer existing assets, business activities, prospects, plans and forecast was “full, true and plainly disclosed”.

This would require, in our case, the seller evaluating, assessing and understanding a business with a very large and diverse asset base in full detail.

For a seller to sign a prospectus they also have to ensure the purchaser would continue to develop and operate the assets they owned prior to the acquisition and the assets being acquired in accordance with the assumptions incorporated in the prospectus. The potential for liability would have to be reflected in their financial information and would be difficult to quantify and an unacceptable byproduct of the asset sale particularly if the seller(s) were individuals.

Our belief is that neither Marathon or CNRL could have been convinced to co-sign our offering prospectus which permitted Freehold to finance the respective asset acquisitions:

- In the case of the Marathon acquisition, their sale was to facilitate their exit from Canada. Liability arising out of a prospectus related to that sale would not have permitted a “clean” exit.
- In the case of the CNRL acquisition, Freehold’s purchase of the partnerships from them would have significantly increased the necessary time and effort which would have had to be dedicated to assess the validity of every aspect of Freehold’s existing assets and business as well as the impact of the sale properties.

To be successful in completing our two major acquisitions in the environment of the proposed new rule 5.13(1) it is likely that Freehold would have had to finance 100% of the acquisition price for each of the acquisitions with the intent to raise equity to replace the debt immediately following the first anniversary of the acquisition when the proposed rule would no longer require the seller's certificate.

The property purchase from Marathon would have been possible under this scenario. The purchase from CNRL would not have been financed at acceptable terms due to the size of the transaction related to the size of Freehold.

Our expectation is that implementation of proposed Part 5 will put Canadian listed public entity at a very significant disadvantage to private entities or foreign listed public entities in transacting major deals for Canadian assets. Such disadvantages reduce the value of Canadian businesses and assets.

**We respectfully request the Commission remove the proposed rule reflected in Part 5.13(1) of the Proposed Amendments to NI41-101 "General Prospectus Requirements".**

**Under the new Rule proposed as Part 5.5 of Schedule 1 Appendix B to National Instrument 41-101 "General Prospectus Requirement**

We also have a concern with respect to the prospectus certification requirements for trusts provided for in Sections 5.5(1) and (2) of Schedule 1 to NI 41-101. As Freehold has a corporate trust, Computershare Trust Company of Canada, the requirement that the CEO and CFO of Computershare Trust Company of Canada and two directors of Computershare Trust Company of Canada execute any prospectus certificate is impracticable.

Our declaration of trust, like most public energy trusts, provides that the trustee is a corporate trustee appointed by our unitholders. Our declaration of trust delegates, among other things, the authority to make all decisions relating to public offering including to execute prospectus certificates to the board of directors of Freehold Resources Ltd., as subsidiary of Freehold. In addition, the board of directors of Freehold Resources Ltd. oversees all operations of the controlled entities of Freehold, including Freehold Resources Ltd., and all public reporting by Freehold. Computershare Trust Company of Canada's primary responsibilities are to hold the assets of Freehold (shares, subsidiary trust units, debt and net profit interests issued by Freehold's various controlled entities) and managing the cash distributions to unitholders. In performing its responsibilities under the declaration of trust Computershare Trust Company of Canada and its officer and directors would not have been in a position to execute a prospectus certificate. Freehold has filed many prospectuses which have contained certificates executed by the CEO and CFO of Freehold Resources Ltd. and two directors of Freehold Resources Ltd. on behalf of the board of directors of Freehold Resources Ltd. We submit that requiring certification of Computershare Trust Company of Canada would not add meaningful protection for investors.

We note that Section 5.5(3) of Schedule 1 to NI 41-101 provides an exemption from the requirements of Sections 5.5(1) and (2) of Schedule 1 to NI 41-101 to issuers that are investment funds in similar circumstances. **We respectfully request the Commission provide a similar exemption be provided to trusts that meet the same criteria.**

If no exemption is provided, we would request that a reasonable transition period be provided so that a meeting of unitholders of Freehold can be called to substantially reorganize the trust in order that it may have access to the public markets.

Yours truly,

FREEHOLD ROYALTY TRUST

(signed) "Joseph N. Holowisky"

Joseph N. Holowisky  
Vice-President, Finance & Administration  
C.F.O. and Secretary

## **SCHEDULE A**

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