

## Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – exemption granted from the requirement to include financial statements and management’s discussion and analysis in an information circular for an exchangeable share entity participating in an arrangement.

## Applicable Legislative Provisions

National Instrument 51-102 *Continuous Disclosure Obligations*, s. 13.1  
Form 51-102F5 *Information Circular*, s. 14.2

**Citation: Monterey Exploration Ltd., Re, 2010 ABASC 392**

**Date: 20100818**

In the Matter of  
the Securities Legislation of  
Alberta and Ontario (the **Jurisdictions**)

and

In the Matter of  
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of  
Monterey Exploration Ltd. (the **Filer** or **Monterey**)

Decision

## Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) exempting the Filer from the requirement under Section 14.2 of Form 51-102F5 *Information Circular* (the **Circular Form**) of the Legislation to include the PGF Corp. Financial Statements (as defined below) and PGF Corp. MD&A (as defined below), in the information circular (the **Circular**) to be mailed to holders (**Monterey Shareholders**) of common shares (**Monterey Common Shares**) and options (**Monterey Options**) of Monterey Exploration Ltd. (**Monterey**) in connection with a special meeting to approve a plan of arrangement (the **Arrangement**) under the *Business Corporations Act* (Alberta) among Monterey, Pengrowth Energy Trust (**Pengrowth**) and PGF Corp. (the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (a) the Alberta Securities Commission is the principal regulator for this Application;
- (b) the Filer has provided notice that Subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British

Columbia, Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia;  
and

- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

### **Interpretation**

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

### **Representations**

This decision is based on the following facts represented by the Filer:

#### **Monterey, Pengrowth and PGF Corp.**

##### *Monterey*

1. Monterey is a corporation continued pursuant to the laws of Alberta. The principal office of Monterey is located in Calgary, Alberta.
2. Monterey is a reporting issuer or the equivalent under the securities legislation of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick and Nova Scotia (the **Monterey Jurisdictions**). Monterey is not in default of securities legislation in any of the Monterey Jurisdictions.
3. The common shares of Monterey are listed on the Toronto Stock Exchange (**TSX**) under the symbol "MXL".

##### *Pengrowth*

4. Pengrowth is an open-ended investment trust established under the laws of Alberta pursuant to a trust indenture between Computershare Trust Company of Canada, as trustee, and PGF Corp., as amended and restated as of July 1, 2009. The principal office of Pengrowth is located in Calgary, Alberta.
5. Pengrowth is a reporting issuer or the equivalent under the securities legislation of each of the provinces of Canada. Pengrowth is not in default of securities legislation in any jurisdiction of Canada.
6. The Pengrowth Units are listed on the TSX under the symbol "PGF.UN" and on the New York Stock Exchange under the symbol "PGH".
7. Pengrowth has filed a "current AIF" (**Pengrowth AIF**) and has "current annual financial statements" (as such terms are defined in National Instrument 44-101 *Short Form Prospectus Distributions* (**NI 44-101**)) for the financial year ended December 31, 2009.
8. The financial statements of Pengrowth are reported on a consolidated basis, which includes the financial results for PGF Corp. PGF Corp. does not report its financial

results independently from the consolidated financial statements of Pengrowth. The operating income of PGF Corp. represents approximately 95% of the operating income of Pengrowth as at December, 31, 2009.

*PGF Corp.*

9. PGF Corp. is a corporation amalgamated under the laws of Alberta. The principal office of PGF Corp. is located in Calgary, Alberta.
10. Pengrowth holds all of the issued and outstanding voting common shares of PGF Corp.
11. PGF Corp. is not a reporting issuer in any province of Canada.
12. The common shares of PGF Corp. are not listed or posted for trading on any exchange or quotation and trade reporting system.
13. PGF Corp. is authorized to issue exchangeable shares of PGF Corp. (**Exchangeable Shares**) none of which have been issued to date. Each Exchangeable Share is ultimately exchangeable on a one to one basis at the holder's election for equity securities of Pengrowth upon the expected conversion of Pengrowth into a corporation. The Exchangeable Shares are not listed or posted for trading on any exchange or quotation and trade reporting system.

*Arrangement*

14. Pursuant to the Arrangement, Pengrowth will acquire all of the existing and outstanding common shares of Monterey. Former Monterey Shareholders, including Monterey Shareholders that acquired their Monterey Common Shares upon the exercise or deemed exercise of options of Monterey will receive, at their election, (i) 0.8298 of a trust unit of Pengrowth (Pengrowth Unit); (ii) 0.8298 of an Exchangeable Share; or (iii) some combination of Pengrowth Units and Exchangeable Shares.
15. Pursuant to Monterey's constating documents and applicable securities laws, Monterey Shareholders will be required to approve the Arrangement at a meeting of Monterey Shareholders (the **Monterey Meeting**). The Arrangement must be approved by not less than two-thirds of the votes cast by Monterey Shareholders at the Monterey Meeting. The Monterey Meeting is anticipated to take place on September 15, 2010 and the Circular is expected to be mailed in mid-August, 2010.
16. The Arrangement will be a "restructuring transaction" under National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) in respect of Monterey and, will therefore, require compliance with Section 14.2 of the Circular Form and National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (**NI 52-107**)), which requires that PGF Corp. Financial Statements (as defined below) and PGF Corp. MD&A (as defined below) be included in the Circular in connection with the Arrangement.

*Disclosure in the Circular*

17. Pursuant to Section 14.2 of the Circular Form, if shareholder approval is required of a "restructuring transaction under which securities are to be changed, exchanged, issued or distributed", then disclosure is required for each entity, other than Monterey, whose securities are being changed, exchanged, issued or distributed if Monterey's shareholders will have an interest in that entity after the restructuring transaction is completed. Therefore, disclosure is required in the Circular for PGF Corp. and Pengrowth.
18. Section 14.2 of the Circular Form requires, among other items, that the Circular contain the disclosure (including financial statements and management discussion and analysis (**MD&A**)) prescribed under securities legislation and described in the form of prospectus that PGF Corp. would be eligible to use immediately prior to the sending and filing of the Circular for a distribution of its securities. Therefore, the Circular must contain the disclosure in respect of PGF Corp. prescribed by Form 41-101F1 *Information Required in a Prospectus* (the **Prospectus Form**) and National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**).
19. Items 8.2(1)(a) and (b) and 8.2(2) of the Prospectus Form require the Filer to include MD&A corresponding to each of the financial years ended December 31, 2009 and December 31, 2008 and the interim period ended June 30, 2010 of PGF Corp. (the **PGF Corp. MD&A**) in the Circular.
20. Subsection 32.2(1) of the Prospectus Form requires Monterey to include certain annual financial statements of PGF Corp. in the Circular, including: (i) an income statement, a statement of retained earnings, and a cash flow statement of PGF Corp. for each of the financial years ended December 31, 2009, December 31, 2008 and December 31, 2007; and (ii) a balance sheet of PGF Corp. as at December 31, 2009 and December 31, 2008 (the **PGF Corp. Annual Financial Statements**) and Subsection 32.3(1) of the Prospectus Form requires PGF Corp. to include certain comparative interim financial statements of PGF Corp. in the Circular including (i) an income statement, a statement of retained earnings, and a cash flow statement of PGF Corp. for the six month period ended June 30, 2010 and comparative financial information for the six month period ended June 30, 2009; (ii) a balance sheet of PGF Corp. as at June 30, 2010 and as at June 30, 2009 (together with the PGF Corp. Annual Financial Statements, the **PGF Corp. Financial Statements**).
21. Subsection 4.2(1) of NI 41-101 requires that the PGF Corp. Annual Financial Statements required to be included in the Circular must be audited in accordance with NI 52-107.

*Exemption Sought*

22. The Circular will contain detailed disclosure regarding the terms and conditions of the Exchangeable Shares to be issued to Monterey Shareholders.
23. The financial statements of Pengrowth are reported on a consolidated basis, which includes the financial results for PGF Corp. PGF Corp. does not report its financial results independently from the consolidated financial statements of Pengrowth. Further,

management of PGF Corp., after consulting with Pengrowth's auditors, believes that the Financial Statements, if prepared, would be misleading, since there are transactions between PGF Corp. and Pengrowth that are eliminated when consolidation is performed at the Pengrowth level. To present the Financial Statements, which would exclude accounts of Pengrowth, would present the effects of only one side of the financing activities between PGF Corp. and Pengrowth. This would result in significant intra-group balances and intra-group interest expense being reflected on the Financial Statements. Additionally, an agreement exists between Pengrowth and PGF Corp. whereby PGF Corp. pays a regular payment to Pengrowth related to royalty and interest income from operations. To present the Financial Statements excluding the accounts of Pengrowth, would present only one side of the intra-group royalty and interest income. As a result, the presentation of these intra-group transactions would present a confusing (and potentially misleading) picture of financial performance.

24. The Pengrowth AIF and the Pengrowth current annual financial statements will be incorporated by reference in the Circular. The Pengrowth AIF includes disclosure, to the extent it is required by NI 51-102, regarding the business, assets, operations and share capital of PGF Corp.
25. The Circular will contain prospectus level disclosure in accordance with NI 44-101 regarding Monterey, Pengrowth and PGF Corp. (other than the PGF Corp. Financial Statements and PGF Corp. MD&A) including detailed disclosure regarding the terms and conditions of the Exchangeable Shares and will contain sufficient information to enable a reasonable securityholder to form a reasoned judgement concerning the nature and effect of the Arrangement.
26. As Exchangeable Shares are ultimately exchangeable for equity securities of Pengrowth upon the expected conversion of Pengrowth into a corporation, it is the financial statements and MD&A of Pengrowth and not the PGF Corp. Financial Statements and PGF Corp. MD&A that are relevant to the Filer Shareholders who may elect to receive Exchangeable Shares.

### **Decision**

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted.

*“original signed by”*

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