

UNDERWRITING AGREEMENT

August 22, 2001

NCE Energy Trust
NCE Energy Corporation
NCE Energy Management Corporation
Suite 280, 130 King Street West
Toronto, Ontario, M5X 1A4

Attention: John F. Driscoll
President and Chief Executive Officer

Dear Sir:

Re: Offering of Trust Units of NCE Energy Trust

National Bank Financial Inc., CIBC World Markets Inc., Canaccord Capital Corporation, Raymond James Ltd. and Yorkton Securities Inc. (the "Underwriters") understand that NCE Energy Trust (the "Trust") proposes to issue and sell 5,000,000 trust units of the Trust (the "Trust Units") pursuant to this agreement. The Underwriters also understand that the Trust will prepare and file, in accordance with the terms hereof, the Prospectus (as hereinafter defined) and all other necessary documents in order to qualify the Trust Units for distribution to the public in each of the Qualifying Provinces (as hereinafter defined).

Upon and subject to the terms and conditions hereof, the Underwriters hereby severally, and not jointly, agree to purchase the Trust Units from the Trust in the respective percentages set forth in paragraph 20 hereof, and the Trust hereby agrees to issue and sell to the Underwriters, subject to paragraph 20, all but not less than all, of the Trust Units at the purchase price of \$3.50 per Trust Unit.

In addition, the Trust hereby grants to the Underwriters:

- a. an option (the "Underwriters' Option"), exercisable in whole or in part, by notice given at any one time until 5:00 p.m. (Toronto time) on the date which is two Business Days (as hereinafter defined) prior to the Closing Date (as hereinafter defined) to purchase from the Trust up to an aggregate of 1,000,000 additional Trust Units (the "Optioned Units") at the Closing Time (as hereinafter defined) for a purchase price of \$3.50 per Trust Unit; and
- b. an over-allotment option (the "Over-Allotment Option"), exercisable in whole or in part, by notice given at any one time until 5:00 p.m. (Toronto time) on the date which is 30 days following the Closing Date to purchase from the Trust that number of additional Trust Units equal to 15% of the Trust Units sold at the Closing (the "Over-Allotment Units") at the Over-Allotment Closing Time (as hereinafter defined), for a purchase price of \$3.50 per Trust Unit.

1. ***Definitions***

In this agreement:

- a. "AIF" means the initial annual information form of the Trust dated June 15, 2001, including management's discussion and analysis of the financial condition and operations of the Trust for the year ended December 31, 2000 incorporated therein;

- b. "**Apache Properties**" means the properties of Apache Canada Ltd. which were acquired by NCE Energy effective January 1, 2001;
- c. "**Applicable Securities Laws**" means all applicable Canadian securities laws, rules, regulations, notices and policies;
- d. "**ASC**" means the Alberta Securities Commission;
- e. "**Business Day**" means a day which is not Saturday or Sunday or a legal holiday in the City of Toronto, Ontario;
- f. "**Closing Date**" means September 13, 2001 or such other date as the Underwriters and the Trust may agree, but no later than September 14, 2001;
- g. "**Closing Time**" means 8:45 a.m. (Toronto time) or such other time, on the Closing Date, as the Underwriters and the Trust may agree;
- h. "**Documents**" means, collectively:
 - i. the AIF;
 - ii. the Information Circular;
 - iii. the audited comparative consolidated financial statements of the Trust for the fiscal years ended December 31, 2000 and 1999, together with the report of the auditors of the Trust thereon;
 - iv. the management's discussion and analysis of the financial condition and operations of the Trust for the three months ended March 31, 2001;
 - v. the unaudited comparative consolidated financial statements of the Trust for the three months ended March 31, 2001 and March 31, 2000;
 - vi. the management's discussion and analysis of the financial condition and operations of the Trust for the six months ended June 30, 2001;
 - vii. the unaudited comparative consolidated financial statements of the Trust for the three months ended June 30, 2001 and June 30, 2000; and
 - viii. all material change reports of the Trust that are filed by the Trust pursuant to Applicable Securities Laws subsequent to December 31, 2000;
- i. "**Exchange**" mean The Toronto Stock Exchange;
- j. "**Financial Statements**" means, collectively, the audited comparative consolidated financial statements of the Trust for the fiscal years ended December 31, 2000 and 1999, together with the report of the auditors of the Trust thereon and the unaudited comparative consolidated financial statements of the Trust for the three months ended March 31, 2001 and 2000, and the six months ended June 30, 2001 and 2000;
- k. "**Forte**" means Forte Energy Ltd.;

- l. **"Forte Financial Statements"** means the audited comparative balance sheets as at December 31, 2000 and 1999 and the statements of earnings and retained earnings and cash flows of Forte for the fiscal years ended December 31, 2000, 1999 and 1998, together with the report of the auditors of Forte thereon, contained in the Preliminary Prospectus;
- m. **"Information Circular"** means the information circular of the Trust dated May 10, 2001, relating to the annual and special meeting of unitholders of the Trust held on June 21, 2001;
- n. **"Management Agreement"** means the management, advisory and administration agreement dated as of January 24, 1997 as amended on November 25, 1998 and as may be further supplemented, amended or amended and restated from time to time among the Trust, NCE Energy and the Manager;
- o. **"Manager"** means NCE Energy Management Corporation, the manager of the Trust and NCE Energy;
- p. **"Material Subsidiaries"** means a subsidiary (within the meaning of the *Business Corporations Act* (Alberta)) of the Trust the total assets of which constitute more than 10% of the consolidated assets of the Trust at or after December 31, 2000, or the total revenues of which constitute more than 10% of the consolidated revenues of the Trust for the period ended December 31, 2000, or for any interim period thereafter;
- q. **"McDaniel"** means McDaniel & Associates Consultants Ltd., independent oil and gas reservoir engineers;
- r. **"McDaniel Report"** means the independent engineering evaluation of the oil, natural gas liquids and natural gas reserves attributable to the properties of Forte dated March 1, 2001, effective January 1, 2001;
- s. **"MRRS Procedures"** shall have the meaning ascribed thereto in paragraph 3 hereof;
- t. **"NCE Energy"** means NCE Energy Corporation, a wholly-owned subsidiary of the Trust;
- u. **"NI 44-101"** means National Instrument 44-101 of the Canadian Securities Administrators, as amended or replaced;
- v. **"Optioned Units"** has the meaning assigned thereto above;
- w. **"Outtrim"** means Outtrim Szabo Associates Ltd., independent oil and gas reservoir engineers;
- x. **"Outtrim Apache Report"** means the independent engineering evaluation of the oil, natural gas liquids and natural gas reserves attributable to the Apache Properties, effective December 31, 2000;
- y. **"Outtrim NCE Energy Report"** means the independent engineering evaluation of the oil, natural gas liquids and natural gas reserves of NCE Energy effective December 31, 2000;
- z. **"Over-Allotment Closing Date"** means a date which shall be the second Business Day after the notice of exercise of the Over-Allotment Option but no earlier than the Closing Date, or such other date as the Underwriters and the Trust may agree;

- aa. **"Over-Allotment Closing Time"** means the time specified in the notice of exercise of the Over-Allotment Option, or such other time, on the Over-Allotment Closing Date as the parties hereto may mutually agree;
- bb. **"Over-Allotment Option"** has the meaning assigned thereto above;
- cc. **"Over-Allotment Units"** has the meaning assigned thereto above;
- dd. **"Preliminary Prospectus"** means the preliminary short form prospectus and any amendments thereto, in respect of the distribution of the Trust Units, in the English and French languages, including the documents incorporated by reference;
- ee. **"Prospectus"** means the (final) short form prospectus and any amendments thereto, in respect of the distribution of the Trust Units, in the English and French languages, including the documents incorporated by reference;
- ff. **"Public Record"** means all information filed by or on behalf of the Trust with the Securities Commissions, including without limitation, the Documents, the Financial Statements, the Preliminary Prospectus and the Prospectus and any other information filed with any Securities Commission in compliance, or intended compliance, with any Applicable Securities Laws;
- gg. **"Qualifying Provinces"** means each of the provinces of Canada;
- hh. **"Royalty"** means the royalty payable by NCE Energy to the Trust pursuant to the Royalty Agreement;
- ii. **"Royalty Agreement"** means the royalty agreement dated as of January 1, 2001, between NCE Energy and the Trust;
- jj. **"Securities Commissions"** means the securities commissions or similar regulatory authorities in the Qualifying Provinces;
- kk. **"Selling Dealer Group"** means the dealers and brokers other than the Underwriters who participate in the offer and sale of the Trust Units pursuant to this agreement;
- ll. **"Trust's counsel"** means Goodman and Carr LLP or such other legal counsel as the Trust, with the consent of the Underwriters, may appoint;
- mm. **"Trust Indenture"** means the amended and restated trust indenture made as of January 24, 1997, as amended on October 9, 1998 and January 8, 1999 and as may be further supplemented, amended or amended and restated from time to time between the Manager, as settlor, and the Trustee;
- nn. **"Trust Units"** has the meaning assigned thereto above but shall also include, where the context reasonably requires, all of the trust units of the Trust, including the Optioned Units and the Over-Allotment Units;
- oo. **"Trustee"** means Montreal Trust Company of Canada, as Trustee of the Trust;
- pp. **"Unanimous Shareholder Agreement"** means the unanimous shareholder agreement dated January 24, 1997 among the Trust, the Manager and NCE Energy;

qq. **"Underwriters' counsel"** means Burnet, Duckworth & Palmer LLP or such other legal counsel as the Underwriters, with the consent of the Trust, may appoint;

rr. **"Underwriters' Option"** has the meaning assigned thereto above; and

"misrepresentation", "material change" and "material fact" shall have the meanings ascribed thereto under the Applicable Securities Laws of the Qualifying Provinces, "distribution" means "distribution" or "distribution to the public", as the case may be, as defined under the Applicable Securities Laws of the Qualifying Provinces and "distribute" has a corresponding meaning.

2. ***Fee***

In consideration for their services in underwriting the distribution to the public in the Qualifying Provinces and the purchasing of the Trust Units, the Trust agrees to pay the Underwriters on the Closing Date, if the Underwriters so purchase the Trust Units, a fee of \$0.21 (6.0%) per Trust Unit for each Trust Unit purchased by the Underwriters (being an aggregate amount of \$1,050,000), a fee of \$0.21 per Trust Unit for each Optioned Unit purchased pursuant to the Underwriters' Option (being an aggregate amount of up to \$210,000) and a fee of \$0.21 per Trust Unit for each Over-Allotment Unit purchased pursuant to the Over-Allotment Option (being aggregate of up to \$189,000), payable from the general funds of the Trust. For greater certainty, the services provided by the Underwriters in connection herewith will not be subject to the Goods and Services Tax provided for in the *Excise Tax Act* (Canada) and taxable supplies provided will be incidental to the exempt financial services provided. The Trust also agrees to pay the Underwriters' reasonable expenses incurred in connection with the underwriting as set forth in paragraph 10 hereof.

3. ***Qualification for Sale***

The Trust shall elect and comply in all respects with the mutual reliance review system and procedures (the "MRRS Procedures") provided for by National Policy 43-201 of the Canadian Securities Administrators relating to the Mutual Reliance Review System and shall select the Province of Alberta as the principal jurisdiction under the MRRS Procedures. Such compliance shall be made within the following time limits:

- a. the Preliminary Prospectus and related documents shall have been filed with the ASC, as principal jurisdiction no later than 5:00 p.m. (Calgary time) on August 24, 2001, and an "MRRS decision document" (as such term is defined in the MRRS Procedures) from the ASC evidencing that a receipt dated not later than August 24, 2001 for the Preliminary Prospectus in each of the Qualifying Provinces shall be obtained; and
- b. the Prospectus and related documents shall be filed no later than 5:00 p.m. (Calgary time) on September 6, 2001, and a final MRRS decision document from the ASC evidencing that a receipt dated not later than September 6, 2001 for the Prospectus in each of the Qualifying Provinces shall be obtained;

and the Trust shall have taken all other steps and proceedings as may be necessary to enable the Trust Units (and the Optioned Units and the Over-Allotment Units) to be qualified for sale to the public in all of the Qualifying Provinces by the Underwriters or any other registrant who complies with the relevant provisions of Applicable Securities Laws.

4. *Delivery of Prospectus and Related Documents*

The Trust shall deliver or cause to be delivered to the Underwriters the documents set out below at the respective times indicated:

- a. as soon as they are available and upon request of the Underwriters, copies of the Prospectus signed as required by the Applicable Securities Laws of the Qualifying Provinces, including copies of any documents incorporated by reference therein which have not previously been delivered to the Underwriters;
- b. as soon as they are available and upon request of the Underwriters, copies of any amendment to the Prospectus required to be filed under the Applicable Securities Laws of any of the Qualifying Provinces, signed as required by the Applicable Securities Laws of the Qualifying Provinces and including, in each case, copies of any documents incorporated by reference therein which have not been previously delivered to the Underwriters;
- c. prior to the filing of the Prospectus with the Securities Commissions, a "comfort letter" from the Trust's auditors and, if required by the Underwriters, acting reasonably, Forte's auditors, as applicable, dated the date of the Prospectus, addressed to the Underwriters and reasonably satisfactory in form and substance to the Underwriters, to the effect that they have carried out certain procedures performed for the purposes of comparing certain specified financial information and percentages appearing in the Prospectus and the documents incorporated therein by reference with indicated amounts in the financial statements or accounting records of the Trust or Forte, as applicable, and have found such information and percentages to be in agreement, which comfort letter shall be based on the Trust's auditors review having a cut-off date of not more than two Business Days prior to the date of the Prospectus;
- d. at the time of delivery to the Underwriters of the Prospectus, the Trust shall deliver to the Underwriters:
 - i. an opinion of local counsel in Québec, addressed to the Underwriters and the Underwriters' counsel and dated at the date of the filing of the Prospectus, in form acceptable to the Underwriters, acting reasonably, to the effect that, except for information in the Prospectus translated by the auditors of the Trust, the French language version of such document (including information incorporated by reference therein) is in all material respects a complete and proper translation of the English language versions thereof and is not susceptible to any materially different interpretation with respect to any material matter contained therein; and
 - ii. a letter from the auditors of the Trust, and Forte's auditors, as applicable, addressed to the Underwriters and the Underwriters' counsel and dated the date of the filing of the Prospectus in form acceptable to the Underwriters, acting reasonably, to the effect that the information excepted from the opinion of counsel referred to in subparagraph 4(d)(i) in the French language version of such document (including information incorporated by reference therein) is in all material respects a complete and proper translation of the information contained in the English language version thereof.

Opinions and comfort letters similar to the foregoing shall be provided to the Underwriters with respect to any amendment to the Prospectus and any other relevant document at the time the same is presented to the Underwriters for their signature or, if the Underwriters' signature is not required, at the time the same is filed. All such letters shall be in form and substance reasonably satisfactory to the Underwriters and the Underwriters' counsel.

Such delivery shall also constitute the Trust's consent to the use by the Underwriters and other members of the Selling Dealer Group of the Prospectus and any amendment to the Prospectus and the documents incorporated therein by reference in connection with the offering and sale to the public of the Trust Units (including the Optioned Units and the Over-Allotment Units).

5. ***Commercial Copies***

- a. The Trust shall, as soon as possible but in any event not later than noon (local time at the place of delivery) on the second Business Day following the date of the MRRS decision document relating to the Preliminary Prospectus have caused to be delivered to the Underwriters, without charge, commercial copies of the Preliminary Prospectus and any amendment to the Preliminary Prospectus in such numbers and in such cities as the Underwriters may reasonably request by written instructions to the printer thereof given no later than the time when the Trust authorizes the printing of the commercial copies of such documents;
- b. The Trust shall, as soon as possible but in any event not later than noon (local time at the place of delivery) on the second Business Day following the date of the MRRS decision document relating to the Prospectus cause to be delivered to the Underwriters, without charge, commercial copies of the Prospectus and any amendment to the Prospectus in such numbers and in such cities as the Underwriters may reasonably request by written instructions to the printer thereof given no later than the time when the Trust authorizes the printing of the commercial copies of such documents; and
- c. The Trust shall cause to be provided to the Underwriters such number of copies of any documents incorporated by reference in the Prospectus or any amendment to the Prospectus as the Underwriters may reasonably request.

6. ***Material Change***

- a. During the period of distribution of the Trust Units (including the Optioned Units and Over-Allotment Units), the Trust will promptly inform the Underwriters of the full particulars of:
 - i. any material change (actual, anticipated or threatened) in the business, operations, capital or condition (financial or otherwise) of the Trust, NCE Energy or its subsidiaries or their properties or assets taken as a whole;
 - ii. any change in any material fact contained or referred to in the Prospectus; and
 - iii. the occurrence of a material fact or event, which, in any such case, is, or may be, of such a nature as to:
 - A. render the Prospectus untrue, false or misleading in a material respect;
 - B. result in a misrepresentation in the Prospectus; or
 - C. result in the Prospectus not complying with Applicable Securities Laws,

provided that if the Trust is uncertain as to whether a material change, change, occurrence or event of the nature referred to in this paragraph has occurred, the Trust shall promptly inform the Underwriters of the full particulars of the occurrence giving rise to the uncertainty and shall consult with the Underwriters as to whether the occurrence is of such nature;

- b. During the period of distribution of the Trust Units (including the Optioned Units and the Over-Allotment Units), the Trust will promptly inform the Underwriters of the full particulars of:
- i. any request of any Securities Commission for any amendment to the Prospectus or any other part of the Public Record or for any additional information;
 - ii. the issuance by any Securities Commission or similar regulatory authority, the Exchange or by any other competent authority of any order to cease or suspend trading of any securities of the Trust or of the institution or threat of institution of any proceedings for that purpose; and
 - iii. the receipt by the Trust of any communication from any Securities Commission or similar regulatory authority, the Exchange or any other competent authority relating to the Preliminary Prospectus, the Prospectus, any other part of the Public Record or the distribution of the Trust Units;
- c. The Trust will promptly comply to the reasonable satisfaction of the Underwriters and the Underwriters' counsel with Applicable Securities Laws of the Qualifying Provinces with respect to any material change, change, occurrence or event of the nature referred to in paragraphs 6(a) and (b) above and the Trust will prepare and file promptly at the Underwriters' request any amendment to the Prospectus which in the Underwriters' opinion, acting reasonably, may be necessary or advisable to comply with Applicable Securities Laws; and
- d. During the period of distribution of the Trust Units (including the Optioned Units and the Over-Allotment Units), the Trust will promptly provide to the Underwriters, for review by the Underwriters and the Underwriters' counsel, prior to filing or issuance:
- i. any financial statement of the Trust;
 - ii. any proposed document, including without limitation any amendment to the AIF, new annual information form, material change report, interim report or information circular, which may be incorporated, or deemed to be incorporated, by reference in the Prospectus; and
 - iii. any press release of the Trust.

7. ***Representations and Warranties***

a. **Representations and Warranties as to Prospectus**

Each delivery of the Prospectus pursuant to paragraph 4 shall constitute a representation and warranty by each of the Trust, NCE Energy and the Manager to the Underwriters that as at the date of delivery:

- i. all information and statements (except information and statements relating solely to and furnished by the Underwriters) contained in the Prospectus, including the documents incorporated by reference, are true and correct and contain no misrepresentation and constitute full, true and plain disclosure of all material facts relating to the Trust and the Trust Units;
- ii. no material fact or information has been omitted from such disclosure (except facts or information relating solely to and furnished by the Underwriters) which is required to be

stated in such disclosure or is necessary to make the statements or information contained in such disclosure not misleading in light of the circumstances under which they were made; and

- iii. the Prospectus, including the documents incorporated by reference, as the case may be, comply fully with the Applicable Securities Laws of the Qualifying Provinces, including without limitation NI 44-101 and the simplified prospectus rules of the *Securities Act* (Québec) and except to the extent of exemptions obtained from various Applicable Securities Laws in Québec.

Such deliveries shall also constitute the consent of the Trust to the Underwriters' use of the Prospectus, including the documents incorporated by reference, in connection with the distribution of the Trust Units in the Qualifying Jurisdictions in compliance with the provisions of this Agreement and Applicable Securities Laws of the Qualifying Provinces, including without limitation NI 44-101 and the simplified prospectus rules of the *Securities Act* (Québec).

b. Additional Representations and Warranties

In addition to the representations and warranties contained in clause (a) hereof, each of the Trust, NCE Energy and the Manager represents and warrants to the Underwriters that:

- i. the Trust has been duly and legally formed and is existing as a trust under the laws of the Province of Ontario;
- ii. NCE Energy is a corporation duly amalgamated and existing under the laws of the Province of Alberta and has all necessary corporate power and authority to own, lease and operate its properties and assets and to carry on its business as it is currently conducted and proposed to be conducted;
- iii. the Manager is a corporation duly incorporated and existing under the laws of the Province of Ontario and has all necessary corporate power and authority to own, lease and operate its properties and assets and to carry on its business as it is currently conducted and proposed to be conducted;
- iv. the Prospectus has been duly authorized and executed by or on behalf of the Trust and all necessary action has been taken to authorize the filing thereof pursuant to Applicable Securities Laws;
- v. each of NCE Energy and the Manager (on its own behalf and on behalf of the Trust) has the necessary corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to carry out the transactions contemplated by this Agreement and the Prospectus. This Agreement has been duly authorized, executed and delivered by NCE Energy and the Manager (on its own behalf and on behalf of the Trust) and constitutes legal, valid and binding obligations of the Trust, NCE Energy and the Manager enforceable in accordance with its terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and except as limited by the application of equitable principles when equitable remedies are sought, and except as to the enforceability of the indemnity provisions of paragraph 8 and the contribution provisions of paragraph 9;
- vi. the execution and delivery of this Agreement, the performance by the Trust, NCE Energy and the Manager of their obligations hereunder, the sale and delivery by the Trust at the

Closing Time of the Trust Units (including the Optioned Units) and the sale and delivery by the Trust at the Over-Allotment Closing Time of the Over-Allotment Units does not and will not result in a breach of, and does not and will not create a state of facts which, after notice or lapse of time or both, will result in a breach of, and does not and will not conflict with: (A) any statute, rule or regulation applicable to the Trust, NCE Energy or the Manager; (B) any terms, conditions or provisions of the articles, by-laws, constating documents or resolutions of the directors (or any committee thereof) or the shareholders of NCE Energy or the Manager or the unitholders of the Trust which are in effect at the date hereof; (C) any terms, conditions or provisions of any indenture, agreement or instrument to which any of the Trust, NCE Energy or the Manager is a party or by which it is contractually bound as at the date hereof or the Closing Date or the Over-Allotment Closing Date; or (D) any judgment, decree or order of any court, governmental agency or body or regulatory authority having jurisdiction over or binding the Trust, NCE Energy or the Manager or their properties or assets, and will not result in the creation or imposition of any lien, charge or encumbrance upon any properties or assets of the Trust, NCE Energy or the Manager pursuant to any mortgage, note, indenture, contract, agreement, instrument, lease or other document to which the Trust, NCE Energy or the Manager is a party or by which it is bound or to which any of the property or assets of the Trust, NCE Energy or the Manager is subject;

- vii. the Trust has all necessary trust power and authority to issue the Trust Units (including the Optioned Units and the Over-Allotment Units) and, at the Closing Date and the Over-Allotment Closing Date, the Trust Units (including the Optioned Units and Over-Allotment Units) will be duly and validly authorized, allotted and reserved for issuance and, upon receipt of the purchase price therefor, will be issued as fully paid and non-assessable Trust Units of the Trust;
- viii. the Manager has the authority to enter into this Agreement on behalf of the Trust and to execute and deliver, on behalf of the Trust, all other necessary documents in connection with the offering of the Trust Units (including the Optioned Units and the Over-Allotment Units);
- ix. each of the Trust, NCE Energy and the Manager, on its own behalf and on behalf of the Trust, has conducted and is conducting its business in compliance in all material respects with all applicable laws, rules and regulations of each jurisdiction in which its business is carried on and, prior to the Closing Date and the Over-Allotment Closing Date, will be duly licensed, registered or qualified in all jurisdictions in which it owns, leases or operates its property or carries on business to enable its business to be carried on as it is now conducted and its property and assets to be owned, leased or operated, and all such licences, registrations or qualifications are valid and existing and in good standing, except where the failure to maintain such licences, registrations or qualifications in good standing would not have a material adverse effect on the Trust, NCE Energy or the Manager;
- x. the Trust is authorized to issue an unlimited number of Trust Units, of which, as at July 31, 2001, 26,431,607 Trust Units are issued and outstanding as fully paid and non-assessable; as at July 31, 2001, 658,670 exchangeable shares of NCE Energy are issued and outstanding as fully paid and non-assessable. No Trust Units have been issued since July 31, 2001 other than pursuant to: (a) the exercise of any of the 658,670 exchangeable shares outstanding as at July 31, 2001; (b) the Trust's unit incentive plans; (c) the Trust's distribution reinvestment plan; or (d) the conversion of the 10% convertible unsecured subordinated redeemable promissory notes of the Trust (which

notes are described in Note 5 to the June 30, 2001 financial statements of the Trust). In addition, no exchangeable shares have been issued since July 31, 2001;

- xi. no person has any agreement, option, right or privilege with or against the Trust, NCE Energy or the Manager for the purchase, subscription or issuance of Trust Units or shares, issued or unissued, in the capital of the Trust, NCE Energy or the Manager except for options and rights to acquire 1,751,548 Trust Units pursuant to the Trust's unit incentive plans, trust units issuable pursuant to the Trust's distribution reinvestment plan and rights plan, and trust units issuable pursuant to the rights attaching to the exchangeable shares of NCE Energy and pursuant to the 10% convertible unsecured subordinated redeemable promissory notes of the Trust;
- xii. the Financial Statements fairly present, in accordance with generally accepted accounting principles in Canada, consistently applied, the financial position and condition of the Trust, NCE Energy and its subsidiaries (taken as a whole) as at the dates thereof and results of the operations of the Trust, NCE Energy and its subsidiaries for the periods then ended and reflect all material liabilities or obligations (absolute, accrued, contingent or otherwise) of the Trust, NCE Energy and its subsidiaries as at the dates thereof required to be disclosed by generally accepted accounting principles in Canada;
- xiii. the Forte Financial Statements fairly present, in all material respects, in accordance with generally accepted accounting principles in Canada, consistently applied, the financial position and condition of Forte as at the dates thereof and results of the operations of Forte for the periods then ended and reflect all material liabilities or obligations (absolute, accrued, contingent or otherwise) of Forte as at the dates thereof required to be disclosed by generally accepted accounting principles in Canada;
- xiv. to the best of the knowledge, information and belief of NCE Energy and the Manager (on behalf of itself and the Trust), except as disclosed in the Financial Statements and the Forte Financial Statements, there are no actions, suits, proceedings, inquiries or investigations pending or threatened against or affecting the Trust, NCE Energy or the Manager at law or in equity or before or by any federal, provincial, municipal or other governmental department, commission, board, agency or instrumentality, domestic or foreign, which may in any way materially affect the business, properties or assets of either of them, the performance of their obligations hereunder or the sale and delivery by the Trust of the Trust Units (including the Optioned Units and the Over-Allotment Units, as applicable) at the Closing Time or the Over-Allotment Closing Time;
- xv. except as disclosed in the Prospectus, neither the Trust nor NCE Energy or its subsidiaries has incurred, assumed or suffered any liability or any tax liability (absolute, accrued, contingent or otherwise) or entered into any transaction which is or may be material to the Trust, NCE Energy and its subsidiaries, if any (taken as a whole) and is not in the ordinary course of business;
- xvi. each of the Trust Indenture, Management Agreement, Royalty Agreement and Unanimous Shareholder Agreement is properly described in the Prospectus, including the documents incorporated by reference, as to parties, dates and as to amendments thereto, each of such agreements is a legal, valid and binding obligation of the respective parties thereto enforceable against such parties in accordance with its terms subject to the general qualifications that:

- A. enforceability may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally; and
- B. equitable remedies, including the remedies of specific performance and injunctive relief, are available only in the discretion of the applicable court;

and each of the Trust, NCE Energy and the Manager, as applicable, are in compliance in all material respects with the terms of such agreements;

- xvii. no consent, approval, authorization, order, registration or qualification of or with any court or governmental agency or body is required for the sale and delivery of the Trust Units (including the Optioned Units and the Over-Allotment Units) or the consummation by the Trust, NCE Energy or the Manager of their obligations under this Agreement, except those which shall have been obtained prior to the Closing Time;
- xviii. each of the Trust, NCE Energy and the Manager is, or prior to the Closing Date will be, current and up-to-date with all filings required to be made under the laws of Canada and the provinces and territories thereof, including without limitation any extra-provincial filings required to register NCE Energy or the Manager as an extra-provincial corporation, except where the failure to make such filings would not have a material adverse effect on the Trust, NCE Energy or the Manager;
- xix. the information and statements set forth in the Public Record were true, correct, and complete and did not contain any misrepresentation, as of the date of such information or statement, and the Trust has not filed any confidential material change reports which are still maintained on a confidential basis;
- xx. the Trust has no interest in any other corporation or unincorporated entity other than NCE Energy, and NCE Energy has no Material Subsidiaries;
- xxi. the Trust will apply the net proceeds from the issue and sale of the Trust Units to be issued and sold by it hereunder substantially in accordance with the description set forth in the Prospectus;
- xxii. the issued and outstanding Trust Units of the Trust are listed and posted for trading on the Exchange;
- xxiii. the Trust is a "reporting issuer" (or has equivalent status) under the Applicable Securities Laws in the Qualifying Provinces;
- xxiv. the Trust is qualified to use NI 44-101 in the Qualifying Provinces and the simplified prospectus rules of the *Securities Act* (Québec) and is not in default thereunder;
- xxv. no Securities Commission nor the Exchange nor any similar regulatory authority has issued any order which is currently outstanding preventing or suspending trading in any securities of the Trust and the Trust is not in default of any material requirement of Applicable Securities Laws;
- xxvi. Computershare Trust Company of Canada, at its principal offices in the city of Toronto, has been duly appointed as the registrar and transfer agent for the Trust Units;

- xxvii. the Trust will, at the Closing Time and at the Over-Allotment Closing Time, qualify as a "mutual fund trust" (as defined by the *Income Tax Act* (Canada)) and the Trust has conducted and will at all times conduct its affairs so as to continue to enable the Trust to continue to qualify as a mutual fund trust under the *Income Tax Act* (Canada) and, in particular, the Trust will not carry on any business and will restrict its activities such that its only undertaking will be the investing of its funds in property other than real property and in which a mutual fund trust is permitted by the *Income Tax Act* (Canada) to invest. In addition, and further to the foregoing representation, the Trust hereby covenants that it will use it commercially reasonable best efforts to:
- A. monitor all other aspects of the Trust's affairs relevant to its continuing qualification as a mutual fund trust for purposes of the *Income Tax Act* (Canada), and will promptly notify the Underwriters upon its becoming aware of any circumstance that may cause the Trust to fail to continue to so qualify;
 - B. monitor the level of ownership of Trust Units held by persons who are not resident in Canada and will promptly notify each of the Underwriters upon its becoming aware that:
 - (I) more than 40% of the issued and outstanding Trust Units are held by or for the benefit of persons who are not resident in Canada or circumstances exist that may reasonably be anticipated to result in such holding; or
 - (II) a governmental body has proposed to change the *Income Tax Act* (Canada) or any other applicable legislation in a manner which reasonably could be expected to have a material adverse effect on the tax consequences to holders of Trust Units who are resident in Canada for purposes of the *Income Tax Act* (Canada), including without limiting the foregoing, any change or proposed change whereby the Trust Units may cease to be eligible investment for any of the various deferred income plans provided for by the *Income Tax Act* (Canada);
- xxviii. the Trust is not in default in any material respect of any requirement of Applicable Securities Laws;
- xxix. no order, ruling or determination having the effect of suspending the sale of, or ceasing the trading of, the Trust Units or any other securities of the Trust has been issued by any regulatory authority and is continuing in effect and no proceedings for that purpose have been instituted, are pending or, to the knowledge of such officers, are contemplated or threatened under any Applicable Securities Laws or by any other regulatory authority;
- xxx. although it does not warrant NCE Energy's title, NCE Energy does not have any reason to believe that it does not have title to its petroleum, natural gas and related hydrocarbons, which may in any way materially affect the business, properties or assets of NCE Energy;
- xxxi. neither NCE Energy nor the Manager has any knowledge of any material adverse change to NCE Energy's oil, natural gas liquids, natural gas or sulphur reserves reported on since the effective date of the Outtrim NCE Report and neither NCE Energy nor the Manager has any reason to believe that the Prospectus or the Outtrim NCE Report does not fairly present the determination of the oil, natural gas liquids, natural gas and sulphur reserves

of NCE Energy attributable to the properties evaluated in the Outtrim NCE Report and the production profile and costs associated therewith, as of the date thereof;

- xxxii. neither NCE Energy nor the Manager has any knowledge of any material adverse change to Forte's oil, natural gas liquids, natural gas or sulphur reserves reported on since the effective date of the McDaniel Report and neither NCE Energy nor the Manager has any reason to believe that the Prospectus or the McDaniel Report does not fairly present the determination of the oil, natural gas liquids, natural gas and sulphur reserves of Forte attributable to the properties evaluated in the McDaniel Report and the production profile and costs associated therewith, as of the date thereof,
- xxxiii. neither NCE Energy nor the Manager is aware of any defects, failures or impairments in the title of NCE Energy to its oil and natural gas property (including the oil and natural gas properties formerly held by Apache Canada Ltd. and Forte), whether or not an action, suit, proceeding or inquiry is pending or threatened or whether or not discovered by any third party which, in aggregate could have a material adverse effect on:
 - A. the quantity and pre-tax present value of estimated future net revenue values of oil and natural gas reserves of NCE Energy as shown in the Prospectus or the Outtrim Apache Report or the McDaniel Report;
 - B. the current production of NCE Energy; or
 - C. the current cash flow of NCE Energy; and
- xxxiv. neither NCE Energy nor the Manager has any knowledge of any material adverse change to the oil, natural gas liquids, natural gas or sulphur reserves acquired from Apache Canada Ltd. and reported on since the effective date of the Outtrim Apache Report and neither NCE Energy nor the Manager has any reason to believe that the Prospectus or the Outtrim Apache Report does not fairly present the determination of the oil, natural gas liquids, natural gas and sulphur reserves acquired from Apache Canada Ltd. attributable to the properties evaluated in the Outtrim Apache Report and the production profile and costs associated therewith, as of the date thereof.

8. ***Indemnity***

- a. The Trust, NCE Energy and the Manager shall indemnify and save the Underwriters, and the Underwriters' agents, directors, officers, shareholders and employees, harmless against and from all liabilities, claims, demands, losses (other than losses of profit in connection with the distribution of the Trust Units or remuneration or other costs of personnel), reasonable costs, damages and expenses to which the Underwriters, or any of the Underwriters' agents, directors, officers, shareholders or employees may be subject or which the Underwriters, or any of the Underwriters' agents, directors, officers, shareholders or employees may suffer or incur, whether under the provisions of any statute or otherwise, in any way caused by, or arising directly or indirectly from or in consequence of:
 - i. any information or statement contained in the Preliminary Prospectus or Prospectus or in any other document or material filed or delivered pursuant hereto (other than any information or statement relating solely to the Underwriters and furnished to the Trust by the Underwriters or the Underwriters' counsel expressly for inclusion in the Preliminary Prospectus or Prospectus) which is or is alleged to be untrue or any omission or alleged omission to provide any information or state any fact the omission of which makes or is

alleged to make any such information or statement untrue or misleading in light of the circumstances in which it was made;

- ii. any misrepresentation or alleged misrepresentation (except a misrepresentation which is based upon information relating solely to the Underwriters and furnished to the Trust by the Underwriters or the Underwriters' counsel expressly for inclusion in the Preliminary Prospectus or Prospectus) contained in the Preliminary Prospectus or Prospectus;
- iii. any prohibition or restriction of trading in the securities of the Trust or any prohibition or restriction affecting the distribution of the Trust Units (including the Optioned Units and the Over-Allotment Units) imposed by any competent authority if such prohibition or restriction is based on any misrepresentation or alleged misrepresentation of a kind referred to in subparagraph 8(a)(ii);
- iv. any order made or any inquiry, investigation (whether formal or informal) or other proceeding commenced or threatened by any one or more competent authorities (not based upon the activities or the alleged activities of the Underwriters or their banking or Selling Dealer Group members, if any) relating to or materially affecting the trading or distribution of the Trust Units (including the Optioned Units and the Over-Allotment Units) during the period of distribution;
- v. any breach of, default under or non-compliance by the Trust, NCE Energy or the Manager with any representation, warranty, term or condition of this agreement; or
- vi. the Trust not complying with any requirement of Applicable Securities Laws in connection with the transaction contemplated herein,

provided that none of the Trust, NCE Energy and the Manager shall be liable in any such case to the extent that any such liabilities, claims, demands, losses, costs, damages and expenses arise directly or indirectly by reason of the breach by any such Underwriter of any of its covenants herein provided for or of Applicable Securities Laws or other laws in connection with the transaction contemplated herein. The Underwriters shall be entitled, as trustee, to enforce the obligations contained herein on behalf of any other party entitled to indemnity or contribution hereunder;

- b. If any claim contemplated by paragraph 8(a) shall be asserted against any of the persons or corporations in respect of which indemnification is or might reasonably be considered to be provided for in such paragraph, such person or corporation (the "Indemnified Person") shall notify the Trust as soon as possible of the nature of such claim and the Trust shall be entitled (but not required) to assume the defence of any suit brought to enforce such claim, provided however, that the defence shall be through legal counsel selected by the Trust and acceptable to the Indemnified Person acting reasonably and that no settlement may be made by the Trust or the Indemnified Person without the prior written consent of the other, such consent not to be unreasonably withheld. The Indemnified Person shall have the right to retain its own counsel in any proceeding relating to a claim contemplated by paragraph 8(a) if:
 - i. the Indemnified Person has been advised by counsel that there may be a reasonable legal defence available to the Indemnified Person which is different from or additional to a defence available to the Trust (in which case the Trust shall not have the right to assume the defence of such proceedings on the Indemnified Person's behalf);

- ii. the Trust shall not have taken the defence of such proceedings and employed counsel within ten (10) days after notice of commencement of such proceedings; or
- iii. the employment of such counsel has been authorized by the Trust in connection with the defence of such proceeding;

and, in any such event, the reasonable fees and expenses of such Indemnified Person's counsel (on a solicitor and his client basis) shall be paid by the Trust, provided that the Trust shall not, in connection with any one such action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, be liable for the fees and expenses of more than one separate law firm (in addition to any local counsel) for all such Indemnified Persons.

- c. The rights of indemnity contained in this paragraph 8 shall not apply if the Trust has complied with the provisions of paragraphs 3 and 4 and the person asserting any claim contemplated by this paragraph 8 was not provided with a copy of the Prospectus or any amendment to the Prospectus or other document which corrects any misrepresentation or alleged misrepresentation which is the basis of such claim and which was required, under Applicable Securities Laws, to be delivered to such person by the Underwriters.

9. ***Contribution***

In order to provide for just and equitable contribution in circumstances in which the indemnification provided for in this agreement is due in accordance with its terms but is, for any reason, held by a court to be unavailable from the Trust, NCE Energy or the Manager on ground of policy or otherwise, each of the Trust, NCE Energy and the Manager and the party or parties seeking indemnification shall contribute to the aggregate liabilities, claims, demands, losses (other than losses of profit in connection with the distribution of the Trust Units), costs, damages and expenses (including legal or other expenses reasonably incurred in connection with investigation or defence of the same) to which they may be subject or which they may suffer or incur:

- a. in such proportion as is appropriate to reflect the relative benefit received by the Trust, NCE Energy and the Manager on the one hand, and by the party or parties seeking indemnity on the other hand, from the offering of the Trust Units; or
- b. if the allocation provided by paragraph 9(a) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in paragraph 9(a) above but also to reflect the relative fault of the party or parties seeking indemnity, on the one hand, and the parties from whom indemnity is sought, on the other hand, in connection with the statements, commissions or omissions or other matters which resulted in such liabilities, claims, demands, losses, costs, damages or expenses as well as any other relevant equitable considerations.

The relative benefits received by the Trust, NCE Energy and the Manager on the one hand, and the Underwriters, on the other hand, shall be deemed to be in the same proportion that the total proceeds of the offering received by the Trust (net of fees but before deducting expenses) bear to the fees received by the Underwriters. In the case of liability arising out of the Prospectus, the relative fault of the Trust, NCE Energy and the Manager on the one hand, and of the Underwriters, on the other hand, shall be determined by reference, among other things, to whether the misrepresentation or alleged misrepresentation, order, inquiry, investigation or other matter or thing referred to in paragraph 8 relates to information supplied or which ought to have been supplied by, or steps or actions taken or done on behalf of or which ought to have been taken or done on behalf of, the Trust, NCE Energy or the Manager

or the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such misrepresentation or alleged misrepresentation, order, inquiry, investigation or other matter or thing referred to in paragraph 8.

The Trust, NCE Energy and the Manager agree that it would not be just and equitable if contributions pursuant to this agreement were determined by pro rata allocation or by any other method of allocation which does not take into account the equitable considerations referred to in the immediately preceding paragraphs. The rights to contribution provided in this paragraph 9 shall be in addition to, and without prejudice to, any other right to contribution which the Underwriters may have.

Any liability of the Underwriters under this paragraph 9 shall be limited to the amount payable to the Underwriters under paragraph 2.

10. *Expenses*

- a. Whether or not the transactions contemplated herein shall be completed, all costs and expenses of or incidental to the distribution of the Trust Units (including the Optioned Units and the Over-Allotment Units) shall be borne by the Trust, including, without limitation, all costs and expenses of or incidental to the preparation, filing and reproduction of the Prospectus, the fees and expenses of the Trust's counsel, listing fees, the fees and expenses of agent counsel retained by the Trust's counsel, the fees and expenses of the Trust's auditors and the Trust's engineers, translation costs, the fees and expenses related to any newspaper advertisements and all other costs and expenses relating to this transaction other than those set forth in paragraph 10(b) hereof to be paid by the Underwriters; and
- b. The Underwriters shall be reimbursed by the Trust for all reasonable fees, disbursements and expenses relating to this transaction (including, without limitation, the reasonable fees and disbursements of counsel to the Underwriters), provided, however, that if the purchase and sale of the Trust Units is not completed in accordance with the terms hereof by reason of a breach by or default of the Underwriters, the Underwriters shall be responsible for all such fees, disbursements and expenses.

11. *Termination*

- a. The Underwriters, or any of them, may terminate their obligations hereunder, by written notice to the Trust, in the event that after the date hereof and at or prior to the Closing Time:
 - i. any order to cease or suspend trading in any securities of the Trust (other than rights issued pursuant to the Trust's unitholders rights plan agreement), or prohibiting or restricting the distribution of the Trust Units (including the Optioned Units and the Over-Allotment Units), is made, or proceedings are announced, commenced or threatened for the making of any such order, by any securities commission or similar regulatory authority, the Exchange or by any other competent authority, and has not been rescinded, revoked or withdrawn;
 - ii. any inquiry, investigation (whether formal or informal) or other proceeding in relation to the Trust or in relation to NCE Energy or the Manager or any of their directors or senior officers is announced, commenced or threatened by any securities commission or similar regulatory authority, the Exchange or by any other competent authority or there is a change in law, regulation or policy or the interpretation or administration thereof, if, in the reasonable opinion of the Underwriters, the change, announcement, commencement

- or threatening thereof materially adversely affects the trading or distribution of the Trust Units (including the Optioned Units and the Over-Allotment Units);
- iii. there shall have occurred any adverse material change, as determined by the Underwriters in their sole discretion, acting reasonably, in the senior management of NCE Energy or the Manager, business, operations, capital or condition (financial or otherwise) of the Trust or NCE Energy or its properties, assets, liabilities or obligations (absolute, accrued, contingent or otherwise);
 - iv. there should develop, occur or come into effect or existence any event, action, state, condition or major financial occurrence of national or international consequence, any law or regulation, or any other occurrence of any nature whatsoever, which, in the sole opinion of the Underwriters, acting reasonably, seriously adversely affects, or involves, or will seriously adversely affect, or involve, the financial markets or the business, operations or affairs of the Trust, NCE Energy and its subsidiaries taken as a whole;
 - v. the Underwriters shall become aware of any adverse material change with respect to the Trust, NCE Energy or its subsidiaries which had not been publicly disclosed or disclosed in writing to the Underwriters at or prior to the date hereof, or in the event that notice shall have been given pursuant to section 7.(b)xxvii(B). hereof; or
 - vi. the Trust, NCE Energy or the Manager shall be in breach or default under or non-compliance with any representation, warranty, term or condition of this agreement, in any material respect.
- b. The Underwriters, or any of them, may exercise any or all of the rights provided for in paragraph 11(a) or paragraphs 12 or 18 notwithstanding any material change, change, event or state of facts and notwithstanding any act or thing taken or done by the Underwriters or any inaction by the Underwriters, whether before or after the occurrence of any material change, change, event or state of facts including, without limitation, any act of the Underwriters related to the offering or continued offering of the Trust Units (including the Optioned Units and the Over-Allotment Units) for sale and any act taken by the Underwriters in connection with any amendment to the Prospectus (including the execution of any amendment) and the Underwriters shall only be considered to have waived or be estopped from exercising or relying upon any of their rights under or pursuant to paragraph 11(a) or paragraphs 12 or 18 if such waiver or estoppel is in writing and specifically waives or estops such exercise or reliance; and
- c. Any termination pursuant to the terms of this agreement shall be effected by notice in writing delivered to the Trust, provided that no termination shall discharge or otherwise affect any obligation of the Trust under paragraphs 8, 9, 10 or 18. The rights of the Underwriters to terminate their obligations hereunder are in addition to, and without prejudice to, any other remedies they may have.

12. ***Closing Documents***

The obligations of the Underwriters hereunder shall be conditional upon the Underwriters receiving on the Closing Date:

- a. Legal opinions of the Trust's counsel and the Underwriters' counsel addressed to the Underwriters, in form and substance reasonably satisfactory to the Underwriters, with respect to such matters as the Underwriters may reasonably request relating to the offering of the Trust Units, including, without limitation:

- i. as to the due creation or incorporation, as the case may be, and valid existence of each of the Trust, NCE Energy and the Manager under the laws of the provinces of Ontario or Alberta, as the case may be;
- ii. as to the power and capacity of each of the Trust, NCE Energy and the Manager to own its property and carry on its business as it is currently conducted and to carry out the transactions contemplated by the Prospectus;
- iii. that all necessary action has been taken by or on behalf of the Trust to authorize the execution and delivery of each of the Preliminary Prospectus and the Prospectus and, if applicable, any Prospectus Amendments and the filing of such documents under Applicable Securities Laws in each of the Qualifying Provinces;
- iv. that the Manager has the authority to enter into this Agreement on behalf of the Trust and to execute and deliver all other necessary documents in connection with the offering of the Trust Units (including the Optioned Units and the Over-Allotment Units);
- v. as to the authorized and issued capital of the Trust;
- vi. that the attributes of the Trust Units are consistent in all material respects with the description thereof in the Prospectus;
- vii. that the form of certificates for the Trust Units has been duly approved and adopted by the Trust and complies with all legal requirements relating thereto;
- viii. that Computershare Trust Company of Canada at its principal offices in the city of Toronto has been duly appointed as the registrar and transfer agent for the Trust Units;
- ix. each of NCE Energy and the Manager (on its own behalf and on behalf of the Trust) has the necessary corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to carry out the transactions contemplated hereby and by the Prospectus, and this Agreement has been duly authorized, executed and delivered by NCE Energy and the Manager (on its own behalf and on behalf of the Trust) and constitutes a legal, valid and binding obligation of the Trust, NCE Energy and the Manager enforceable against them in accordance with its terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and except as limited by the application of equitable principles when equitable remedies are sought, and except as to the enforceability of the indemnity provisions of paragraph 8 hereof and the contribution provisions of paragraph 9 hereof;
- x. the execution and delivery of this Agreement, the performance by the Trust, NCE Energy and the Manager of their obligations hereunder and the sale and delivery by the Trust at the Closing Time or the Over-Allotment Closing Time of the Trust Units do not and will not create a state of facts which, after notice or lapse of time or both, will result in a breach of or constitute a default under: (A) any federal or Ontario statute, rule or regulation applicable to the Trust, NCE Energy or the Manager; (B) any terms, conditions or provisions of the articles or by-laws of NCE Energy or the Manager which are in effect at the date hereof; or (C) any terms, conditions or provisions of the Trust Indenture, the Royalty Agreement, the Management Agreement and the Unanimous Shareholder Agreement;

- xi. the Trust Units (including the Optioned Units and the Over-Allotment Units) when issued in accordance with the terms of this agreement, will be validly issued as fully paid and non-assessable trust units of the Trust;
- xii. the Trust Units (including the Optioned Units and the Over-Allotment Units), when issued, will be eligible investments under the statutes set out or to be set out under the heading "Eligibility for Investment" in the Prospectus;
- xiii. all Applicable Securities Laws in connection with the creation, offering, issuance and sale of the Trust Units have been complied with, assuming distribution by registrants who comply with the relevant provisions of Applicable Securities Laws and all necessary documents have been filed, all necessary proceedings have been taken and all legal requirements have been fulfilled as required under the Applicable Securities Laws of each of the Qualifying Provinces in order to qualify the Trust Units for distribution and sale to the public in each of such Qualifying Provinces by or through investment dealers and brokers duly registered under the applicable laws of such provinces who have complied with the relevant provisions of such Applicable Securities Laws;
- xiv. all laws of the Province of Québec relating to the use of the French language (other than those relating to oral communications) will have been complied with in connection with the sale of the Trust Units to purchasers in the Province of Québec if such purchasers receive copies of the Prospectus and of all documents which constitute the contract of sale, including forms of order and confirmation, invoices and receipts, in the French and English language or the French language only, provided that the Prospectus in the English language and all documents which constitute the contract of sale, including forms of order and confirmation, invoices and receipts in the English language may be delivered, without delivery of the French language version thereof, to physical persons in the Province of Québec who have expressly requested in writing such documents in the English language;
- xv. subject to the qualifications set out therein, the statements in the Prospectus under the heading "Canadian Federal Income Tax Considerations" constitute a fair summary of the principal Canadian federal income tax consequences arising under the *Income Tax Act* (Canada) to persons resident in Canada who hold Trust Units as capital property and who deal at arm's length with the Trust, the Manager and NCE Energy;
- xvi. the issuance of the Trust Units (including the Optioned Units and the Over-Allotment Units) has been approved by the Exchange and the Trust Units have been accepted for listing upon the Exchange subject to any applicable filing requirements;

and as to all other legal matters, including compliance with Applicable Securities Laws of the Qualifying Provinces, in any way connected with the issuance, sale and delivery of the Trust Units as the Underwriters may reasonably request.

It is understood that the respective counsel may rely on the opinions of local counsel acceptable to them as to matters governed by the laws of jurisdictions other than Ontario or Alberta, as applicable, and on certificates of officers of the Manager and NCE Energy, the transfer agent and the auditors of the Trust as to relevant matters of fact. It is further understood that the Underwriters' counsel may rely on the opinion of the Trust's counsel as to matters which specifically relate to the Trust and the Trust Units, including the issuance of the Trust Units and as to matters which specifically relate to matters governed by the laws of Ontario. It is further understood that the opinion of the Trust's counsel shall not cover matters governed by the laws of

Alberta and that the opinion of the Underwriters' counsel shall cover all matters governed by the laws of Alberta;

- b. a certificate dated the Closing Date, addressed to the Underwriters and signed by appropriate signing officers on behalf of NCE Energy and the Manager (on behalf of itself and the Trust), certifying that:
 - i. each of the Trust, NCE Energy and the Manager has complied with and satisfied all terms and conditions of this agreement on its part to be complied with or satisfied at or prior to the Closing Time;
 - ii. except for changes contemplated by this Agreement, the representations and warranties of the Trust, NCE Energy and the Manager set forth in this agreement are true and correct in all material respects at the Closing Time, as if made at such time; and
 - iii. no event of a nature referred to in paragraphs 6(a), 6(b), 11(a)(i), 11(a)(ii), 11(a)(iii) or 11(a)(vi) has occurred or to the knowledge of such officer is pending, contemplated or threatened;
- c. a comfort letter of the auditors of the Trust and, if required by the Underwriters, acting reasonably, the auditors of Forte, as applicable, addressed to the Underwriters and dated the Closing Date, in a format satisfactory to the Underwriters, acting reasonably, bringing the information contained in the comfort letter or letters referred to in paragraph 4(c) hereof up to the Closing Time, which comfort letter shall be based on a review having a cut off date not more than two Business Days prior to the Closing Date; and
- d. evidence satisfactory to the Underwriters that the Trust has obtained all necessary approvals of the Exchange for:
 - i. the issuance of the Trust Units (including the Optioned Units and the Over-Allotment Units); and
 - ii. the listing of the Trust Units (including the Optioned Units and the Over-Allotment Units);

subject only to the filing of documents which may be required by the Exchange.

13. ***Deliveries***

The sale of the Trust Units (including the Optioned Units), if any, shall be completed at the Closing Time at the offices of the Trust's Counsel in Toronto, Ontario or at such other place as the Trust and the Underwriters may agree. Subject to the conditions set forth in paragraph 12, the Underwriters, on the Closing Date, shall deliver to the Trust a certified cheque or bank draft payable to the Trust at par in Calgary in immediately available funds, in the amount of \$17,500,000, plus \$3.50 per Optioned Unit purchased pursuant to the exercise of the Underwriters' Option, against delivery by the Trust of:

- a. the opinions, certificates and documents referred to in paragraph 12;
- b. definitive certificates representing, in the aggregate, all of the Trust Units and Optioned Units, if any, registered in the name of National Bank Financial Inc. or in such name or names as the Underwriters shall notify the Trust in writing not less than twenty-four (24) hours prior to the Closing Time; and

- c. a certified cheque or bank draft payable to National Bank Financial Inc. representing the fee provided for in paragraph 2.

14. ***Closing of Over-Allotment Option***

If the Underwriters exercise the Over-Allotment Option, the completion of the purchase and sale of the Over-Allotment Units shall take place on the Over-Allotment Closing Date at the Over-Allotment Closing Time. If the Over-Allotment Closing Date is the same as the Closing Date, the completion of the purchase of the Trust Units (including the Optioned Units and the Over-Allotment Units) shall occur concurrently and reference to the Optioned Units in paragraph 13 shall, unless the context otherwise requires, refer to the Optioned Units and the Over-Allotment Units. If the Over-Allotment Closing Date is later than the Closing Date, paragraph 13 shall apply to the purchase of the Over-Allotment Units *mutatis mutandis*.

15. ***Due Diligence***

Prior to the filing of the Prospectus, the Trust shall allow the Underwriters to participate fully in the preparation of the Prospectus and allow the Underwriters to conduct all due diligence which the Underwriters may reasonably require in order to fulfil the Underwriters' obligations as underwriters and to enable the Underwriters to responsibly execute the certificate in the Prospectus required to be executed by the Underwriters.

16. ***Restrictions on Offerings***

Provided that the sale of the Trust Units is completed in accordance with this agreement, the Trust agrees that, prior to 90 days after the Closing Date, it shall not, except for (i) Trust Units issued pursuant to options or rights granted prior to the date hereof; (ii) options or rights to acquire Trust Units granted pursuant to the Trust's unit incentive plans and the Trust Units issuable upon such options and rights; (iii) Trust Units issued pursuant to the Trust's distribution reinvestment plan; or (iv) Trust Units issued pursuant to an acquisition or to satisfy existing instruments already issued; issue any Trust Units of the Trust or any securities exchangeable, convertible or exercisable into Trust Units of the Trust without the consent of National Bank Financial Inc. on behalf of the Underwriters after discussion therewith, which consent shall not be unreasonably withheld.

17. ***Notices***

Any notice or other communication to be given hereunder shall, in the case of notice to be given to the Trust may be addressed to the Trust c/o Mr. John T. Driscoll, President and Chief Executive Officer, at the above address, Telecopy No. (416) 364-5615 with a copy to:

Goodman and Carr LLP
Suite 2300, 200 King Street West
Toronto, Ontario, M5H 3W5

Attention: Sandra Cowan
Telecopy No.: (416) 597-4064

and, in the case of notice to be given to the Underwriters, be addressed to:

National Bank Financial Inc.
2000, 855 - 2nd Street S.W.
Calgary, Alberta, T2P 4J8

Attention: Julian J. Din
Telecopy No.: (403) 265-0543

CIBC World Markets Inc.
11th Floor, 855 - 2nd Street S.W.
Calgary, Alberta, T2P 4J7

Attention: Brenda A. Mason
Telecopy No.: (403) 260-0524

Canaccord Capital Corporation
10377 Pacific Centre
2200 - 609 Granville Street
Vancouver, British Columbia, V7Y 1H2

Attention: Peter Brown
Telecopy No.: (604) 643-7606

Raymond James Ltd.
2500, 707 8th Avenue S.W.
Calgary, Alberta T2P 1H5

Attention: Naveen Dargan
Telecopy No.: (403) 509-0535

Yorkton Securities Inc.
23rd Floor, 440 - 2nd Avenue S.W.
Calgary, Alberta, T2P 5E9

Attention: Daniel J. Cristall
Telecopy No.: (403) 260-5782

and a copy to:

Burnet, Duckworth & Palmer LLP
1400, 350 - 7 Avenue S.W.
Calgary, Alberta T2P 3N9

Attention: Gary R. Bugeaud
Telecopy No.: (403) 260-0330

or to such other address as the party may designate by notice given to the other. Each communication shall be personally delivered to the addressee or sent by facsimile transmission to the addressee, and:

- a. A communication which is personally delivered shall, if delivered before 4:00 p.m. (local time at the place of delivery) on a Business Day, be deemed to be given and received on that day and, in any other case be deemed to be given and received on the first Business Day following the day on which it is delivered; and

- b. A communication which is sent by facsimile transmission shall, if sent on a Business Day before 4:00 p.m. (local time at the place of receipt), be deemed to be given and received on that day and, in any other case, be deemed to be given and received on the first Business Day following the day on which it is sent.

18. ***Conditions***

- a. All terms and conditions of this agreement to be performed by the Trust shall be construed as conditions, and any breach or failure to comply with any material terms and conditions shall entitle the Underwriters to terminate their obligations to purchase the Trust Units by written notice to that effect given to the Trust prior to the Closing Date. The Underwriters may waive in whole or in part any breach of, default under or non-compliance with any representation, warranty, term or condition hereof, or extend the time for compliance therewith, without prejudice to any of their rights in respect of any other representation, warranty, term or condition hereof or any other breach of, default under or non-compliance with any other representation, warranty, term or condition hereof, provided that any such waiver or extension shall be binding on the Underwriters only if the same is in writing; and
- b. All terms and conditions of this agreement to be performed by the Underwriters shall be construed as conditions, and any breach or failure to comply with any material terms and conditions shall entitle the Trust to terminate its obligations to sell the Trust Units (including the Optioned Units) by written notice to that effect given to the Underwriters prior to the Closing Date. The Trust may waive in whole or in part any breach of, default under or non-compliance with any representation, warranty, term or condition hereof, or extend the time for compliance therewith, without prejudice to any of their rights in respect of any other representation, warranty, term or condition hereof or any other breach of, default under or non-compliance with any other representation, warranty, term or condition hereof, provided that any such waiver or extension shall be binding on the Trust only if the same is in writing

19. ***Survival of Representations and Warranties***

All representations, warranties, terms and conditions herein or contained in certificates or documents submitted pursuant to or in connection with the transactions contemplated herein shall survive the payment by the Underwriters for the Trust Units and the distribution of the Trust Units pursuant to the Prospectus and shall continue in full force and effect for the benefit of the Underwriters regardless of any investigation by or on behalf of the Underwriters with respect thereto for a period of 3 years following the Closing Date (other than the agreements and obligations of the Trust set forth in paragraphs 8 and 9 hereof which will continue indefinitely).

20. ***Several Liability of Underwriters***

The Underwriters' rights and obligations under this agreement are separate and not joint and several including, without limitation, that:

- a. each of the Underwriters shall be obligated to purchase only the percentage of the total number of Trust Units (which for greater certainty for the purposes of this paragraph 20 shall include the Optioned Units) set opposite their names set forth in this paragraph 20; and
- b. if any of the Underwriters (having an obligation to purchase greater than 12.5% of the total number of Trust Units) does not purchase their applicable percentage of the total number of Trust Units, the others who shall be willing and able to purchase their own applicable percentages of the total number of Trust Units shall be relieved of their obligations hereunder,

provided that, notwithstanding the provisions of paragraph (b) of this paragraph 20, the Underwriters who shall be willing and able to purchase their respective applicable percentages of the total number of Trust Units shall have the right, but not the obligation, to purchase the total number of Trust Units. Nothing in this paragraph 20 shall obligate the Trust to sell less than all of the Trust Units to the Underwriters.

The applicable percentage of the total number of Trust Units (including any Optioned Units) which each of the Underwriters shall be separately obligated to purchase is as follows:

National Bank Financial Inc.	37.5%
CIBC World Markets Inc.	25.0%
Canaccord Capital Corporation	12.5%
Raymond James Ltd.	12.5%
Yorkton Securities Inc.	12.5%

21. ***Authority to Bind Underwriters***

The Trust shall be entitled to and shall act on any notice, waiver, extension or communication given by or on behalf of the Underwriters by National Bank Financial Inc., which shall represent the Underwriters and which shall have the authority to bind the Underwriters in respect of all matters hereunder, except in respect of any settlement under paragraphs 8 or 9, any matter referred to in paragraph 11 or any agreement under paragraph 20. While not affecting the foregoing, National Bank Financial Inc. shall consult with the other Underwriters with respect to any such notice, waiver, extension or other communication.

22. ***Underwriters' Covenants***

The Underwriters covenant and agree with the Trust that they will:

- a. conduct activities in connection with the proposed offer and sale of the Trust Units in compliance with all Applicable Securities Laws in the Qualifying Provinces and in compliance with Rule 903 of Regulation S of the United States Securities Act of 1933, as amended ("Regulation S") and cause a similar covenant to be contained in any agreement entered into with any Selling Dealer Group established in connection with the distribution of the Trust Units;
- b. not solicit subscriptions for the Trust Units, trade in Trust Units or otherwise do any act in furtherance of a trade of Trust Units outside of the Qualifying Provinces where such sales are made in accordance with the applicable securities laws of such jurisdictions and not in any manner which would require registration or the filing of a prospectus in any jurisdiction and cause a similar covenant to be contained in any agreement entered into with any Selling Dealer Group established in connection with the distribution of the Trust Units. Accordingly, none of the Underwriters nor any of their affiliate(s), nor any persons acting on their behalf have engaged or will engage in any Directed Selling Efforts (as defined in Regulation S) with respect to the Trust Units. The Underwriters acknowledge that the Trust Units have not been and will not be registered under the United States Securities Act of 1933 Act, as amended (the "1933 Act") and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. Persons (as defined in Regulation S), except in accordance with Regulation S or pursuant to an exemption from the registration requirements of the 1933 Act. The Underwriters agree they will not make any offers or sales of the Trust Units in the United States or to, or for the account or benefit of, a U.S. Person except as may be permitted by Regulation S. The Underwriters further agree that any offer or sale of the Trust Units in the United States, or to U.S. persons, shall be made in accordance with Schedule A, which forms part of this Agreement, and, in the event that the Trust Units are offered or sold in the United States, or to U.S. persons, an executed

Underwriters' certificate, substantially in the form attached hereto as Schedule B, shall be delivered to the Trust prior to the Closing Time. The Underwriters and the Trust acknowledge that Schedule A forms part of this Agreement;

- c. not make use of any "green sheet" in respect of the Trust Units or other marketing materials without the approval of such materials by the Trust and shall comply with Applicable Securities Laws with respect to the use of "green sheets" and other marketing material during the waiting period under Applicable Securities Laws of the Qualifying Provinces including the filing of such "green sheets" and cause a similar covenant to be contained in any agreement entered into with any Selling Dealer Group established in connection with the distribution of the Trust Units; and
- d. as soon as reasonably practicable after the Closing Date, provide the Trust with a breakdown of the number of Trust Units sold in each of the Qualifying Provinces and, upon completion of the distribution of the Trust Units, provide to the Securities Commissions notice to that effect, if required by Applicable Securities Laws.

23. ***Severance***

If one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this agreement, but this agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein.

24. ***Relationship Between the Trust and the Underwriters***

The Trust: (i) acknowledges and agrees that the Underwriters have certain statutory obligations as registrants under the Applicable Securities Laws and have fiduciary relationships with their clients; (ii) acknowledges and agrees that the Underwriters are neither the agents of the Trust nor otherwise fiduciaries of the Trust; and (iii) consents to the Underwriters acting hereunder while continuing to act for their clients. To the extent that the Underwriters' statutory obligations as registrants under Applicable Securities Laws or fiduciary relationships with their clients conflicts with their obligations hereunder the Underwriters shall be entitled to fulfil their statutory obligations as registrants under Applicable Securities Laws and their duties to their clients. Nothing in this agreement shall be interpreted to prevent the Underwriters from fulfilling their statutory obligations as registrants under Applicable Securities Laws or to act as a fiduciary of their clients.

25. ***Governing Law***

This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

26. ***Time of the Essence***

Time shall be of the essence of this agreement.

27. ***Counterpart Execution***

This agreement may be executed in one or more counterparts each of which so executed shall constitute an original and all of which together shall constitute one and the same agreement.

28. ***Contractual Obligations of Trust***

The obligations or liabilities, if any, of the Trust hereunder shall not be binding upon, nor shall resort be had to the property of, any of the unitholders or annuitants of the Trust and such obligations and liabilities shall not be binding upon such unitholders or annuitants. The obligations or liabilities, if any, of the Trust hereunder shall be satisfied only out of the property of the Trust and no resort may be had to the property of any trustee, manager, officer or trustee of the Trust. The obligations and liabilities hereunder, if any, of any trustee, manager, officer or employee of the Trust or any director, officer or employee of any manager or trustee of the Trust shall bind such obligor only to the extent that such obligor is entitled to be indemnified by the Trust. The provisions of this paragraph shall enure to the benefit of the heirs, successors, assigns and personal representatives of the unitholders and annuitants of the Trust.

29. ***Distributions***

The Trust agrees that it will not between the date hereof and prior to the Closing Date declare or pay out any distributions to Unitholders of the Trust other than the distribution of \$0.07 per Trust Unit, which is payable on August 31, 2001 to Unitholders of record on August 17, 2001 and the ordinary distribution which will be payable in the month of September.

30. ***Entire Agreement***

It is understood that the terms and conditions of this agreement supersede any previous verbal or written agreement between the Underwriters and the Trust, NCE Energy or the Manager.

If the foregoing is in accordance with your understanding and is agreed to by you, please confirm your acceptance by signing the enclosed copies of this letter at the place indicated and by returning the same to National Bank Financial Inc.

NATIONAL BANK FINANCIAL INC.

By: (signed) Julian J. Din

CIBC WORLD MARKETS INC.

By: (signed) Brenda A. Mason

CANACCORD CAPITAL CORPORATION

By: (signed) Michael Greenwood

By: (signed) Peter Brown

RAYMOND JAMES LTD.

By: (signed) Naveen Dargan

YORKTON SECURITIES INC.

By: (signed) J. Alexander Wylie

ACCEPTED AND AGREED to as of the date first above written.

**NCE ENERGY TRUST
by its Manager, NCE Energy Management Corporation**

By: (signed) John Vooglaid

NCE ENERGY CORPORATION

By: (signed) John Vooglaid

NCE ENERGY MANAGEMENT CORPORATION

By: (signed) John Vooglaid

SCHEDULE A

UNITED STATES OFFERS AND SALES

As used in this Schedule A, the following terms have the following meanings:

“Directed Selling Efforts” means directed selling efforts as that term is defined in Regulation S. Without limiting the foregoing, but for greater clarity in this Schedule, it means, subject to the exclusions from the definition of directed selling efforts contained in Regulation S, any activity undertaken for the purpose of, or that could reasonably be expected to have the effect of, conditioning the market in the United States for the Securities, and includes the placement of any advertisement in a publication with a general circulation in the United States that refers to the offering of the Securities;

“Foreign Issuer” means a foreign issuer as that term is defined in Regulation S. Without limiting the foregoing, but for greater clarity in this Schedule, it means any issuer which is (a) the government of any foreign country or of any political subdivision of a foreign country; or (b) a corporation or other organization incorporated under the laws of any foreign country, except an issuer meeting the following conditions: (1) more than 50 percent of the outstanding voting securities of such issuer are held of record either directly or through voting trust certificates or depositary receipts by residents of the United States; and (2) any of the following: (i) the majority of the executive officers or directors are United States citizens or residents, (ii) more than 50 percent of the assets of the issuer are located in the United States, or (iii) the business of the issuer is administered principally in the United States;

“General Solicitation” and “General Advertising” means “general solicitation” and “general advertising”, respectively, as used in Rule 502(c) under the U.S. Securities Act, including advertisements, articles, notices or other communications published in any newspaper, magazine or similar media or broadcast over radio or television, or any seminar or meeting whose attendees had been invited by general solicitation or general advertising or in other any manner involving a public offering within the meaning of Section 4(2) of the U.S. Securities Act;

“Qualified Institutional Buyer” means a qualified institutional buyer as defined in Rule 144A;

“Regulation D” means Regulation D adopted by the SEC under the U.S. Securities Act;

“Regulation S” means Regulation S adopted by the SEC under the U.S. Securities Act;

“Rule 144A” means Rule 144A adopted by the SEC under the U.S. Securities Act;

“SEC” means the United States Securities and Exchange Commission;

“Substantial U.S. Market Interest” means substantial U.S. market interest as that term is defined in Regulation S;

“United States” means the United States of America, its territories and possessions, any state of the United States, and the District of Columbia;

“U.S. Exchange Act” means the United States Securities Exchange Act of 1934, as amended;

“U.S. Person” means a U.S. person as that term is defined in Regulation S; and

“U.S. Securities Act” means the United States Securities Act of 1933, as amended.

All other capitalized terms used but not otherwise defined in this Schedule A shall have the meanings assigned to them in the Agreement to which this Schedule A is attached.

Representations, Warranties and Covenants of the Trust

1. NCE Energy Trust (the "Trust") represents, warrants, covenants and agrees to and with the Underwriters that:
 - (a) The Trust is a Foreign Issuer with no Substantial U.S. Market Interest with respect to the trust units of the Trust (the "Securities").
 - (b) None of the Trust, its affiliates or any person acting on its or their behalf has engaged or will engage in any Directed Selling Efforts or has engaged or will engage in any form of General Solicitation or General Advertising in the United States with respect to the Securities.
 - (c) The Securities satisfy the requirements set forth in Rule 144A(d)(3) under the U.S. Securities Act.
 - (d) So long as any of the Securities which have been sold in the United States in reliance upon Rule 144A are outstanding and are "restricted securities" within the meaning of Rule 144(a)(3) under the U.S. Securities Act, the Trust shall either:
 - (i) furnish to the SEC all information required to be furnished in accordance with Rule 12g3-2(b) under the U.S. Exchange Act;
 - (ii) file reports and other information with the SEC under Section 13 or 15(d) of the U.S. Exchange Act; or
 - (iii) furnish to any holder of the Securities and any prospective purchaser of the Securities designated by such holder, upon request of such holder, the information required to be delivered pursuant to Rule 144A(d)(4) under the U.S. Securities Act (so long as such requirement is necessary in order to permit holders of the Securities to effect resales under Rule 144A).
 - (e) The Trust is not an open-end investment company, closed-end investment company, unit investment trust or face-amount certificate company that is or is required to be registered under Section 8 of the United States Investment Company Act of 1940, as amended.

Representations, Warranties and Covenants of the Underwriters

2. Each Underwriter represents and warrants to and with the Trust that:
 - (a) It acknowledges that the Securities have not been and will not be registered under the U.S. Securities Act and may not be offered or sold within the United States except pursuant to the exemption from the registration requirements of the U.S. Securities Act provided by Rule 144A. It has not offered or sold, and will not offer or sell, any of the Securities constituting part of its allotment within the United States except in accordance with Regulation S or Rule 144A, as provided in paragraphs 3 and 4 below. Accordingly, neither it nor its affiliate(s), nor any persons acting on its or their behalf have engaged or will engage in any Directed Selling Efforts with respect to the Securities.

- (b) It has not entered and will not enter into any contractual arrangement with respect to the distribution of the Securities, except with its affiliates, any selling group members or with the prior written consent of the Trust.
- (c) It shall require each selling group member to agree, for the benefit of the Trust, to comply with, and shall use their best efforts to ensure that each selling group member complies with, the provisions of clauses 2(a) and (b) above as if such provisions applied to such selling group member.

3. Each Underwriter covenants to and agrees with the Trust that:

- (a) All offers and sales of the Securities in the United States will be effected through NBC International (USA) Inc. in accordance with all applicable U.S. broker-dealer requirements.
- (b) Its U.S. broker-dealer affiliate selling Securities in the United States is a Qualified Institutional Buyer.
- (c) It will not, either directly or through its U.S. affiliate, solicit offers for, or offer to sell, the Securities in the United States by means of any form of General Solicitation or General Advertising.
- (d) It will solicit, and will cause its U.S. affiliate to solicit, offers for the Securities in the United States only from, and will offer the Securities only to, persons it reasonably believes to be Qualified Institutional Buyers in accordance with Rule 144A. It also agrees that it will solicit offers for the Securities only from, and will offer the Securities only to, persons that in purchasing such Securities will be deemed to have represented and agreed as provided in Section 4 below (to the extent such representations are applicable to the purchaser concerned).
- (e) It will inform, and cause its U.S. affiliate to inform, all purchasers of the Securities in the United States that the Securities have not been and will not be registered under the U.S. Securities Act and are being sold to them without registration under the U.S. Securities Act in reliance on Rule 144A.
- (f) It will deliver, through its U.S. broker-dealer affiliate, a copy of each of the preliminary private placement memorandum and final private placement memorandum, including (i) the Canadian short form preliminary prospectus or final short form prospectus, as the case may be, relating to the Securities and (ii) a U.S. covering memorandum for the U.S. offering to each person in the United States purchasing Securities from it.
- (g) It shall cause its U.S. broker-dealer affiliate to agree, for the benefit of the Trust, to the same provisions as are contained in paragraphs 3 and 4.
- (h) At least one business day prior to closing, it shall cause NBC International (USA) Inc. to provide Computershare Trust of Canada with a list of all purchasers of the Securities in the United States.

- (i) At closing, it, together with its U.S. broker-dealer affiliate selling Securities in the United States, will provide a certificate, substantially in the form of Schedule B included herewith relating to the manner of the offer and sale of the Securities in the United States.

Mutual Covenants and Agreements

- 4. Each Underwriter and the Trust covenant to and agree with each other that the private placement memorandum for the offering of the Securities in the United States shall contain disclosure in substantially the form set forth below:

“The Securities offered hereby have not been and will not be registered under the U.S. Securities Act and may not be offered or sold within the United States or to U.S. persons except that Securities may be offered or sold to Qualified Institutional Buyers pursuant to Rule 144A.

“Each U.S. purchaser hereof will, by its purchase of such Securities, be deemed to have represented and agreed for the benefit of the Trust as follows:

- (i) it is aware that the Securities have not been and will not be registered under the U.S. Securities Act and that the sale contemplated hereby is being made in reliance on Rule 144A to Qualified Institutional Buyers;
- (ii) it is a Qualified Institutional Buyer and it is acquiring the Securities for its own account or for the account of a Qualified Institutional Buyer with respect to which it exercises sole investment discretion;
- (iii) it understands that if it decides to offer, sell or otherwise transfer such Securities, such Securities may be offered, sold or otherwise transferred only (A) to the Trust, (B) outside the United States in accordance with Rule 904 of Regulation S, or (C) inside the United States in accordance with (x) Rule 144A to a person the seller reasonably believes is a Qualified Institutional Buyer that is purchasing for its own account or for the account of a Qualified Institutional Buyer to whom notice is given that the offer, sale or transfer is being made in reliance on Rule 144A or (y) the exemption from registration under the U.S. Securities Act provided by Rule 144, if available; and
- (iv) it understands that all Securities sold in the United States as part of this offering will bear a legend to the following effect:

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE “U.S. SECURITIES ACT”) OR UNDER ANY STATE SECURITIES LAWS. THE HOLDER HEREOF, BY PURCHASING SUCH SECURITIES, AGREES FOR THE BENEFIT OF THE TRUST THAT SUCH SECURITIES MAY BE OFFERED, SOLD OR OTHERWISE TRANSFERRED ONLY (A) TO THE TRUST, (B) OUTSIDE THE UNITED STATES IN ACCORDANCE WITH RULE 904 OF REGULATION S UNDER THE U.S. SECURITIES ACT, OR (C) INSIDE THE UNITED STATES IN ACCORDANCE WITH (1) RULE 144A UNDER THE U.S. SECURITIES ACT OR (2) RULE 144 UNDER THE U.S. SECURITIES ACT, IF AVAILABLE. DELIVERY OF THIS

CERTIFICATE MAY NOT CONSTITUTE “GOOD DELIVERY” IN SETTLEMENT OF TRANSACTIONS ON STOCK EXCHANGES IN CANADA. A NEW CERTIFICATE, BEARING NO LEGEND, DELIVERY OF WHICH WILL CONSTITUTE “GOOD DELIVERY” MAY BE OBTAINED FROM COMPUTERSHARE TRUST COMPANY OF CANADA UPON DELIVERY OF THIS CERTIFICATE AND A DULY EXECUTED DECLARATION, IN A FORM SATISFACTORY TO COMPUTERSHARE TRUST OF CANADA AND THE TRUST, TO THE EFFECT THAT THE SALE OF THE SECURITIES REPRESENTED HEREBY IS BEING MADE IN COMPLIANCE WITH RULE 904 OF REGULATION S UNDER THE U.S. SECURITIES ACT;

provided that, if any such Securities are being sold in accordance with Rule 904 of Regulation S, the legend may be removed by providing a declaration to Computershare Trust of Canada, as registrar and transfer agent for the Securities, to the following effect (or as the Trust may prescribe from time to time):

The undersigned (A) acknowledges that the sale of the Securities, represented by certificate numbers _____, to which this declaration relates is being made in reliance on Rule 904 of Regulation S under the United States Securities Act of 1933, as amended (the “U.S. Securities Act”) and (B) certifies that (1) it is not an “affiliate” (as defined in Rule 405 under the U.S. Securities Act) of NCE Energy Trust, (2) the offer of such Securities was not made to a person in the United States and either (a) at the time the buy order was originated, the buyer was outside the United States, or the seller and any person acting on its behalf reasonably believe that the buyer was outside the United States, or (b) the transaction was executed on or through the facilities of The Toronto Stock Exchange and neither the seller nor any person acting on its behalf knows that the transaction has been prearranged with a buyer in the United States and (3) neither the seller nor any person acting on its behalf engaged in any directed selling efforts in connection with the offer and sale of such Securities. Terms used herein have the meanings given to them by Regulation S under the U.S. Securities Act;

provided, further, that, if any such Securities are being sold pursuant to Rule 144 under the U.S. Securities Act, the legend may be removed by delivery to Computershare Trust of Canada of an opinion of counsel, of recognized standing reasonably satisfactory to the Trust, to the effect that such legend is no longer required under applicable requirements of the U.S. Securities Act or state securities laws.”

SCHEDULE B

UNDERWRITER'S CERTIFICATE

In connection with the private placement in the United States of the trust units (the "Securities") of NCE Energy Trust (the "Trust"), the undersigned National Bank Financial Inc. on behalf of the several underwriters (the "Underwriters") referred to in the Underwriting Agreement" dated as of August _____, 2001 among the Trust and the Underwriters (the "Underwriting Agreement"), and NBC International (USA) Inc., do hereby certify that:

(a) NBC International (USA) Inc. is a duly registered broker or dealer with the United States Securities and Exchange commission and is a member of, and in good standing with, the National Association of Securities Dealers, Inc. on the date hereof;

(b) each offeree was provided was provided with a short form prospectus together with a U.S. covering memorandum relating to the offering in the United States of the Securities.

(c) Immediately prior to our transmitting the short form prospectus together with a U.S. covering memorandum relating to the offering in the United States of the Securities to such offerees, we had reasonable grounds to believe and did believe that each offeree was a Qualified Institutional Buyer (as defined in Rule 144A under the U.S. Securities Act of 1933, as amended (the "U.S. Securities Act")), and, on the date hereof, we continue to believe that each U.S. person purchasing Securities from us is a Qualified Institutional Buyer;

(d) No form of general solicitation or general advertising (as those terms are used in Regulation D under the U.S. Securities Act) was used by us, including advertisements, articles, notices or other communications published in any newspaper, magazine or similar media or broadcast over radio or television, or any seminar or meeting whose attendees had been invited by general solicitation or general advertising, in connection with the offer or sale of the Securities in the United States or to U.S. persons; and

(e) The offering of the Securities in the United States has been conducted by us in accordance with the Underwriting Agreement.

Terms used in this certificate have the meanings given to them in the Underwriting Agreement unless otherwise defined herein.

Dated this _____ day of August, 2001.

NATIONAL BANK FINANCIAL INC.

NBC INTERNATIONAL (USA) INC.

By: _____

By : _____

Name:

Name:

Title:

Title: