

## **2003 BCSECCOM 413**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – Relief from prohibitions against trading in portfolio shares by persons having information about the trading programs of mutual funds – Portfolio is fixed and passively managed – confidentiality of decision and application granted for limited period of time

### **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 128, 130 and 169(4)

**IN THE MATTER OF THE SECURITIES LEGISLATION OF ONTARIO,  
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,  
NEWFOUNDLAND AND LABRADOR AND NOVA SCOTIA**

**AND**

**IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM  
FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

**IN THE MATTER OF OIL SANDS SPLIT TRUST**

**AND**

**IN THE MATTER OF RBC DOMINION SECURITIES INC.**

### **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Ontario, British Columbia, Alberta, Saskatchewan, Newfoundland and Labrador and Nova Scotia (the “Jurisdictions”) has received an application (the “Application”) from Oil Sands Split Trust (the “Issuer”) and RBC Dominion Securities Inc. (“RBC DS”) for decisions under the securities legislation (the “Legislation”) of the Jurisdictions that:

- (i) the prohibitions contained therein prohibiting trading in portfolio shares by persons or companies having information concerning the trading programs of mutual funds (the “Principal Trading Prohibitions”) shall not apply to RBC DS in connection with the Principal Sales and Principal Purchases (both as hereinafter defined) in connection with the initial public offerings (the “Offerings”) of trust units (the “Capital Units”) and preferred

## 2003 BCSECCOM 413

securities (the "Preferred Securities") of the Issuer, subject to certain restrictions; and

- (ii) the Application and this Decision Document be kept confidential until the earlier of the date of filing of the Final Prospectus (as hereinafter defined) or a date that is 60 calendar days from the date of this Decision Document.

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS, unless otherwise defined, the terms herein have the meanings set out in National Instrument 14-101 – *Definitions*;

AND WHEREAS the Issuer has represented to the Decision Makers that:

1. RBC DS was incorporated under the laws of the Province of Ontario and is registered under the Legislation as a dealer in the categories of "broker" and "investment dealer" and is a member of the Investment Dealers Association of Canada and The Toronto Stock Exchange (the "TSX").
2. The Issuer will be established pursuant to the laws of the Province of Ontario on the date of the Final Prospectus (as defined below) pursuant to a declaration of trust and will be authorized to issue an unlimited number of Capital Units.
3. The Issuer will enter into a trust indenture with an indenture trustee on the date of the Final Prospectus (the "Trust Indenture"). The Preferred Securities will be issued pursuant to the Trust Indenture.
4. The Issuer has filed with the securities regulatory authorities of each Province of Canada a preliminary prospectus (the "Preliminary Prospectus") in respect of the Offerings.
5. The Issuer further intends to become a reporting issuer under the Legislation by filing a final prospectus (the "Final Prospectus") relating to the Offerings.
6. RBC DS will be the promoter of the Issuer and will be establishing a credit facility in favour of the Issuer in order to facilitate the acquisition of the COS Units (as defined below) by the Issuer.

## **2003 BCSECCOM 413**

7. Application will be made to list the Preferred Securities and Capital Units on the TSX.
8. The Issuer will have five trustees (the “Trustees”). Three of the Trustees will be employees of RBC DS. The remaining Trustees (the “Independent Trustees”) will be independent of RBC DS and its affiliates.
9. Pursuant to an agreement (the “Agency Agreement”) to be made between the Issuer and RBC DS and such other agents as may be appointed after the date of this application (collectively, the “Agents” and individually, an “Agent”), the Issuer will appoint the Agents, as its agents, to offer the Preferred Securities and Capital Units of the Issuer on a best efforts basis and the Final Prospectus qualifying the Offerings will contain a certificate signed by each of the Agents in accordance with the Legislation.
10. The Issuer is considered to be a mutual fund as defined in the Legislation, except in Quebec. Since the Issuer does not operate as a conventional mutual fund, it has made application for a waiver from certain requirements of National Instrument 81-102.
11. The Issuer is a passive investment trust whose principal undertaking will be to invest the net proceeds of the Offerings in a portfolio (the “Portfolio”) of units (the “COS Units”) of Canadian Oil Sands Trust (“COS”) in order to generate fixed interest payments for the holders of the Preferred Securities (the “Preferred Security Interest Amount”) and to enable the holders of Capital Units to participate in any capital appreciation in the COS Units after payment of administrative and operating expenses and to benefit from any increase in the distributions on the COS Units.
12. The Final Prospectus will disclose the acquisition cost to the Issuer of the COS Units and selected financial information and dividend and trading history of the COS Units.
13. The COS Units are listed and traded on the TSX.
14. The Issuer will not upon the completion of the Offerings be an insider of COS within the meaning of the Legislation.
15. RBC DS does not have knowledge of a material fact or material change with respect to COS that has not been generally disclosed.
16. RBC DS’s economic interest in the Issuer and in the material transactions involving the Issuer are disclosed in the Preliminary Prospectus and will be

## 2003 BCSECCOM 413

disclosed in the Final Prospectus under the heading “Interest of Management and Others in Material Transactions” and will include the following:

- (a) agency fees with respect to the Offerings;
  - (b) an administration fee under the Administration Agreement;
  - (c) commissions in respect of the acquisition of COS Units, the disposition of COS Units to fund a redemption or retraction, or the purchase for cancellation, of the Preferred Securities and Capital Units or, if necessary, to fund a portion of the Preferred Security Interest Amount;
  - (d) interest and reimbursement of expenses, in connection with the acquisition of COS Units; and
  - (e) amounts in connection with Principal Sales and Principal Purchases (as described in paragraphs 19 and 27 below).
17. The net proceeds from the sale of the Preferred Securities and Capital Units under the Final Prospectus, after payment of commissions to the Agents, expenses of issue and carrying costs relating to the acquisition of the COS Units, will be used by the Issuer to:
- (a) pay the acquisition cost (including any related costs or expenses) of the COS Units; and
  - (b) pay the initial fee payable to RBC DS for its services under the Administration Agreement (as defined below).
18. All Preferred Securities and Capital Units outstanding on a date approximately seven years from the closing of the Offerings will be redeemed by the Issuer on such date. Preferred Securities and Capital Units will be retractable at the option of the holder and redeemable at the option of the Issuer as described in the Preliminary Prospectus.
19. Pursuant to an agreement (the “Securities Purchase Agreement”) to be entered into between the Issuer and RBC DS, RBC DS will purchase, (i) as agent for the benefit of the Issuer, COS Units in the market on commercial terms, or (ii) from non-related parties with whom RBC DS and the Issuer deal at arm’s length, including if possible from COS. Subject to receipt of all necessary regulatory approvals, RBC DS may, as principal, sell COS Units to the Issuer (the “Principal Sales”). The aggregate purchase price to be paid by the Issuer for the COS Units (together with carrying costs and other expenses incurred in

## 2003 BCSECCOM 413

connection with the purchase of COS Units) will not exceed the net proceeds from the Offerings. If the Issuer acquires COS Units under a private placement or as part of a public offering of COS Units, the Issuer would pay no fees to RBC DS in connection with such a trade.

20. Under the Securities Purchase Agreement, RBC DS may receive commissions at normal market rates in respect of its purchase of COS Units, as agent on behalf of the Issuer, and the Issuer will pay any carrying costs or other expenses incurred by RBC DS, on behalf of the Issuer, in connection with its purchase of COS Units as agent on behalf of the Issuer. In respect of any Principal Sales made to the Issuer by RBC DS as principal, RBC DS may realize a financial benefit to the extent that the proceeds received from the Issuer exceed the aggregate cost to RBC DS of such COS Units. Similarly, the proceeds received from the Issuer may be less than the aggregate cost to RBC DS of the COS Units and RBC DS may realize a financial loss, all of which will be described in the Preliminary Prospectus and the Final Prospectus.
21. The Preliminary Prospectus discloses, and the Final Prospectus will disclose, that any Principal Sales will be made in accordance with the rules of the applicable stock exchange and the price paid to RBC DS (inclusive of all transaction costs, if any) will not be greater than the price which would have been paid (inclusive of all transaction costs, if any) if the acquisition had been made through the facilities of the principal stock exchange on which the COS Units are listed and posted for trading at the time of the purchase from RBC DS.
22. RBC DS will not receive any commissions from the Issuer in connection with the Principal Sales and all Principal Sales will be approved by the Independent Trustees.
23. For the reasons set forth in paragraphs 19 and 20 above, and the fact that no commissions are payable to RBC DS in connection with the Principal Sales, in the case of the Principal Sales, the interests of the Issuer and the securityholders of the Issuer may be enhanced by insulating the Issuer from price increases in respect of the COS Units.
24. None of the COS Units to be sold by RBC DS as principal to the Issuer will be acquired, nor will RBC DS agree to acquire, any COS Units while RBC DS has access to information concerning the investment program of the Issuer, although certain of the COS Units to be held by the Issuer may be acquired or RBC DS may agree to acquire such COS Units on or after the date of this Decision Document.

## 2003 BCSECCOM 413

25. It will be the policy of the Issuer to hold the COS Units and to not engage in any trading of the COS Units, except:
- (a) to fund retractions or redemptions of Preferred Securities and Capital Units or to pay a portion of the Preferred Security Interest Amount; or
  - (b) in certain other limited circumstances as described in the Preliminary Prospectus.
26. Pursuant to an administration agreement (the “Administration Agreement”) to be entered into, the Issuer will retain RBC DS to administer the ongoing operations of the Issuer and will pay RBC DS a monthly fee of 1/12 of 0.15% of the market value of the COS Units held in the Portfolio.
27. In connection with the services to be provided by RBC DS to the Issuer pursuant to the Administration Agreement, RBC DS may sell COS Units to fund repayments or retractions of Preferred Securities and Capital Units prior to the date of redemption of the Preferred Securities and the Capital Units, to fund a portion of the Preferred Security Interest Amount, and upon liquidation of the COS Units in connection with the final redemption of Preferred Securities and Capital Units. These sales will be made by RBC DS as agent on behalf of the Issuer, but in certain circumstances, such as where a small number of Capital Units (and Preferred Securities) have been surrendered for retraction, RBC DS may purchase COS Units as principal (the “Principal Purchases”) subject to receipt of all regulatory approvals.
28. In connection with any Principal Purchases, RBC DS will comply with the rules, procedures and policies of the applicable stock exchange of which it is a member and in accordance with orders obtained from all applicable securities regulatory authorities. The Preliminary Prospectus discloses and the Final Prospectus will disclose that RBC DS may realize a gain or loss on the resale of such securities.
29. The Administration Agreement will provide that RBC DS must take reasonable steps, such as soliciting bids from other market participants or such other steps as RBC DS, in its discretion, considers appropriate after taking into account prevailing market conditions and other relevant factors, to enable the Issuer to obtain the best price reasonably available for the COS Units so long as the price obtained (net of all transaction costs, if any) by the Issuer from RBC DS is at least as advantageous to the Issuer as the price which is available (net of all transaction costs, if any) through the facilities of the applicable stock exchange at the time of the trade.

## **2003 BCSECCOM 413**

30. RBC DS will not receive any commissions from the Issuer in connection with Principal Purchases and, in carrying out the Principal Purchases, RBC DS shall deal fairly, honestly and in good faith with the Issuer.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers pursuant to the Legislation is that:

- (i) the Principal Trading Prohibitions shall not apply to RBC DS in connection with the Principal Sales and Principal Purchases; and
- (ii) the Application and this Decision Document shall be kept confidential until the earlier of the date of filing of the Final Prospectus or a date that is 60 calendar days from the date of this Decision Document.

DATED May 13, 2003.

Paul Moore

Harold P. Hands