

# 2002 BCSECCOM 366

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – relief from the prospectus requirement for first trades of securities reclassified in connection with an arrangement completed more than four months before the date of the decision document

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 61, 76

Multilateral Instrument 45-102 *Resale of Securities*

## **IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, AND SASKATCHEWAN**

**AND**

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

**AND**

## **IN THE MATTER OF FLINT ENERGY SERVICES LTD.**

## **MRRS DECISION DOCUMENT**

1. WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in British Columbia, Alberta, and Saskatchewan (the "Jurisdictions") has received an application from Flint Energy Services Ltd. ("Flint") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the first trades in certain Flint securities reclassified in connection with a plan of arrangement be exempt from the requirements contained in the Legislation to file and obtain a receipt for a prospectus before effecting a trade that is a distribution (the "Prospectus Requirement");
2. AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System") the Alberta Securities Commission is the principal regulator for this application;
3. AND WHEREAS Flint has represented to the Decision Makers that:
  - 3.1 Flint was incorporated under the *Business Corporations Act* (Alberta) (the ABCA") on April 9, 1998 under the name HMW Services Group Ltd.;

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- 3.2 on November 12, 1998, HMW Services Group Ltd. amended its articles to change its name to Flint Energy Services Ltd. and on April 1, 2000, the corporation amalgamated with Reid's Construction Group Incorporated and continued under the name of Flint Energy Services Ltd.;
- 3.3 the head office of Flint is located at 100, 2899 Broadmoor Blvd., Sherwood Park, Alberta, T8H 1B5 and the registered office of Flint is located at 1000, 10035 – 105 Street, Edmonton, Alberta, T5J 3T2;
- 3.4 before November 21, 2001, the authorized capital of Flint consisted of an unlimited number of Class A shares (the "Class A Shares") and an unlimited number of Class B shares (the "Class B Shares");
- 3.5 as at November 21, 2001, there were an aggregate of 1,450,401 Class A Shares and Class B Shares and 50,800 options to acquire Class A Shares (the "Flint Options") outstanding;
- 3.6 IPEC Ltd. was incorporated under the ABCA on August 1, 1996 as 704891 Alberta Inc.;
- 3.7 on December 6, 1996, IPEC Ltd. amended its articles to change its name to Locksley Capital Partners Inc. ("Locksley"), reorganize its share capital and remove restrictions on the transfer of shares;
- 3.8 on March 3, 1998, Locksley amended its articles to change its name to IPEC Ltd. ("IPEC");
- 3.9 IPEC completed an initial public offering on April 17, 1997 as a junior capital pool issuer and the corporation's common shares commenced trading on the Alberta Stock Exchange on June 25, 1997;
- 3.10 on November 6, 1997, IPEC acquired all of the outstanding common shares of Chriscor Production Enhancement Technologies Inc.;
- 3.11 the common shares of IPEC (the "IPEC Shares") began trading on the Toronto Stock Exchange (the "TSE") in June 2000;
- 3.12 before November 21, 2001, the authorized capital of IPEC consisted of an unlimited number of IPEC Shares and an unlimited number of preferred shares issuable in series with such rights, privileges, restrictions and conditions as the board of directors of IPEC determined (the "IPEC Preferred Shares");

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- 3.13 as at November 21, 2001, the outstanding securities of IPEC consisted of 51,971,917 IPEC Shares, warrants to purchase 300,000 IPEC Shares and options to purchase 4,011,000 IPEC Shares (collectively, the "IPEC Options");
- 3.14 under an arrangement agreement dated September 23, 2001, Flint and IPEC agreed, subject to approval by security holders of Flint and IPEC and the Court of Queen's Bench of Alberta, that Flint would acquire all of the outstanding IPEC Shares by way of a plan of arrangement (the "Arrangement") under section 186 (now section 193) of the ABCA;
- 3.15 a joint information circular containing prospectus-level disclosure on both Flint and IPEC, including audited financial statements for the two previous financial years ended June 30, 2001 for IPEC, audited financial statements for Flint for the three previous financial years ended June 30, 2001 and pro forma financial statements in respect of the combined company, was delivered to holders of Flint securities and holders of IPEC securities in connection with the Arrangement;
- 3.16 at the annual general and special meeting of shareholders and option holders of Flint held on November 21, 2001, the shareholders and option holders of Flint approved the Arrangement;
- 3.17 at the special meeting of shareholders, option holders and warrant holders of IPEC held on November 21, 2001, the shareholders, option holders and warrant holders of IPEC approved the Arrangement;
- 3.18 by Final Order of the Court of Queen's Bench of Alberta granted on November 22, 2001, the Arrangement was approved and, upon the filing of articles of arrangement under the ABCA, was made effective;
- 3.19 as a result of the Arrangement the following transactions occurred:
- 3.19.1 the Class B Shares were converted to Class A Shares and the Class A Shares were renamed as common shares (the "Common Shares"), and the Common Shares were subdivided on the basis of ten Common Shares for each one Common Share outstanding;
  - 3.19.2 each outstanding Flint Option was exchanged for an option under the new Stock Option Plan of Flint (the "New Flint Options");
  - 3.19.3 each Flint Option was exchanged for a New Flint Option to purchase that number of Common Shares determined by multiplying

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the number of Class A Shares subject to the Flint Option by ten at an exercise price equal to the former exercise price of the Flint Option divided by ten;

3.19.4 each of the outstanding IPEC Shares was transferred to Flint in exchange for \$2.67 in cash and 0.0297 of a Common Share; and

3.19.5 each outstanding IPEC Option was transferred to Flint, at the election of each holder thereof and before the Arrangement, in exchange for:

3.19.5.1 a cash payment equal to the amount per Common Share by which \$2.67 exceeded the exercise price per IPEC Option multiplied by the number of Common Shares issuable upon the exercise of such IPEC Option; and

3.19.5.2 that number of Common Shares equal to the number of shares issuable upon the exercise of the IPEC Option multiplied by 0.0297;

3.20 by certificate of dissolution dated November 22, 2001, IPEC was dissolved;

3.21 at the close of business on November 22, 2001, the IPEC Shares were delisted by the TSE and the Common Shares commenced trading on the TSE on November 23, 2001;

3.22 before the Arrangement:

3.22.1 IPEC was a reporting issuer in British Columbia, Alberta and Ontario; and

3.22.2 Flint was not a reporting issuer in any jurisdiction in Canada;

3.23 as a result of the Arrangement, Flint became, and is currently, a reporting issuer in British Columbia, Alberta, Ontario and Nova Scotia;

3.24 under the certificate of amendment and registration of restated articles dated November 22, 2001 issued in connection with the Arrangement, the authorized capital of Flint consists of an unlimited number of Common Shares and an unlimited number of preferred shares issuable in series (the "Preferred Shares");

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3.25 as at February 27, 2002 there were:

3.25.1 16,047,576 Common Shares;

3.25.2 no Preferred Shares; and

3.25.3 508,000 New Flint Options

outstanding;

3.26 the Common Shares are currently listed and posted for trading on the TSE under the symbol "FES" and are not subject to escrow or similar restrictions. As of February 27, 2002, based on Flint's close of trading share price of \$21.25 on that day, Flint's market capitalization was approximately \$340 million;

3.27 the issuance of the Common Shares in exchange for IPEC Shares under the Arrangement was, and the first trade of those Common Shares is, exempt from the prospectus and registration requirements under the Legislation; however, because Flint was not a reporting issuer at the time the Class A Shares and Class B Shares were issued, the first trade in the 14,504,010 Common Shares which replaced those shares as a result of the Arrangement (the "Restricted Shares") are subject to a 12-month seasoning period under subsection 2.6(4) of Multilateral Instrument 45-102 – *Resale of Securities* ("MI 45-102");

3.28 the issuance of Common Shares issuable upon the exercise of New Flint Options (the "Restricted Option Shares") is exempt from the prospectus and registration requirements under the Legislation; however, for the same reasons outlined in paragraph 3.27 above, the Restricted Option Shares would also be subject to a 12- month seasoning period under subsection 2.6(4) of MI 45-102; and

3.29 but for the requirement that it have a current annual information form filed on the system for electronic document analysis and retrieval, Flint meets the requirements of a qualifying issuer as defined in MI 45-102;

4. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");
5. 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; and

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6. AND WHEREAS the Decision of the Decision Makers under the Legislation is that the first trades of the Restricted Shares and the Restricted Option Shares shall be exempt from the Prospectus Requirement provided that:

6.1 at the time of the trade Flint is a reporting issuer in a jurisdiction listed in Appendix B of MI 45-102 and is not in default of any requirements of the Legislation;

6.2 the trade is not a control distribution;

6.3 no unusual effort is made to prepare the market or to create a demand for the Restricted Shares or the Restricted Option Shares;

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

6.5 if the selling security holder is an insider or officer of Flint, the selling security holder has no reasonable grounds to believe that Flint is in default of the Legislation.

DATED this 19th day of April, 2002.

Glenda A. Campbell, Vice-Chair

James E. Allard, Member