

# 2008 BCSECCOM 119

January 25, 2008

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-102 *Continuous Disclosure Obligations*, s. 13.1 – information circular requirements - Information circular - An issuer wants relief from the requirement to include prospectus-level disclosure in an information circular to be circulated in connection with an arrangement, reorganization, acquisition or amalgamation - The issuer is only internally restructuring, not adding or removing any assets or changing the shareholders' proportionate interest in the issuer's operations; the issuer will provide sufficient information about the transaction for shareholders to understand the restructuring

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c.418, ss.117 and 119

National Instrument 51-102, ss. 9.1 and 13.1

Form 51-102F5, Item 14.2

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Manitoba,  
Ontario, Québec, Nova Scotia, New Brunswick, and Newfoundland and Labrador  
(the Jurisdictions)

and

In the Matter of  
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of Trinidad Energy Services Income Trust (the Trust)  
and Trinidad Drilling Ltd. (Trinidad)

## MRRS Decision Document

## Background

1. The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Trust and Trinidad for a decision under the securities legislation of the Jurisdiction (the Legislation) that the Trust and Trinidad be exempt from the requirements of item 14.2 of Form 51-102F5 *Information Circular* of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) to include in an

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information circular of the Trust (Information Circular) in connection with a proposed arrangement (Proposed Arrangement) the financial statements in respect of a certain entity whose securities are being changed, exchanged, issued or distributed in connection with a restructuring transaction, and an entity that would result from a restructuring transaction, in a management information circular sent in connection with a meeting of securityholders of the Trust at which a restructuring transaction will be considered (the Financial Statement Requirement).

2. Under the Mutual Reliance Review System for Exemptive Relief Applications:
  - (a) the Alberta Securities Commission is the principal regulator for the Trust; and
  - (b) this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

3. Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are otherwise defined in this decision.

### **Representations**

4. This decision is based on the following facts represented by the Trust and Trinidad:
  - (a) The Trust is an open-end unincorporated investment trust formed under the laws of the Province of Alberta pursuant to a trust indenture dated August 1, 2002 and the first supplemental trust indenture dated December 31, 2003, between the Trust, Trinidad and Valiant Trust Company, as trustee of the Trust (such trust indenture and first supplemental trust indenture are collectively referred to herein as the Trust Indenture).
  - (b) The Trust is a reporting issuer in each of the Provinces of Canada where such status exists and is not in default of its obligations as a reporting issuer.
  - (c) The authorized capital of the Trust includes an unlimited number of trust units (Units) which may be issued pursuant to the Trust Indenture. As at the date hereof, 83,615,790 Units are issued and outstanding. The Units are listed and posted for trading on the Toronto Stock Exchange (the TSX) under the symbol TDG.UN.

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- (d) Pursuant to a trust indenture (Debenture Indenture) dated July 5, 2007 among the Trust, Trinidad and Valiant Trust Company, as trustee under the Debenture Indenture (Debenture Trustee), the Trust issued 7.75% convertible unsecured subordinated debentures (Debentures) in the principal amount of \$354,337,340, which amount is still outstanding as of the date hereof.
- (e) The Trust currently holds its operating assets through several direct and indirect subsidiaries, including Trinidad. The Trust and its subsidiaries are collectively referred to herein as the “Trinidad Entities”.
- (f) Trinidad is a corporation amalgamated and subsisting pursuant to the laws of the Province of Alberta.
- (g) Trinidad is not currently a reporting issuer in any jurisdiction of Canada. However, if the Proposed Arrangement is completed, Trinidad will be a reporting issuer in each of the Provinces of Canada where such status exists.
- (h) The authorized capital of Trinidad consists of an unlimited number of common shares (Trinidad Shares) and an unlimited number of preferred shares issuable in series. All of the outstanding common shares of Trinidad are held by the Trust. Trinidad has also issued three series of exchangeable shares (Exchangeable Shares) in the capital of Trinidad which are exchangeable for Units. As at the date hereof, there are 300,599 Exchangeable Shares of Trinidad issued and outstanding to persons other than the Trinidad Entities exchangeable into 403,341 Units. Holders of Units (Unitholders) and holders of exchangeable shares (Exchangeable Shareholders) are collectively referred to herein as “Trinidad Securityholders”.
- (i) In connection with the Proposed Arrangement, Trinidad will apply to have the Trinidad Shares listed and posted for trading on the TSX.
- (j) The Proposed Arrangement is being undertaken to reorganize the Trust and its subsidiaries following the enactment by the federal government of new rules in respect of the tax treatment of specified investment flow-through trusts. Pursuant to the Proposed Arrangement, the Trust and its subsidiaries will be reorganized into a public oil and gas services corporation that will retain the name “Trinidad Drilling Ltd.” and will own, directly or indirectly, all of the existing assets and assume all of the existing liabilities of the Trust.

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- (k) The Proposed Arrangement requires the approval of a majority of not less than two thirds of the votes cast by Unitholders and Exchangeable Shareholders (excluding Exchangeable Shares held by the Trust or one of its affiliates) voting together as a single class in person or proxy at a meeting. Unitholders and Exchangeable Shareholders will have the right to dissent to the Proposed Arrangement and to be paid the fair value of their securities in respect of which they dissent.
- (l) Pursuant to the Proposed Arrangement: (i) the Units will be exchanged on a one-for-one basis into Trinidad Shares; (ii) the Exchangeable Shares will be exchanged into a number of Trinidad Shares equal to the number of Units that would otherwise be issued on exchange from the applicable series of Exchangeable Shares; and (iii) Trinidad will assume all covenants and obligations of the Trust under the Debenture Indenture in respect of the Debentures.
- (m) The rights of Trinidad Securityholders and Debentureholders in respect of Trinidad following the Proposed Arrangement will be substantially equivalent to the rights the Trinidad Securityholders and Debentureholders currently have in respect of the Trust and Trinidad, as applicable, and their relative interest in and to the business carried on by subsidiaries of the Trust will not be affected by the Proposed Arrangement.
- (n) The only securities that will be distributed to Trinidad Securityholders pursuant to the Arrangement will be Trinidad Shares.
- (o) Following completion of the Proposed Arrangement, neither the number of issued and outstanding securities held by the Trinidad Securityholders (other than to give effect to the exchange ratios of the Exchangeable Shares) nor the relative holdings of the securities by the Trinidad Securityholders will be altered as a result of the completion of the Arrangement and the existing operating assets will continue to be owned by the Trinidad Entities.
- (p) The Proposed Arrangement does not contemplate the acquisition of any additional operating assets or the disposition of any existing operating assets.
- (q) While changes to the consolidated financial statements of the Trinidad Entities will be required to reflect the organizational structure of the Trinidad Entities following the Proposed Arrangement, the financial position of Trinidad will be largely the same as reflected in the Trust's

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audited annual consolidated financial statements most recently filed or required to have been filed under Part 4 of NI 51-102 prior to the date of the Information Circular and the unaudited interim consolidated financial statements of the Trust most recently filed or required to have been filed under Part 4 of NI 51-102, if any, prior to the date of the Information Circular. In particular, the entity that exists both before and subsequent to the Proposed Arrangement would be substantially the same given the fact that the assets and liabilities of the enterprise, from both an accounting perspective and an economic perspective, are not changing based on the Proposed Arrangement. However, as the tax structure will be changing from that of an income trust to a corporation, the tax advantages of the income trust structure would be lost. As a result, the only reconciling items would be with respect to both the current and future income tax due to the elimination of the deduction for the interest on certain promissory notes between the Trust and subsidiaries of the Trust. This would therefore require these entities to use tax pools to shield their taxability therefore creating a future income tax liability and to the extent that the income could not be shielded by tax pools, it would trigger cash taxes.

- (r) The Information Circular of the Trust in respect of which relief is required is to be sent to Trinidad Securityholders in connection with a special meeting of Trinidad Securityholders to be held on March 10, 2008, and any adjournment thereof, at which Trinidad Securityholders will vote on the Proposed Arrangement.
- (s) Sections 14.2(c) and (d) of Form 51-102F5 requires that the Information Circular include financial information sufficient to enable a reasonable securityholder to form a reasoned judgment concerning the nature and effect of the Proposed Arrangement (including financial statement disclosure) for Trinidad prescribed by the form of the prospectus that Trinidad would be eligible to use for a distribution of securities in the Jurisdiction.
- (t) Pursuant to Section 4.1 of OSC Rule 41-501 *General Prospectus Requirements* (OSC Rule 41-501), the Trust would be required to include the following annual financial statements of Trinidad in the Information Circular:
  - (i) statements of income, retained earnings and cash flows for each of the three most recently completed financial years ended more than 90 days before the date of the Information Circular; and
  - (ii) a balance sheet as at:

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- A. the last day of the most recently completed financial year ended more than 90 days before the date of the Information Circular; and
  - B. the last day of the immediately preceding financial year.
- (u) The financial statements of the Trust are reported on a consolidated basis, which includes the financial results for Trinidad and all other subsidiaries of the Trust. Trinidad does not report its financial results independently from the consolidated financial statements of the Trust. The financial information relating to Trinidad prior to the Proposed Arrangement is not relevant to the consideration of the approval of the Proposed Arrangement, as the financial results of Trinidad will not impact the effectiveness of the reorganization being completed pursuant to the Proposed Arrangement.
- (v) Management of the Trust and Trinidad (Management), in consultation with the Trust's auditors, has determined that because the Proposed Arrangement will result in a reorganization of entities under common control, with no resultant change in beneficial ownership of the assets and liabilities of the enterprise, from both an accounting perspective and an economic perspective, no acquisition will occur as a result of the Proposed Arrangement and therefore the significant acquisition financial statement disclosure requirements found in Part 6 of OSC Rule 41-501 are inapplicable.
- (w) The Proposed Arrangement will be a reorganization undertaken without dilution to the Trinidad Securityholders or additional debt or interest expense.
- (x) The financial statements of the Trust are reported on a consolidated basis, which includes the financial results for Trinidad and all other subsidiaries of the Trust. Trinidad does not report its financial results independently from the consolidated financial statements of the Trust. Historical consolidated financial statements for Trinidad, if prepared, would not include the accounts of the Trust. Management, after consulting with the Trust's auditors, believes that this would be misleading, since there are transactions between Trinidad and the Trust that eliminate when consolidation is performed at the Trust level. To present a consolidated set of financial statements for Trinidad, which would exclude the accounts of the Trust, would present the effects of only one side of the financing activities between Trinidad and the Trust. This would result in large amounts of intra-group interest expense being reflected on the Trinidad

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consolidated financial statements, which would present a confusing (and potentially misleading) picture of financial performance.

- (y) The Information Circular will contain prospectus level disclosure in accordance with applicable securities legislation for Trinidad (other than the financial statement disclosure required by the Financial Statement Requirement) and will contain sufficient information to enable a reasonable securityholder to form a reasoned judgment concerning the nature and effect of the Proposed Arrangement, including:
- (i) the information in section 4.(q) of this decision document;
  - (ii) qualitative disclosure on how the tax position of Trinidad following the completion of the Proposed Arrangement will differ from the existing tax position of the Trust; and
  - (iii) disclosure on how the retained cash flows of Trinidad following the completion of the Proposed Arrangement will differ from the existing cash flows of the Trust.

### **Decision**

5. 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.
6. The decision of the Decision Makers under the Legislation is that the Financial Statement Requirement for Trinidad will not apply to the Information Circular.

Blaine Young  
Associate Director, Corporate Finance  
Alberta Securities Commission