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Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Relief from registration and prospectus requirements granted for trades in connection with a statutory arrangement involving exchangeable shares where exemptions not available for technical reasons - Relief from continuous disclosure and proxy requirements for issuer of exchangeable shares - First trades in securities acquired under decision deemed a distribution unless certain conditions in MI 45-102 *Resale of Securities* are satisfied.

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61, 76, 85(1), 87, 91, 117 and 119

Securities Rules, B.C. Reg. 194/97, ss. 144, 145 and 184

Multilateral Instrument 45-102 *Resale of Securities*

**IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA,
BRITISH COLUMBIA, SASKATCHEWAN MANITOBA, ONTARIO,
QUÉBEC, NEW BRUNSWICK, PRINCE EDWARD ISLAND, NOVA
SCOTIA, NEWFOUNDLAND AND LABRADOR, THE NORTHWEST
TERRITORIES, NUNAVUT, AND THE YUKON TERRITORY**

AND

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

AND

**IN THE MATTER OF CCS INCOME TRUST, CANADIAN CRUDE
SEPARATORS INC., AND CCS INC.**

MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (collectively, the "Decision Makers") in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Nova Scotia, the Yukon Territory, Nunavut and the Northwest Territories (the "Jurisdictions") has received an application from CCS Income Trust (the "Trust"), Canadian Crude Separators Inc. ("CCS") and CCS Inc. ("AcquisitionCo") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirements contained in the Legislation:

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- 1.1 to be registered to trade in a security (the "Registration Requirement") and to file a preliminary prospectus and a prospectus and receive receipts therefore (the "Prospectus Requirement") shall not apply to certain trades of securities to be made in connection with a proposed plan of arrangement under section 193 of the Business Corporations Act (Alberta) (the "ABCA") involving the Trust, AcquisitionCo, CCS and the security holders of CCS; and
 - 1.2 with respect to AcquisitionCo (or its successor on amalgamation with CCS - the "Amalgamated Corporation") in those Jurisdictions in which it becomes a reporting issuer or the equivalent under the Legislation to issue a press release and file a report upon the occurrence of a material change, file an annual report where applicable, interim financial statements and audited annual financial statements and deliver such financial statements to the security holders of AcquisitionCo or the Amalgamated Corporation, file an information circular or make an annual filing in lieu of filing an information circular, where applicable, file an annual information form and provide management's discussion and analysis of financial conditions and results of operations (the "Continuous Disclosure Requirements") shall not apply to AcquisitionCo or the Amalgamated Corporation;
2. AND WHEREAS pursuant to 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 the Trust, CCS and AcquisitionCo have represented to the Decision Makers that:
 - 3.1 CCS is a corporation organized and subsisting under the ABCA;
 - 3.2 CCS provides a variety of services to the upstream oil and gas sector, including the provision of oil field waste treatment, processing and disposal services and crude oil separation and terminaling services to oil and gas producers and the operation of a fleet of service rigs;
 - 3.3 the head and principal offices of CCS are located at 2400, 530 – 8th Avenue S.W., Calgary, Alberta T2P 3S8;
 - 3.4 the authorized capital of CCS presently consists of an unlimited number of common shares ("Common Shares") and up to 764,000 Series "A" preferred shares;

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- 3.5 as at April 19, 2002, 13,824,747 Common Shares and no Series "A" preferred shares were issued and outstanding; options and warrants ("Options") to purchase 1,733,411 Common Shares were outstanding; and a \$17,000,000 6% Subordinated Convertible Debenture due July 29, 2005 was issued and outstanding, which Debenture the holder has agreed to convert into 3,912,778 Common Shares prior to the Arrangement;
- 3.6 the Common Shares are presently listed on the Toronto Stock Exchange (the "TSE");
- 3.7 CCS is a reporting issuer in the Provinces of Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, and Newfoundland and Labrador and has been for more than 12 months;
- 3.8 CCS has filed all the information that it has been required to file as a reporting issuer in each of the Provinces of Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador, and is not in default of the securities legislation in any of these jurisdictions;
- 3.9 the Trust is an open-end unincorporated investment trust governed by the laws of the Province of Alberta and created pursuant to a trust indenture dated April 17, 2002 between CCS and Computershare Trust Company of Canada, as trustee;
- 3.10 the head and principal offices of the Trust are located at 2400, 530 – 8th Avenue S.W., Calgary, Alberta T2P 3S8;
- 3.11 the Trust was established to invest in securities of AcquisitionCo and the Amalgamated Corporation initially but is also permitted to acquire and invest in securities of any other subsidiary of the Trust or any other entity;
- 3.12 the Trust was established with nominal capitalization and currently has only nominal assets and no liabilities and the only activity which will be carried on by the Trust will be the holding of securities, initially securities of the Amalgamated Corporation;
- 3.13 the Trust is authorized to issue an unlimited number of trust units ("Trust Units") and an unlimited number of special voting rights ("Special Voting Rights");
- 3.14 as at April 24, 2002, there was one Trust Unit issued and outstanding and owned by CCS and no Special Voting Rights were outstanding;

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- 3.15 the Trust has received conditional approval from the TSE for the listing on the TSE of the Trust Units to be issued in connection with the Arrangement subject to, among other things, completion of the Arrangement;
- 3.16 the Trust is not a reporting issuer in any of the Jurisdictions;
- 3.17 AcquisitionCo was incorporated pursuant to the ABCA on April 17, 2002;
- 3.18 the head and principal offices of AcquisitionCo are located at 2400, 530 – 8th Avenue S.W., Calgary, Alberta T2P 3S8;
- 3.19 AcquisitionCo was incorporated to participate in the Arrangement by acquiring, directly or indirectly, Common Shares and Options of CCS;
- 3.20 the authorized capital of AcquisitionCo presently consists of an unlimited number of common shares; AcquisitionCo will amend its Articles such that it (and the Amalgamated Corporation) will also be authorized to issue an unlimited number of exchangeable shares issuable in series, of which 6,500,000 Series A exchangeable shares (the "Exchangeable Shares") will be authorized;
- 3.21 as at April 24, 2002, 10 common shares of AcquisitionCo were issued and outstanding and owned by the Trust;
- 3.22 AcquisitionCo is not a reporting issuer in any of the Jurisdictions;
- 3.23 the Arrangement will be effected by way of a plan of arrangement under section 193 of the ABCA which will require approval by (i) not less than two-thirds of the votes cast by the holders of Common Shares and the holders of Options (present in person or represented by proxy), each voting separately as a class, at a meeting to be held on May 22, 2002 (the "Meeting") and thereafter, (ii) the approval of the Court of Queen's Bench of Alberta (the "Court");
- 3.24 the management information circular (the "Information Circular") mailed to the holders of Common Shares and the holders of Options in connection with the Meeting conforms with the ABCA, applicable securities laws and an interim order of the Court and contains prospectus-level disclosure concerning the respective business, affairs and securities of the Trust, CCS

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and the Amalgamated Corporation and a detailed description of the Arrangement;

3.25 under the Arrangement:

3.25.1 the holders ("Shareholders") of Common Shares (other than dissenting holders or certain participating holding corporations ("Participating Holdcos")) will exchange each of the Common Shares held by them with AcquisitionCo in consideration for, at the election or deemed election of each such Shareholder: (i) one note of AcquisitionCo (a "Note") or (ii) one Series A exchangeable share of AcquisitionCo (an "Exchangeable Share") or (iii) a combination thereof;

3.25.2 the holders ("Participating Holdco Shareholders") of shares of Participating Holdcos ("Participating Holdco Shares") will exchange each of the Participating Holdco Shares held by them with AcquisitionCo in consideration for, at the election or deemed election of each such Participating Holdco Shareholder: (i) one Note or (ii) one Exchangeable Share or (iii) a combination thereof;

3.25.3 the holders ("Optionholders") of Options (other than dissenting holders) will exchange each of the Options held by them with AcquisitionCo for Notes;

3.25.4 Options acquired by AcquisitionCo will be exchanged with CCS for Common Shares; and

3.25.5 each Note will be exchanged with the Trust for one Trust Unit;

3.26 upon completion of these exchanges, each Participating Holdco will become wholly-owned by AcquisitionCo and all of the Common Shares of CCS will be owned by AcquisitionCo directly or indirectly through the Participating Holdcos;

3.27 as part of the Arrangement, AcquisitionCo, CCS and each Participating Holdco will amalgamate to form the Amalgamated Corporation which will continue under the name "CCS Inc.";

3.28 the Amalgamated Corporation will become a reporting issuer under the Legislation in Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador and will be subject to the Continuous Disclosure Requirements in such Jurisdictions;

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- 3.29 the Trust will become a reporting issuer under the Legislation in Alberta, Saskatchewan, Ontario, and Québec and will be subject to the Continuous Disclosure Requirements in such Jurisdictions;
- 3.30 the Exchangeable Shares will provide a holder with a security having economic, ownership and voting rights which are, as nearly as practicable, equivalent to those of the Trust Units;
- 3.31 under the terms of the Exchangeable Shares and certain rights to be granted in connection with the Arrangement, holders of Exchangeable Shares will be able to exchange them at their option for Trust Units;
- 3.32 under the terms of the Exchangeable Shares and certain rights to be granted in connection with the Arrangement, the Trust or a subsidiary of the Trust other than the Amalgamated Corporation (an "ExchangeCo") or the Amalgamated Corporation will be able to redeem, retract or acquire Exchangeable Shares in exchange for Trust Units in certain circumstances;
- 3.33 in order to ensure that the Exchangeable Shares remain the voting and economical equivalent of the Trust Units prior to their exchange, the Arrangement provides for:
 - 3.33.1 a voting and exchange trust agreement to be entered into among the Trust, the Amalgamated Corporation and Computershare Trust Company of Canada (the "Trustee") which will, among other things, grant to the Trustee, for the benefit of holders of Exchangeable Shares, the right to require the Trust or ExchangeCo to exchange the Exchangeable Shares for Trust Units, or to trigger automatically the exchange of the Exchangeable Shares for Trust Units upon the occurrence of certain specified events;
 - 3.33.2 the deposit by the Trust of a Special Voting Right with the Trustee which will effectively provide the holders of Exchangeable Shares with voting rights equivalent to those attached to the Trust Units; and
 - 3.33.3 a support agreement to be entered into between the Trust and the Amalgamated Corporation which will, among other things, restrict the Trust from distributing additional Trust Units or rights to subscribe therefore or other property or assets to all or substantially all of the holders of Trust Units, nor change the rights, privileges or other terms of the Trust Units, unless the same or an economically equivalent

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change to the Exchangeable Shares (or in the rights of the holders thereof) is made simultaneously;

- 3.34 the steps under the Arrangement, the terms of the Exchangeable Shares and the exercise of certain rights provided for in connection with the Arrangement and the Exchangeable Shares involves or may involve a number of trades of securities (collectively, the "Trades");
- 3.35 there are no exemptions from the Registration Requirement or the Prospectus Requirement available under the Legislation for certain of the Trades;
- 3.36 the Information Circular discloses that the Trust and AcquisitionCo will rely on exemptions, including discretionary exemptions, from the Registration Requirement and Prospectus Requirement with respect to the issuance of Trust Units and Exchangeable Shares pursuant to the Arrangement and discloses that application will be made to relieve the Amalgamated Corporation from the Continuous Disclosure Requirements; and
- 3.37 the Trust will concurrently send to holders of Exchangeable Shares resident in the Jurisdictions all disclosure material it sends to holders of Trust Units pursuant to the Legislation;
- 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;
- 6. THE DECISION of the Decision Makers under the Legislation is that:
 - 6.1 the Registration Requirement and Prospectus Requirement shall not apply to the Trades provided that the first trade in securities acquired under this Decision shall be deemed to be a distribution or primary distribution to the public;
 - 6.2 the Prospectus Requirement shall not apply to the first trade in Trust Units and Exchangeable Shares acquired by security holders of CCS or Participating Holdcos under the Arrangement and the first trade of the Trust Units acquired by the holders thereof on the exercise of all rights, automatic or otherwise, under such Exchangeable Shares, provided that:

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- 6.2.1 except in Québec, the conditions in subsections (3) or (4) of section 2.6 of Multilateral Instrument 45-102 *Resale of Securities* ("MI 45-102"), with the issuer being the Trust, are satisfied and for the purposes of determining the period of time that the Trust has been a reporting issuer under section 2.6 of MI 45-102, the period of time that CCS was a reporting issuer in at least one of the jurisdictions listed in Appendix B of MI 45-102 immediately before the Arrangement may be included; and
- 6.2.2 in Québec,
- 6.2.2.1 the Trust is and has been a reporting issuer in Québec for the 12 months immediately preceding the trade, including the period of time that CCS was a reporting issuer in Québec immediately before the Arrangement;
- 6.2.2.2 no unusual effort is made to prepare the market or create a demand for the securities that are the subject of the trade;
- 6.2.2.3 no extraordinary commission or consideration is paid to a person or company in respect of the trade; and
- 6.2.2.4 if the selling security holder is an insider or officer of the Trust, the selling security holder has no reasonable grounds to believe that the Trust is in default of securities legislation;
- 6.3 the Continuous Disclosure Requirements shall not apply to the Amalgamated Corporation for so long as:
- 6.3.1 the Trust is a reporting issuer in Québec and at least one of the jurisdictions listed in Appendix B of MI 45-102 and is an electronic filer under National Instrument 13-101;
- 6.3.2 the Trust sends to all holders of Exchangeable Shares resident in the Jurisdictions all disclosure material furnished to holders of Trust Units under the Continuous Disclosure Requirements;
- 6.3.3 the Trust complies with the requirements of the TSE, or such other market or exchange on which the Trust Units may be quoted or listed, in respect of making public disclosure of material information on a timely basis;

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- 6.3.4 the Amalgamated Corporation is in compliance with the requirements of the Legislation to issue a press release and file a report with the Decision Makers upon the occurrence of a material change in respect of the affairs of the Amalgamated Corporation that is not also a material change in the affairs of the Trust;
- 6.3.5 the Trust shall include in all future mailings of proxy solicitation materials to holders of Exchangeable Shares a clear and concise insert explaining the reason for the mailed material being solely in relation to the Trust and not to the Amalgamated Corporation, such insert to include a reference to the economic equivalency between the Exchangeable Shares and Trust Units and the right to direct voting at meetings of holders of Trust Units;
- 6.3.6 the Trust remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities of the Amalgamated Corporation; and
- 6.3.7 the Amalgamated Corporation does not issue any preferred shares or debt obligations other than debt obligations issued to its affiliates or to banks, loan corporations, trust corporations, treasury branches, credit unions, insurance companies or other financial institutions.

DATED this 22nd day of May, 2002

Glenda A. Campbell, Q.C., Vice-Chair

David W. Betts, Member