

# 2002 BCSECCOM 917

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – vary previous MRRS decision document so that condition to that relief contemplates the arrangement

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c.418, s. 171

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

AND

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

AND

IN THE MATTER OF NABORS INDUSTRIES LTD., 3064297 NOVA SCOTIA  
COMPANY, NABORS EXCHANGE CO (CANADA) INC. AND RYAN ENERGY  
TECHNOLOGIES INC.

MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland, Yukon Territory, Nunavut and the Northwest Territories (the "Jurisdictions") has received an application from Nabors Industries Ltd. ("Nabors"), 3064297 Nova Scotia Company ("Callco") and Nabors Exchange Co (Canada) Inc. ("Canco") (collectively, the "Applicant") for a decision pursuant to the securities legislation, regulations, rules,

instruments and/or policies of the Jurisdictions (the "Legislation") that the requirements contained in the Legislation to be registered to trade in a security (the "Registration Requirement") and to file a preliminary prospectus and a prospectus and to obtain receipts therefor (the "Prospectus Requirement") shall not apply to certain trades and distributions of securities to be made in connection with an agreement to combine the businesses of Nabors and Ryan Energy Technologies Inc. ("Ryan") pursuant to a plan of arrangement (the "Arrangement") under Section 193 of the *Business Corporations Act* (Alberta) as amended (the "ABCA");

2. AND WHEREAS the Decision Makers issued a decision on April 18, 2002, *In the Matter of Nabors Industries, Inc. et al.* (the "Enserco Decision") under the Legislation exempting trades in certain securities by Nabors Industries, Inc. (the predecessor to Nabors), Callco and Canco and exempting Canco from, among other things, the requirements contained in the Legislation to issue a press release and file a report with the Decision Makers upon the occurrence of a material change, file and deliver an annual report, where applicable, interim and annual financial statements, information circulars and annual information forms and provide, where applicable, interim and annual management's discussion and analysis of financial conditions and results of operations (collectively the "Continuous Disclosure Requirements") and the Applicant has applied to the Decision Makers for a decision under the Legislation varying the Enserco Decision;

3. 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;

4. AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or in Québec Commission Notice 14-101;

5. AND WHEREAS the Applicant has represented to the Decision Makers that:

5.1 Nabors is an exempted company organized and existing under the laws of Bermuda, with its registered office in Bridgetown, Barbados; Effective June 24, 2002, Nabors became the successor to Nabors Industries, Inc., a Delaware corporation ("Nabors Delaware"), following a corporate reorganization;

5.2 the authorized capital of Nabors is US\$425,000, which consists of 425,000,000 shares of stock, par value US\$0.001 per share, of which 400,000,000 are common shares of Nabors ("Nabors Shares") and 25,000,000 are preferred shares, par value US\$0.001 per share;

5.3 the Nabors Shares are currently listed and posted for trading on the American Stock Exchange (the "AMEX") under the symbol "NBR";

5.4 as of August 20, 2002, there were 15 registered holders of Nabors Shares resident in Canada (out of a total of 2,209 registered holders) holding 878,274 Nabors Shares, representing approximately 0.608% of the total number of issued and outstanding Nabors Shares. As of September 6, 2002, there were 978 beneficial holders of Nabors Shares resident in Canada holding 334,414 Nabors Shares representing approximately 0.231% of the total number of issued and outstanding Nabors Shares;

5.5 on August 12, 2002, the day immediately prior to the Arrangement being publicly announced, the closing price for Nabors Shares was US\$31.29, representing a market capitalization of approximately US\$4.5 billion;

5.6 Nabors is subject to the reporting requirements of the *United States Securities Exchange Act of 1934*, as amended (the "1934 Act");

5.7 Nabors is not a reporting issuer in any of the Jurisdictions but anticipates becoming a reporting issuer, absent exemptive relief from the securities regulatory authority or regulator therein, in Alberta and Québec following, and as a consequence of, the completion of the Arrangement;

5.8 Callco is:

5.8.1 an indirect wholly-owned subsidiary of Nabors;

5.8.2 an unlimited liability company incorporated under the *Companies Act* (Nova Scotia) solely for the purpose of holding the various call rights associated with the exchangeable non-voting shares of Canco (the "Exchangeable Shares"); and

5.8.3 not a reporting issuer or the equivalent in any province or territory of Canada and does not intend to become a reporting issuer or the equivalent in any province or

territory of Canada;

5.9 all of the issued and outstanding shares of Callco are and will be held indirectly by Nabors at all material times;

5.10 Nabors and Callco have applied to be deemed to have ceased to be reporting issuers after the Effective Time (as defined below) of the Arrangement;

5.11 Canco was incorporated under the *Canada Business Corporations Act* on March 8, 2002 for the purpose of implementing business combinations in Canada and issuing Exchangeable Shares in connection therewith, and has its registered office in Calgary, Alberta. The only business Canco has carried on prior to its involvement in the Arrangement was the arrangement involving Nabors Delaware, Canco, Callco and Enserco Energy Service Company Inc. on April 2002 (the "Enserco Arrangement");

5.12 the authorized capital of Canco consists of an unlimited number of common shares and an unlimited number of Exchangeable Shares;

5.13 as at August 31, 2002, there was one common share of Canco and 641,982 Exchangeable Shares issued and outstanding. All of the issued and outstanding common shares of Canco are and will continue to be held indirectly by Nabors as long as any outstanding Exchangeable Shares are owned by any person or entity other than Nabors or any of Nabors' subsidiaries;

5.14 Canco is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Québec;

5.15 the Exchangeable Shares are listed and posted for trading on TSX Inc. (the "TSX");

5.16 on January 22, 1993, Adesso Corporation was incorporated under the ABCA and on March 14, 1994, Adesso Corporation acquired all of the issued and outstanding shares of Ryan Energy Technologies Inc., a private Alberta Company, which was incorporated on October 30, 1991;

5.17 on April 1, 1994, Adesso Corporation and Ryan Energy Technologies Inc. amalgamated under the ABCA to continue under the name Ryan Energy Technologies

Inc.;

5.18 the authorized capital of Ryan consists of an unlimited number of common shares ("Ryan Shares") and an unlimited number of preferred shares issuable in series, of which 22,716,848 Ryan Shares were issued and outstanding as of August 12, 2002. Up to an additional 565,566 Ryan Shares may be issued pursuant to outstanding in-the-money options ("Ryan Options") and up to 1,731,450 Ryan Shares may be issued pursuant to outstanding out-of-the-money Ryan Options;

5.19 the Ryan Shares are listed and posted for trading on the TSX under the symbol "RYN";

5.20 Ryan is a reporting issuer in Alberta, British Columbia, Manitoba, Ontario and Québec;

5.21 to the knowledge of the Applicant, Ryan is not in default of any requirements of the Legislation;

5.22 the Arrangement is subject to approval of the holders of Ryan Shares ("Shareholders"), and the holders of Ryan Options (collectively, the "Ryan Security Holders") and the Court of Queen's Bench of Alberta by virtue of a final order approving the Arrangement;

5.23 a meeting of the Ryan Security Holders (the "Ryan Meeting") has been scheduled for October 8, 2002 to consider and, if deemed appropriate, approve the Arrangement;

5.24 an information circular dated September 6, 2002 (the "Circular") prepared in accordance with the Legislation was mailed to the Ryan Security Holders on September 10, 2002 in connection with the Ryan Meeting and filed with each of the Decision Makers concurrently therewith;

5.25 the Circular contains or incorporates by reference prospectus-level disclosure concerning the Arrangement and the business and affairs of both Nabors and Ryan as well as certain historical financial information regarding both Nabors and Ryan;

5.26 at the Ryan Meeting, each Shareholder will be entitled to one vote for each Ryan

Share held, and each holder of Ryan Options will be entitled to one vote for each Ryan Share such holder would receive on a valid exercise thereof;

5.27 subject to the satisfaction or waiver of all closing conditions, including the receipt of all regulatory approvals, it is currently anticipated that the Arrangement will be completed on or about October 9, 2002;

5.28 under the terms of the Arrangement, at the effective time (the "Effective Time") on the date shown on the registration statement issued upon filing Articles of Arrangement under the ABCA giving effect to the Arrangement (the "Effective Date"):

5.28.1 each Ryan Share that is not held by either a Shareholder who has exercised its dissent right and who is ultimately entitled to be paid the fair value of its Ryan Shares, or by Nabors or any affiliate thereof, will be transferred to, and acquired by, Canco, in exchange for, at the Shareholder's election (or deemed election): (a) Cdn. \$1.85 (the "Per Share Price"); or (b) such number of fully paid and non-assessable Exchangeable Shares as is determined pursuant to an Exchange Ratio (as defined in paragraph 5.29);

5.28.2 each Ryan Share in respect of which no election or no effective election has been made by the Shareholder (other than Ryan Shares held by (i) a Shareholder who has exercised its dissent right and is ultimately entitled to be paid the fair market value of its Ryan Shares, or (ii) Ryan or any affiliate) will be transferred to, and acquired by, Canco without any act or formality on the part of the Shareholder or Canco, free and clear of all liens, claims and encumbrances, and the Shareholder shall be deemed to have elected to receive in exchange therefor the Per Share Price in cash; and

5.28.3 each Ryan Option that has not been duly exercised or surrendered for termination prior to the Effective Time shall be terminated and, in consideration for such termination, each holder of such Ryan Option shall receive cash, without interest, in an amount equal to the greater of: (A) the positive difference, if any, between (i) the product of the Per Share Price and the number of Ryan Shares that are subject to issuance upon the exercise of such Ryan Option, and (ii) the cash exercise price of such Ryan Option; and (B) Cdn.\$0.10, for each Ryan Share subject to such issuance;

5.29 the "Exchange Ratio" will be determined by dividing the Per Share Price by the

simple average of the weighted average trading price of Nabors Shares on the AMEX over 3 consecutive trading days ending on the third Business Day prior to the date of the Ryan Meeting (the "Measurement Period") using a currency exchange rate of Canadian dollars to U.S. dollars equal to the average of the noon-buying rates in New York City for cable transfers in Canadian dollars as certified for customs purposes by the Federal Reserve Bank of New York for each trading day in the Measurement Period. The "Simple Average of the Weighted Average Trading Price" is determined by dividing the aggregate sale price of all Nabors Shares sold on the AMEX during the Measurement Period by the total number of Nabors Shares sold;

5.30 upon the completion of the Arrangement, all of the issued and outstanding Ryan Shares will be held directly or indirectly by Nabors and its affiliates;

5.31 it is expected that the Ryan Shares will be delisted from the TSX on or after the Effective Date. Ryan will continue to be a reporting issuer or the equivalent thereof, absent exemptive relief from the securities regulatory authority or regulator therein, in Alberta, British Columbia, Manitoba, Ontario and Québec;

5.32 Nabors will apply to the AMEX to list the Nabors Shares to be issued in exchange for the Exchangeable Shares;

5.33 the rights, privileges, conditions and restrictions attaching to the Exchangeable Shares (the "Exchangeable Share Provisions"), the terms and conditions of the voting and exchange trust agreement between Nabors Delaware, Canco and Computershare Trust Company of Canada (the "Trustee") dated April 26, 2002 (the "Voting and Exchange Trust Agreement") and the terms and conditions of the support agreement between Nabors Delaware, Callco and Canco dated April 26, 2002 (the "Support Agreement") are described in the Circular. Nabors became a party to the Voting and Exchange Trust Agreement and the Support Agreement by a novation agreement dated June 24, 2002;

5.34 the Exchangeable Shares will be issued by Canco and are exchangeable at any time after the Effective Date (subject to earlier redemption in accordance with the Arrangement), on a one-for-one basis, at the option of the holder, for Nabors Shares. An Exchangeable Share provides a holder with economic terms and voting rights which are, as nearly as practicable, equivalent to those of a Nabors Share;

5.35 the Arrangement involves or may involve, a number of trades and/or distributions of securities (collectively, the "Trades"), in respect of which there may be no registration or prospectus exemptions available under the securities legislation of the Jurisdictions, other than British Columbia, including, without limitation, the issuance of the Exchangeable Shares; the issuance of Nabors Shares upon the exchange of Exchangeable Shares; the creation and exercise of all the various rights under the Voting and Exchange Trust Agreement, Support Agreement and Exchangeable Share Provisions; and the issuance of shares of Nabors and its affiliates (including Canco and Callco) in connection with the Arrangement;

5.36 the fundamental investment decision to be made by a Ryan Security Holder will be made at the time when such holder votes in respect of the Arrangement. As a result of this decision, unless Exchangeable Shares are sold in the market, a holder (other than a dissenting Shareholder) will ultimately receive Nabors Shares in exchange for the Ryan Shares held by such holder. The use of the Exchangeable Shares will provide certain Canadian tax benefits to certain Canadian holders but will otherwise be, as nearly as practicable, the economic and voting equivalent of the Nabors Shares. As such, all subsequent exchanges of Exchangeable Shares stem from the holder's initial investment decision;

5.37 as a result of the economic and voting equivalency in all material respects between the Exchangeable Shares and the Nabors Shares, holders of Exchangeable Shares will have an equity interest determined by reference to Nabors, rather than Canco. Dividend and dissolution entitlements will be determined by reference to the financial performance and condition of Nabors, not Canco. Accordingly, it is the information relating to Nabors, not Canco, that will be relevant to the holders of Exchangeable Shares;

5.38 the Circular discloses that Nabors and Canco have applied for relief from the Registration Requirement and Prospectus Requirement and Insider Reporting Requirements for insiders of Canco. The Circular also identifies the limitations imposed on any resale of Exchangeable Shares or Nabors Shares and the continuous disclosure that will be provided to holders of Exchangeable Shares if the requested relief is granted;

5.39 upon completion of the Arrangement, assuming a maximum exchange ratio



("Exchange Ratio") of 0.0367 (based upon the weighted average trading price of Nabors Shares on October 1, 2002 converted from US dollars to Canadian dollars, based upon the average exchange rate on such date) and assuming that Exchangeable Shares are considered to be Nabors Shares, the beneficial holders of Nabors Shares resident in Canada will hold approximately 0.9% of the issued and outstanding Nabors Shares (calculated based upon the number of Nabors Shares held by residents of Canada, as set out above, the election of Ryan Shareholders holding 9,082,675 Ryan Shares as of September 30, 2002 (the election deadline) to receive either Exchangeable Shares or Nabors Shares and on the assumption that all such electing Ryan Shareholders are residents of Canada);

5.40 following completion of the Arrangement, Nabors will concurrently send to holders of Exchangeable Shares or Nabors Shares resident in the Jurisdictions all disclosure material it sends to holders of Nabors Shares resident in the United States pursuant to the 1934 Act;

#### *Varying the Enserco Decision*

5.41 paragraph 6.4 of the Enserco Decision provides that the Continuous Disclosure Requirements shall not apply to Canco so long as certain conditions are met including that Canco not issue any securities to the public other than the exchangeable non-voting shares of Canco issued pursuant to the Enserco Arrangement;

5.42 under the Arrangement, Canco is required to issue Exchangeable Shares to certain Ryan Shareholders who elect to receive Exchangeable Shares and as this issuance will contravene the Enserco Decision, the Enserco Decision must be varied to allow this issuance;

5.43 in addition to continuing to comply with the Enserco Decision:

5.43.1 Nabors will send concurrently to all holders of Exchangeable Shares and Nabors Shares resident in Canada (including, following the Effective Time, to former Shareholders who elect to receive Exchangeable Shares pursuant to the Arrangement) all disclosure material furnished to holders of Nabors Shares resident in the United States, including, without limitation, copies of its proxy solicitation materials and its annual financial statements, which financial statements will be prepared solely in accordance with US GAAP;

5.43.2 Canco will comply with the material change reporting requirements in respect of material changes in the affairs of Canco that would be material to holders of Exchangeable Shares but would not be material to holders of Nabors Shares; and

5.43.3 Nabors will include in all future mailings of proxy solicitation materials (if any) to holders of Exchangeable Shares a clear and concise statement explaining the reason for the mailed material being solely in relation to Nabors and not in relation to Canco, such statement to include a reference to the economic equivalency between the Exchangeable Shares and the Nabors Shares and the right to direct voting at Nabors' shareholders' meetings pursuant to the Voting and Exchange Trust Agreement (without taking into account tax effects);

5.44 the policy rationale underlying the relief from the Continuous Disclosure Requirements provided to Canco in the Enserco Decision is equally applicable to issuances of Exchangeable Shares to the Ryan Shareholders; and

5.45 Nabors and Canco are not in default of any requirements of the Legislation;

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

7. 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;

8. AND WHEREAS the decision of the Decision Makers under the Legislation is that:

8.1 except in British Columbia:

8.1.1 the Registration Requirement and Prospectus Requirement shall not apply to the Trades;

8.1.2 the first trade in Exchangeable Shares acquired in connection with the Arrangement shall be deemed to be a distribution or primary distribution to the public under the Legislation of the Jurisdiction in which the trade takes place, unless:

8.1.2.1 except in Québec:

8.1.2.1.1 the conditions in subsections (3) or (4) of Section 2.6 of Multilateral Instrument 45-102 Resale of Securities ("MI 45-102") are satisfied; and provided further that, in determining the period of time that Canco has been a reporting issuer for the purposes of Section 2.6 of MI 45-102, the period of time that Ryan has been a reporting issuer may be included; or

8.1.2.1.2 where such first trade is a "control distribution" as such term is defined in MI 45-102, such trade is made in compliance with Sections 2.8 of MI 45-102; and provided further that, in determining the period of time that Canco has been a reporting issuer for the purposes of Section 2.8 of MI 45-102, the period of time that Ryan has been a reporting issuer may be included; and the period of time that a holder of Exchangeable Shares (or an affiliated or controlled entity of such holder) held Ryan Shares shall be included in the calculation of the hold period);

8.1.2.2 in Québec:

8.1.2.2.1 Canco or one of the parties to the Arrangement (including, for greater certainty, Ryan) is and has been a reporting issuer in Québec in good standing for the twelve months immediately preceding the first trades (and for the purpose of determining the period of time that the issuer or one of the parties to the Arrangement has been a reporting issuer in Québec, the period of time that Ryan was a reporting issuer may be included);

8.1.2.2.2 no unusual effort is made to prepare the market or to create a demand for the Exchangeable Shares;

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

8.1.2.2.4 if the selling Exchangeable Shareholder is an insider or officer of Nabors or Canco, the selling Exchangeable Shareholder has no reason to believe that Nabors or Canco are in default of the legislation.

8.1.3 the first trade in Nabors Shares acquired in connection with the Arrangement shall be deemed to be a distribution or primary distribution to the public under the

Legislation unless, at the time of the trade:

8.1.3.1 except in Québec:

8.1.3.1.1 if Nabors is a reporting issuer in any Jurisdiction listed in Appendix B to MI 45-102 other than Québec, the conditions in subsections (3) or (4) of Section 2.6 of MI 45-102 are satisfied; and for the purpose of determining the period of time that Nabors has been a reporting issuer under Section 2.6, the period of time that Ryan has been a reporting issuer may be included; or

8.1.3.1.2 if Nabors is not a reporting issuer in any Jurisdiction other than Québec, such first trade is made through an exchange, or a market, outside of Canada; and

8.1.3.2 in Québec:

8.1.3.2.1 Nabors or one of the parties to the Arrangement (including, for greater certainty, Ryan) is and has been a reporting issuer in Québec in good standing for the twelve months immediately preceding the first trades (and for the purpose of determining the period of time that the issuer or one of the parties to the Arrangement has been a reporting issuer in Québec, the period of time that Ryan was a reporting issuer may be included);

8.1.3.2.2 no unusual effort is made to prepare the market or to create a demand for the Nabors Shares;

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

8.1.3.2.4 if the selling Exchangeable Shareholder is an insider or officer of Nabors or Cancor, the selling Exchangeable Shareholder has no reason to believe that Nabors or Cancor are in default of the legislation;

8.2 the Enserco Decision be varied by:

8.2.1 deleting the condition to the relief from the Continuous Disclosure Requirements at paragraph 6.4.7 in the Enserco Decision; and

8.2.2 inserting the following as paragraph 6.4.7 in the Enserco Decision:

6.4.7 Canco does not issue any securities to the public other than exchangeable shares in connection with the arrangements involving Canco and Enserco Energy Service Company Inc. and Canco and Ryan Energy Technologies Inc.

DATED this 8th day of October, 2002.

Stephen P. Sibold, Q.C., Chair Eric T. Spink, Vice-Chair