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Headnote

Mutual Reliance Review System for Exemptive Relief Application – exemption from the requirement contained in Multilateral Instrument 45-102 *Resale of Securities* for a qualifying issuer to have a current annual information form filed on the system for electronic document analysis and retrieval – issuer relying on reverse takeover information circular as an alternative form of annual information form

Applicable British Columbia Provisions

Multilateral Instrument 45-102 *Resale of Securities*, subsections 1.1 and 4.1

IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA AND BRITISH COLUMBIA

AND

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

AND

IN THE MATTER OF DRIVER ENERGY SERVICES INC.

MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (collectively, Decision Makers) in each of Alberta and British Columbia (Jurisdictions) has received an application from Driver Energy Services Inc. (Driver or Corporation), for a decision under the securities legislation of the Jurisdictions (Legislation) that for the purposes of MI 45-102, Driver be temporarily exempt from the requirement contained in the definition of qualifying issuer to have a current AIF filed on SEDAR;
2. AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (System), the Alberta Securities Commission is the principal regulator for this application;
3. AND WHEREAS unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions*;
4. AND WHEREAS DRIVER has represented that:

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- 4.1 Driver was incorporated pursuant to the Business Corporations Act (Alberta) (ABCA) on July 5, 1999 under the name Merit Oilfield Services Inc. In June 2000 Driver changed its name to Driver Energy Services Inc.;
- 4.2 the head office of Driver is located at Site #16 Industrial Drive, Sylvan Lake, Alberta T4S 1P4 and the registered office of Driver is located at Suite 3100, Home Oil Tower, 324 – 8th Avenue SW, Calgary, Alberta T2P 2Z2;
- 4.3 Driver is a reporting issuer in Alberta and British Columbia and is not in default of any of its obligations under the Legislation;
- 4.4 Driver completed an initial public offering on November 6, 2000 as a capital pool company (CPC) and was listed on the CDNX on November 17, 2000 and is now presently listed on the TSX Venture Exchange Inc. (Exchange).
- 4.5 on March 31, 2002 Driver amalgamated with Easyford Resources Inc.;
- 4.6 the authorized capital of Driver consists of an unlimited number of common shares (Driver Common Shares);
- 4.7 as at August 31, 2003, there were 4,401,500 Driver Common Shares issued and outstanding and options to purchase 424,000 Driver Common Shares outstanding;
- 4.8 Kodiak Construction Ltd. (Kodiak) was incorporated pursuant to the ABCA on June 27, 1975 under the name N.B. Wold & Sons Trucking Ltd. In December 1990 Kodiak changed its name to Kodiak Construction Ltd.;
- 4.9 the head office and registered office of Kodiak is located at Box 300, Sexsmith, Alberta T0H 3C0;
- 4.10 Kodiak is not a reporting issuer in any jurisdiction;
- 4.11 the articles of Kodiak presently contain private company restrictions. The authorized capital of Kodiak consists of an unlimited number of Class A Shares (Kodiak Common Shares), Class B Shares, Class C Non-Cumulative Redeemable Preferred Shares (Kodiak Preferred Shares), Class D Non-Cumulative Redeemable Preferred Shares Class

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F Non-Cumulative Redeemable Non-Voting Preferred Shares and 2000 Class E Special Voting Shares;

- 4.12 as at August 31, 2003, there were 100 Kodiak Common Shares and 890,000 Kodiak Preferred Shares issued and outstanding;
- 4.13 pursuant to an Amalgamation Agreement dated as of July 18, 2003, Kodiak and Driver agreed to amalgamate (Amalgamation) to form Kodiak Energy Services Ltd. (Amalco);
- 4.14 the Amalgamation constitutes a reverse take-over (RTO) under Exchange Policy 5.2 *Changes of Business and Reverse Take-overs* (Exchange Policy 5.2). The disclosure requirements of Exchange Policy 5.2 are substantially the same as the requirements in Exchange Policy 2.4 *Capital Pool Companies* (Exchange Policy 2.4). An information circular filed pursuant to Exchange Policy 2.4 that has been reviewed and accepted by the Exchange is one of the items defined as a current AIF in MI 45-102;
- 4.15 An information circular of Driver in the form required by Exchange Policy 5.2, was delivered to shareholders of Driver in connection with the proposed Amalgamation (Circular);
- 4.16 the Circular contains financial statement disclosure similar to that which is typically required to obtain a final receipt for a prospectus:
 - (a) audited financial statements of Driver for the year ended December 31, 2002;
 - (b) unaudited interim financial statements of Driver for the six months ended June 30, 2003;
 - (c) audited consolidated financial statements of Kodiak for the year ended July 31, 2002;
 - (d) unaudited interim consolidated financial statements of Kodiak for the nine months ended April 30, 2003; and
 - (e) pro-forma consolidated financial statements of Amalco as at April 30, 2003 accompanied by a compilation report of an auditor;

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- 4.17 the Circular has been filed with the Exchange and has been reviewed and approved by the Exchange pursuant to Exchange Policy 5.2;
- 4.18 an Annual and Special Meeting of shareholders of Driver was held on October 9, 2003 at which time the shareholders of Driver approved the Amalgamation by special resolution;
- 4.19 on October 9, 2003 the shareholders of Kodiak approved the Amalgamation by special resolution;
- 4.20 as a result of the Amalgamation the following will occur:
 - (a) each two Driver Common Shares shall be exchanged for one Amalco Common Share;
 - (b) each Kodiak Preferred Share shall be exchanged for 6.95 Amalco Common Shares;
 - (c) each Kodiak Common Share shall be exchanged for 35,111.53 Amalco Special Voting Shares; and
 - (d) Amalco will become a reporting issuer in Alberta and British Columbia.
- 4.21 concurrent with the closing of the Amalgamation, Amalco also intends to issue up to \$900,000 principal amount of Amalco convertible debentures and intends to complete the private placement of up to 800,000 Amalco Common Shares to arm's length investors at a price of \$0.25 per share for gross proceeds to Amalco of up to \$200,000 (Amalco Share Private Placement);
- 4.22 after completion of the Amalgamation, assuming the completion of the maximum Amalco Share Private Placement, Amalco will have 9,186,250 Amalco Common Shares and 3,511,153 Amalco Special Voting Shares issued and outstanding;
- 4.23 After completion of the Amalgamation, Amalco will satisfy the definition of "qualifying issuer" in MI 45-102 except that it will not have a current AIF filed on SEDAR, as it will:
 - (a) be a reporting issuer in Alberta and British Columbia, both being jurisdictions listed in Appendix B of MI 45-102;

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- (b) be an electronic filer under NI 13-101; and
 - (c) meet the listing requirements of and have its common shares listed on the Exchange;
- 4.24 as Driver currently does not, and Amalco will not, have a current AIF, as defined in MI 45-102, filed on SEDAR, it will not be a qualifying issuer under MI 45-102;
- 4.25 the Circular contains substantially all of the information that is prescribed by Form 44-101 F1 AIF of National Instrument 44-101 Short Form Prospectus Distributions;
- 4.26 the Circular complies substantially with the form required by the Exchange for an RTO, which contains all of the information contained in a CPC information circular; and
- 4.27 in MI 45-102 a CPC information circular is included in the list of items defined as a current AIF.
- 5. AND WHEREAS pursuant to the System this MRRS Decision Document evidences the decision of each of the Decision Makers (Decision);
- 6. 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;
- 7. THE DECISION of the Decision Makers under the Legislation is that:
 - 7.1 under section 4.1 of MI 45-102, Amalco is exempt from the requirement contained in the definition of qualifying issuer to have a current AIF filed on SEDAR provided that:
 - (a) Amalco files a Form 45-102F2 on or before the tenth day after the date the Private Placement Shares are issued certifying that it is a qualifying issuer except for the requirement that Amalco have a current AIF; and
 - (b) at the distribution date of any securities, Amalco has filed a notice on SEDAR advising that it has filed the Circular as an alternative form of AIF and identifying the SEDAR project number under which the Circular was filed; and

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7.2 the order will expire 140 days after Amalco's financial year end.

DATED this 31st day of October, 2003.

Stephen P. Sibold, Q.C., Chair

Stephen R. Murison, Vice-Chair