

2002 BCSECCOM 732

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from continuous disclosure, insider reporting and SEDI filing requirements in connection with an arrangement involving exchangeable shares

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 87, 91, 119(2)

Securities Rules, B.C. Reg. 194/97, ss. 144, 145, 149, 184(2)

National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)*, s. 6.1

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

AND

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

AND

**IN THE MATTER OF WELLCO ENERGY SERVICES INC., WELLCO
ACQUISITION INC., AND WELLCO ENERGY SERVICES TRUST**

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, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Nova Scotia, the Yukon Territory, and the Northwest Territories (the “Jurisdictions”) has received an application from Wellco Energy Services Trust (the “Trust”), Wellco Energy Services Inc. (the “Corporation”) and Wellco Acquisition Inc. (“AcquisitionCo”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that:

- 1.1 the requirements contained in the Legislation of all of the Jurisdictions except British Columbia, 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”) will not apply to certain trades of securities to be made in connection

2002 BCSECCOM 732

with a proposed plan of arrangement under section 193 of the *Business Corporations Act* (Alberta) (the “ABCA”) (the “Arrangement”) involving the Trust, AcquisitionCo, the Corporation and the securityholders of the Corporation; and

- 1.2 with respect to AcquisitionCo (or its successor on amalgamation with the Corporation and the Corporation’s Canadian subsidiaries – the “Amalgamated Corporation”), in those Jurisdictions in which AcquisitionCo or the Amalgamated Corporation becomes a reporting issuer under the Legislation;

- 1.2.1 the requirements 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 securityholders 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”) will not apply to AcquisitionCo or the Amalgamated Corporation; and

- 1.2.2 the requirement that insiders file reports disclosing the insiders direct or indirect beneficial ownership of, or control or direction over, securities (the “Insider Reporting Requirements”), and the requirement to file an insider profile under National Instrument 55-102 *System of Electronic Disclosure by Insiders* (the “SEDI Filing Requirements”), will not apply to insiders of 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, the Corporation and AcquisitionCo have represented to the Decision Makers that:

- 3.1 the Corporation was incorporated pursuant to the *Company Act* (British Columbia) on July 29, 1981 under the name of Tomahawk Resources Ltd. It subsequently changed its name to Sartis Medical Systems Canada Inc. on August 23, 1993 and further changed its name to United Sartis Enterprises Inc. on December 5, 1995 and then changed its name to

2002 BCSECCOM 732

Wellco Energy Services Inc. on February 11, 1999. On August 16, 2000, the Corporation continued into the province of Alberta pursuant to Articles of Continuance;

- 3.2 the Corporation's primary services to the oil and gas industry include directional and horizontal drilling, wellsite accommodation unit rentals, drilling and completion supervision, drilling fluids and environmental services, rental of flare tanks and portable water and wastewater treatment facilities;
- 3.3 the head and principal offices of the Corporation are located in Calgary, Alberta;
- 3.4 the authorized capital of the Corporation presently consists of 50,000,000 common shares ("Common Shares") and 50,000,000 Class "A" preferred shares;
- 3.5 as at June 24, 2002, 30,492,499 Common Shares and no Class "A" preferred shares were issued and outstanding and options ("Options") to purchase 2,515,000 Common Shares were outstanding;
- 3.6 the Common Shares are listed on the TSX Venture Exchange (the "TSX");
- 3.7 the Corporation is a reporting issuer in Alberta, British Columbia and Ontario and has been for more than 12 months;
- 3.8 the Corporation has filed all the information that it has been required to file as a reporting issuer in each of the Provinces of Alberta, British Columbia and Ontario, 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 Alberta and created pursuant to a Declaration of Trust dated as of May 28, 2002, amended and restated on June 26, 2002. Computershare Trust Company of Canada is the initial trustee of the Trust;
- 3.10 the head and principal offices of the Trust are located in Calgary, Alberta;
- 3.11 the Trust was established to:

2002 BCSECCOM 732

- 3.11.1 invest in securities of AcquisitionCo and the Amalgamated Corporation;
- 3.11.2 acquire or invest in other securities of the Amalgamated Corporation, any other subsidiary of the Trust, or any other entity;
- 3.11.3 dispose of any part of the monies, properties and assets of the Trust;
- 3.11.4 temporarily hold cash and investments for the purposes of paying the expenses and the liabilities of the Trust, making other permitted investments, paying amounts payable by the Trust in connection with the redemption of any Trust Units, and making distributions to Unitholders; and
- 3.11.5 pay costs, fees and expenses associated with the foregoing purposes or incidental thereto;
- 3.12 the Trust was established with nominal capitalization and currently has only nominal assets and no liabilities. The only activity that will initially be carried on by the Trust will be the holding of 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 of July 2, 2002, there was one Trust Unit issued and outstanding and no Special Voting Rights were outstanding;
- 3.15 on May 28, 2002, the Trust issued 11,000,000 special warrants. Each special warrant entitles the holder to acquire 0.1 Trust Units on the effective date of the Arrangement;
- 3.16 the Trust has received conditional approval from the TSX for the listing on the TSX of the Trust Units to be issued in connection with the Arrangement subject to, among other things, completion of the Arrangement;
- 3.17 the Trust is not a reporting issuer in any of the Jurisdictions;
- 3.18 AcquisitionCo was incorporated pursuant to the ABCA on June 25, 2002;

2002 BCSECCOM 732

- 3.19 the head and principal offices of AcquisitionCo are located in Calgary, Alberta;
- 3.20 AcquisitionCo was incorporated to participate in the Arrangement by acquiring Common Shares of the Corporation;
- 3.21 the authorized capital of AcquisitionCo currently consists of an unlimited number of common shares;
- 3.22 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 1,300,000 Series A exchangeable shares (the "Exchangeable Shares") will be authorized;
- 3.23 as of July 2, 2002, 10 common shares of AcquisitionCo were issued and outstanding and owned by the Trust;
- 3.24 AcquisitionCo is not a reporting issuer in any of the Jurisdictions;
- 3.25 the Arrangement will be effected by way of a plan of arrangement under section 193 of the ABCA which will require approval by:
 - 3.25.1 not less than two-thirds of the votes cast by the holders of Common Shares ("Shareholders") and the holders of Options ("Optionholders") (present in person or represented by proxy), voting as a single class, at a meeting to be held on August 2, 2002 (the "Meeting"); and
 - 3.25.2 the approval of the Court of Queen's Bench of Alberta (the "Court");
- 3.26 the management information circular (the "Information Circular") mailed to the Shareholders and the Optionholders in connection with the Meeting was prepared in conformity with the provisions of the ABCA and applicable securities laws and contains prospectus-level disclosure concerning the respective business and affairs of the Trust, the Corporation and the Amalgamated Corporation and a detailed description of the Arrangement;
- 3.27 under the Arrangement:

2002 BCSECCOM 732

- 3.27.1 Shareholders (other than dissenting Shareholders) will exchange Common Shares held by them with AcquisitionCo in consideration for, at the election or deemed election of each such Shareholder:
 - 3.27.1.1 one note of AcquisitionCo (a “Note”) for every 10 Common Shares;
 - 3.27.1.2 one Exchangeable Share for every 10 Common Shares;
or
 - 3.27.1.3 a combination of Notes and Exchangeable Shares;
- 3.27.2 Options (other than those held by dissenting Optionholders) will be terminated; and
- 3.27.3 each Note will be exchanged with the Trust for one Trust Unit;
- 3.28 each Option, other than Options held by dissenting Shareholders, will be amended to vest in its entirety;
- 3.29 holders of Options that exercise the same prior to the effective time of the Arrangement will participate in the Arrangement in respect of the Common Shares received on the same basis as other Shareholders;
- 3.30 as part of the Arrangement, AcquisitionCo, the Corporation and the Corporation’s Canadian subsidiaries will amalgamate to form the Amalgamated Corporation which will continue under the name “Wellco Energy Services Inc.”;
- 3.31 upon completion of the Arrangement, the Amalgamated Corporation will become a reporting issuer under the Legislation in Alberta, British Columbia and Ontario and will be subject to the Continuous Disclosure Requirements in such Jurisdictions;
- 3.32 the Trust will become a reporting issuer under the Legislation in Alberta, British Columbia and Ontario and will be subject to the Continuous Disclosure Requirements in such Jurisdictions;
- 3.33 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;

2002 BCSECCOM 732

- 3.34 the Exchangeable Shares will be exchangeable by a holder thereof for Trust Units at any time at the option of such holder;
- 3.35 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;
- 3.36 prior to the occurrence of the Arrangement, AcquisitionCo, the Trust and Computershare Trust Company of Canada (the "Trustee") will enter into a voting and exchange trust agreement (the "Voting and Exchange Trust Agreement");
- 3.37 under the terms of the Voting and Exchange Trust Agreement, upon the occurrence and during the continuance of certain events involving the bankruptcy, insolvency, dissolution or winding up of the Amalgamated Corporation, involuntarily or otherwise, a holder of Exchangeable Shares will be entitled to instruct the Trustee to exercise the rights granted by the Trust under the Voting and Exchange Trust Agreement with respect to any or all of the Exchangeable Shares held by such holder, thereby requiring the Trust or ExchangeCo, as the case may be, to purchase such Exchangeable Shares from the holder;
- 3.38 upon the occurrence of certain events pertaining to the institution of voluntary liquidation, dissolution or winding-up proceedings in respect of the Trust or other distribution of the assets of the Trust for the purposes of winding-up the affairs of the Trust or the threat or institution of proceedings with respect to the involuntary liquidation, dissolution or winding-up of the Trust or to effect any other distribution of assets of the Trust for the purposes of winding-up the affairs of the Trust, the Trust or ExchangeCo, as the case may be, will be deemed to have acquired each outstanding Exchangeable Share (other than Exchangeable Shares held by the Trust or its subsidiaries) and holders of Exchangeable Shares will be deemed to have exchanged the Exchangeable Shares held by them immediately prior to such trust liquidation event;
- 3.39 the Trust will issue a Special Voting Right to the Trustee which will effectively provide the holders of Exchangeable Shares with voting rights equivalent to those attached to the Trust Units. Pursuant to the Voting and Exchange Trust Agreement, the Special Voting Right will be held by the Trustee for the benefit of holders of Exchangeable Shares from time

2002 BCSECCOM 732

to time (other than the Trust and its subsidiaries) and each voting right attached thereto will be voted pursuant to the instructions of the holder of the related Exchangeable Share;

3.40 prior to the occurrence of the Arrangement, AcquisitionCo and the Trust will enter into a support agreement (the “Support Agreement”). Under the Support Agreement, the Trust will agree that:

3.40.1 the Trust will take all actions and do all things necessary to ensure that the Amalgamated Corporation is able to pay to the holders of the Exchangeable Shares the liquidation amount in the event of a liquidation, dissolution or winding up of the Amalgamated Corporation, the retraction price in the event of the giving of a retraction request by a holder of Exchangeable Shares or the redemption price in the event of a redemption of Exchangeable Shares by the Amalgamated Corporation; and

3.40.2 the Trust will not vote or otherwise take any action or omit to take any action causing the liquidation, dissolution or winding-up of the Amalgamated Corporation;

3.41 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 or potential trades of Common Shares, Exchangeable Shares, Notes, Trust Units and rights to acquire Trust Units under the Arrangement (collectively, the “Trades”);

3.42 there are no exemptions from the Registration Requirement or the Prospectus Requirement available under the Legislation for certain of the Trades;

3.43 the Information Circular discloses that application will be made to relieve the Amalgamated Corporation from the Continuous Disclosure Requirements; and

3.44 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”);

2002 BCSECCOM 732

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 of all of the Jurisdictions except British Columbia is that:

- 6.1 the Registration Requirement and the Prospectus Requirement will 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; and
- 6.2 the Prospectus Requirement will not apply to the first trade in Trust Units and Exchangeable Shares acquired by securityholders of the Corporation 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:
 - 6.2.1 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 the Corporation 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

7. THE DECISION of the Decisions Makers of Alberta, British Columbia and Ontario under the Legislation of Alberta, British Columbia and Ontario is that:

- 7.1 the Continuous Disclosure Requirements will not apply to AcquisitionCo and the Amalgamated Corporation for so long as:
 - 7.1.1 the Trust is a reporting issuer in at least one of the jurisdictions listed in Appendix B of MI 45-102 and is an electronic filer under National Instrument 13-101;
 - 7.1.2 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;
 - 7.1.3 the Trust complies with the requirements of the TSX, or such other market or exchange on which the Trust Units may be quoted

2002 BCSECCOM 732

or listed, in respect of making public disclosure of material information on a timely basis;

- 7.1.4 AcquisitionCo or 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 of Alberta, British Columbia and Ontario upon the occurrence of a material change in respect of the affairs of AcquisitionCo or the Amalgamated Corporation that is not also a material change in the affairs of the Trust;
- 7.1.5 the Trust will 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 AcquisitionCo or 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;
- 7.1.6 the Trust remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities of AcquisitionCo or the Amalgamated Corporation; and
- 7.1.7 AcquisitionCo or 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.
- 7.2 the Insider Reporting Requirements and the SEDI Filing Requirements will not apply to any insider of AcquisitionCo or the Amalgamated Corporation in respect of securities of AcquisitionCo or the Amalgamated Corporation provided:
 - 7.2.1 such insider does not receive, in the ordinary course, information as to material facts or material changes concerning the Trust before the material facts or material changes are generally disclosed;
 - 7.2.2 such insider is not a director or senior officer of a major subsidiary of the Trust as defined in National Instrument 55-101 ("Major Subsidiary");

2002 BCSECCOM 732

- 7.2.3 such insider is not also an insider of the Trust, excluding any director or senior officer of a subsidiary of the Trust that is not a Major Subsidiary;
- 7.2.4 the Trust remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities of AcquisitionCo or the Amalgamated Corporation; and
- 7.2.5 AcquisitionCo or 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 2nd day of August, 2002

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

James A. Millard, Q.C., Member