

# **2004 BCSECCOM 46**

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - relief from sections 2.1 and 2.2 of NI 51-101 (the Annual Filing Requirements) granted to a wholly-owned subsidiary of another reporting issuer, subject to certain conditions

National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*, ss. 2.1, 2.2, 8.1

## **IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUEBEC, NEW BRUNSWICK, NOVA SCOTIA, AND NEWFOUNDLAND AND LABRADOR**

**AND**

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

**AND**

## **IN THE MATTER OF CANADIAN OIL SANDS LIMITED AND CANADIAN OIL SANDS TRUST**

### **MRRS DECISION DOCUMENT**

1. WHEREAS the local securities regulatory authority or regulator (the Decision Maker) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia and Newfoundland and Labrador (the Jurisdictions) has received an application from Canadian Oil Sands Limited (the Corporation) and Canadian Oil Sands Trust (the Trust and, together with the Corporation, the Applicant) for a decision under the securities legislation of the Jurisdictions (the Legislation) that
  - 1.1 the Corporation be exempted from sections 2.1 and 2.2 of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (NI 51-101) (the Annual Filing Requirements); and
  - 1.2 in Québec, the Applicant be exempted from the requirements of National Policy Statement No. 2-B *Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators* (NP 2-B) until such time as NI 51-101 is implemented in Québec;

## 2004 BCSECCOM 46

2. 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;
3. AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions* or Appendix 1 of Companion Policy 51-101CP;
4. AND WHEREAS the Applicant has represented to the Decision Makers as follows:
  - 4.1 The Trust is an unincorporated open-ended investment trust formed under the laws of the Province of Alberta pursuant to a trust indenture dated October 5, 1995, as amended (the Trust Indenture) and its trustee is Computershare Trust Company of Canada (Computershare).
  - 4.2 The Trust is a reporting issuer or the equivalent in each of the Jurisdictions.
  - 4.3 The entire beneficial interest in the Trust is held by the holders of its trust units (Units).
  - 4.4 The Units are participating equity securities of the Trust and currently trade on the TSX.
  - 4.5 As at the date hereof, the Trust has two wholly-owned subsidiary entities, namely the Corporation and Canadian Oil Sands Commercial Trust (CT). The Trust owns all of the issued and outstanding common shares of the Corporation and all of the ordinary units of Canadian Oil Sands Commercial Trust (CT).
  - 4.6 The Trust holds an aggregate 35.49% working interest in the Syncrude oil sands project near Fort McMurray, Alberta (the Syncrude Project) indirectly through the Corporation (which has a direct 31.74% interest) and CT (which has an indirect 3.75% interest).
  - 4.7 The Trust receives from CT a distribution on ordinary units and from the Corporation a net royalty (together, the Trust Royalties) in respect of the production of synthetic crude oil and associated products attributable to the subsidiaries' working interests in the

## 2004 BCSECCOM 46

Syncrude Project. After deducting the Trust's expenses, the Trust, in turn, distributes the Trust Royalties to its unitholders.

- 4.8 All net revenues from the Corporation's 31.74% direct interest and from CT's 3.75% indirect interest in Syncrude flow to the Trust either as a Trust Royalty or as repayment of inter-company loans made by the Trust.
- 4.9 The Trust, in its annual information form and other public disclosure, reports information concerning its reserves data based on its subsidiaries' working interest on a consolidated basis.
- 4.10 The Trust has no material assets other than its indirect interests in the Syncrude Project.
- 4.11 The Trust has no directors or officers.
- 4.12 The Corporation's head office is in Calgary, Alberta.
- 4.13 The Corporation has the following securities issued and outstanding:
  - 4.13.1 common shares, all of which are held by the Trust,
  - 4.13.2 preferred shares, all of which are held by CT,
  - 4.13.3 USD \$300 million of 5.8% Senior Notes due 2013, USD \$70 million of 7.625% Senior Notes due 2007, USD \$250 million of 7.9% Senior Notes due 2021 and USD \$74 million of 8.2% Senior Notes due 2027 (collectively, the Senior Notes), which were sold on a private placement basis to purchasers in the United States pursuant to exemptions from the registration requirements of the United States *Securities Act of 1933*, and
  - 4.14.4 CAD \$150 million of 5.75% unsecured medium term notes due 2008 (the Notes).
- 4.14 Pursuant to the terms of the Trust Indenture, the Corporation is the manager of the Trust and is therefore responsible for the management of the business and affairs of the Trust, including the provision of finance, legal, engineering, accounting, treasury and

## 2004 BCSECCOM 46

investor relations services. The Corporation is also the manager of CT.

- 4.15 The business of the Corporation is to oversee the Trust's indirect 35.49% working interest in the Syncrude Project through its role as the manager of both the Trust and CT. The Corporation itself currently holds 89.43% (31.74 / 35.49) of the Trust's indirect 35.49% interest in the Syncrude Project. The Corporation does not have any material operations that are independent of this role.
- 4.16 The Corporation became a reporting issuer or the equivalent in each of the Jurisdictions on March 27, 2003 upon the issuance of a receipt for a short form base shelf prospectus (the Shelf Prospectus) under National Instrument 44-102 *Shelf Distributions* (NI 44-102) relating to the sale of the Notes.
- 4.17 The Notes are issued under a trust indenture dated as of April 2, 2003 between the Corporation and Computershare (the Note Indenture).
- 4.18 Pursuant to a guarantee agreement (the Guarantee) dated as of April 2, 2003 between the Trust and Computershare, as trustee under the Note Indenture, any payments to be made by the Corporation as stipulated in the terms of the Notes or in an agreement governing the rights of the holders of Notes (Noteholders) will be fully and unconditionally guaranteed by the Trust, such that the Noteholders shall be entitled to receive payment thereof from the Trust within 15 days of any failure by the Corporation to make a payment as stipulated.
- 4.19 The Corporation is qualified under National Instrument 44-101 *Short Form Prospectus Distributions* (NI 44-101) to file a prospectus in the form of a short form prospectus on the basis that the Notes are, pursuant to the Guarantee, guaranteed non-convertible debt securities as contemplated by Section 2.5 thereof.
- 4.20 In accordance with NI 44-101 and NI 44-102, the Shelf Prospectus provides disclosure about the consolidated business and operations of the Trust and incorporates by reference the required disclosure documents of the Trust.
- 4.21 The Shelf Prospectus provides disclosure with respect to the Trust's guarantee of the Notes. The certificate page of the Shelf

## 2004 BCSECCOM 46

Prospectus is signed on behalf of both the Corporation and the Trust (in its capacity as a credit supporter within the meaning of NI 44-101) by the chief executive officer and the chief financial officer of the Corporation and two directors of the Corporation (on behalf of the Board of Directors of the Corporation).

- 4.22 The Notes are not listed on any securities exchange.
- 4.23 In May, 2003, based on very similar representations:
  - 4.23.1 the Decision Makers granted the Corporation relief from certain continuous disclosure requirements under the Legislation pertaining to financial statements, material change disclosure, proxy and proxy solicitation requirements, on conditions that include the filing by the Corporation of consolidated financial statements of the Trust; and
  - 4.32.2 the Decision Makers in Ontario, Saskatchewan and Québec, granted the Corporation relief from requirements under the Legislation pertaining to annual information forms and management's discussion and analysis.
- 5. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the Decision);
- 6. AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the Decision has been met;
- 7. THE DECISION of the Decision Makers under the Legislation is that:
  - 7.1 the Corporation is exempt from the Annual Filing Requirements for so long as:
    - 7.1.1 the Trust complies with the Annual Filing Requirements and in so doing the Trust
      - (i) includes as a note in the statement filed in the form of Form 51-101F1 *Statement of Reserves Data and Other Oil and Gas Information*,

## 2004 BCSECCOM 46

- (A) the percentage ownership that the Corporation directly holds of the Trust's interest in the Syncrude Project; and
    - (B) a statement to the effect that the Corporation is relying on an exemption from the requirement to file information annually under NI 51-101 separately from the Trust;
  - (ii) files a report in the form of Form 51-101F2 *Report on Reserves Data by Independent Qualified Reserves Evaluator or Auditor* executed by a qualified reserves evaluator or auditor who is independent of the Trust, the Corporation and CT; and
  - (iii) except in British Columbia, files a report in the form of Form 51-101F3 *Report of Management and Directors on Oil and Gas Disclosure* executed by two senior officers and two directors of the Corporation;
- 7.1.2 in all disclosure to which NI 51-101 applies that is made by either the Corporation, or the Trust on behalf of the Corporation, that disclosure includes the note required in section 7.1.1(i);
- 7.1.3 concurrently with the filing of the statement and reports that the Trust files under section 2.1 of NI 51-101, the Corporation files on SEDAR
- (i) the same statement and reports that the Trust files under section 2.1 of NI 51-101; or
  - (ii) a document
    - (A) that indicates that the Corporation has been granted an exemption from filing information required annually by NI 51-101 separately from the Trust,

## 2004 BCSECCOM 46

- (B) that indicates that the Trust has filed the statement and reports under section 2.1 of NI 51-101, and
  - (C) that indicates where a copy of the filed information can be found for viewing on SEDAR by electronic means;
- 7.1.4 the Corporation disseminates, or causes the Trust to disseminate on the Corporation's behalf, a news release announcing the filing by the Corporation of the information set out in section 7.1.3 above, and indicating where a copy of the filed information can be found for viewing on SEDAR by electronic means;
- 7.1.5 if the Trust files a material change report to which section 6.1 of NI 51-101 applies, the Corporation files the same material change report;
- 7.1.6 the business of the Corporation continues to be the same as the Trust, in that the business of the Corporation continues to be the management and oversight, through ownership and control, of all of the material assets of the Trust, including, without limitation, the Trust's entire investment in the Syncrude Project;
- 7.1.7 the Trust remains a reporting issuer or the equivalent under the Legislation;
- 7.1.8 the Trust remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities of the Corporation;
- 7.1.9 the Trust continues to fully and unconditionally guarantee the Notes as to the payments required to be made by the Corporation to the holders of the Notes;
- 7.1.10 the Corporation does not distribute additional securities other than
  - (i) the Notes or other debt securities contemplated by section 7.1.11 below;

## 2004 BCSECCOM 46

- (ii) to the Trust or to entities that are wholly-owned, directly or indirectly, by the Trust; or
- (iii) debt securities on a private placement basis pursuant to exemptions from the prospectus requirements of applicable securities legislation of the Jurisdictions; and

7.1.11 if the Corporation hereafter distributes additional debt securities (other than debt securities that are issued to the Trust or to entities that are wholly-owned, directly or indirectly, by the Trust or are distributed on a private placement basis pursuant to exemptions from the prospectus requirements of applicable securities legislation of the Jurisdictions) the Trust shall fully and unconditionally guarantee such debt securities as to the payments required to be made by the Corporation to the holders of such debt securities; and

7.2 in Québec, until NI 51-101 comes into force in Québec, the Applicant is exempt from the requirements of NP 2-B and may satisfy requirements under the Legislation of Québec that refer to NP 2-B by complying with the requirements of NI 51-101 as varied by this Decision.

DATED this 12<sup>th</sup> day of January, 2004.

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

Stephen R. Murison, Vice-Chair