

2003 BCSECCOM 339

Headnote

Mutual Reliance Review System for Exemptive Relief Application – relief from continuous disclosure requirements granted to a wholly owned subsidiary issuing debt securities that are fully-guaranteed by its parent, a reporting issuer, and relief from the insider reporting requirements granted to the parent, subject to certain conditions

Applicable British Columbia Provisions

Securities Act, R.S.B.C.1996, c. 418, ss. 85, 87, 91(1)(b), 117 and 119

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

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

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, Newfoundland and Labrador and Nova Scotia (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 the requirements contained in the Legislation:
 - 1.1. that the Corporation file with the Decision Makers and, where applicable, send to its securityholders audited annual comparative financial statements (including without limitation management's discussion and analysis thereon) or annual reports containing such statements;

2003 BCSECCOM 339

- 1.2. that the Corporation file with the Decision Makers and, where applicable, send to its securityholders unaudited interim comparative financial statements (including without limitation management's discussion and analysis thereon);
- 1.3. that the Corporation issue and file a news release and file a report with the Decision Makers upon the occurrence of a material change; and
- 1.4. that the Corporation comply with the proxy and proxy solicitation requirements, including the requirement to file with the Decision Makers and send to holders of its voting securities a form of proxy and information circular in the required form or an annual report or filing in lieu thereof, as applicable,

(collectively, the "Reporting Requirements") shall not apply to the Corporation; and

- 1.5. that, where applicable, a person or company that is an insider of the Corporation file reports with the Decision Makers disclosing such person's or company's direct or indirect beneficial ownership of, or control or direction over, securities of the Corporation (the "Insider Requirements") shall not apply to any insiders of the Corporation;
2. AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System") created pursuant to National Policy 12-201, 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 or in Québec Commission Notice 14-101;
 4. AND WHEREAS the Applicant has represented to the Decision Makers that:
 - 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 and restated as of July 5, 2001 and as further amended by a supplemental indenture dated as of August 7, 2001 and a notice of change in quarterly distribution dates dated December 10, 2001 (the "Trust Indenture"). The trustee of the Trust is Computershare Trust Company of Canada ("Computershare").

2003 BCSECCOM 339

- 4.2. The Trust has been a reporting issuer or the equivalent in each of the Jurisdictions since 1995, and to its knowledge is not in default of any requirements under the Legislation of any such Jurisdiction.
- 4.3. The entire beneficial interest in the Trust is held by the holders of its trust units ("Units"), of which a maximum of 500,000,000 Units may be authorized and issued pursuant to the Trust Indenture. As of April 8, 2003, there were 79,538,258 Units issued and outstanding.
- 4.4. The Units are participating equity securities of the Trust and currently trade on the Toronto Stock Exchange.
- 4.5. As at the date hereof, the Trust has three wholly-owned subsidiary entities, namely the Corporation, Canadian Oil Sands Commercial Trust ("CT") and 834541 Alberta Ltd. The Corporation and CT are directly owned by the Trust, and 834541 Alberta Ltd. is directly owned by CT.
- 4.6. The Trust indirectly holds an aggregate 31.74% working interest in the Syncrude oil sands project near Fort McMurray, Alberta through the Corporation (which has a direct 21.74% interest), CT (which has a direct 9.5% interest) and 834541 Alberta Ltd. (which has a direct 0.5% interest).
- 4.7. The Trust has no material assets other than its interests in the Syncrude project.
- 4.8. The Corporation is a corporation organized and subsisting under the laws of Alberta. The Corporation's principal and registered offices are located in Calgary, Alberta.
- 4.9. 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 investor relations services. The Corporation is also the manager of CT.
- 4.10. The business of the Corporation is to oversee the Trust's indirect 31.74% working interest in the Syncrude project through its role as the manager of both the Trust and CT. The Corporation does not have any material operations that are independent of this role.
- 4.11. The Corporation currently holds a direct 21.74% interest in Syncrude. Subject to receipt of a favourable tax opinion or ruling from Canada

2003 BCSECCOM 339

Customs and Revenue Agency, the Trust intends to effect a reorganization of its interests pursuant to which the Corporation will ultimately become the direct or indirect holder of the Trust's entire 31.74% indirect interest in Syncrude.

- 4.12. The authorized share capital of the Corporation consists of an unlimited number of common shares and an unlimited number of preferred shares, issuable in series.
- 4.13. All of the issued and outstanding shares of the Corporation are held by the Trust. The Corporation has no other securities outstanding as at the date of this application except 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") and CAD \$150 million of 5.75% unsecured medium term notes due 2008 issued under the Shelf Prospectus (as defined in paragraph 4.15 below).
- 4.14. All of the Senior Notes 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*.
- 4.15. 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 up to CAD \$750,000,000 of unsecured medium term notes (the "Notes").
- 4.16. The Notes will be issued under a trust indenture dated as of April 2, 2003 between the Corporation and Computershare (the "Note Indenture").
- 4.17. 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. Until such time as the 9.5% interest in Syncrude that is currently held directly by CT is transferred, directly or indirectly, to the Corporation, the Notes will be similarly guaranteed by CT.

2003 BCSECCOM 339

- 4.18. The Corporation was 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.
- 4.19. 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.
- 4.20. The Shelf Prospectus provides disclosure with respect to both the Trust and CT guarantees of the Notes, and each of the Trust and CT signed the certificate page as credit supporters within the meaning of NI 44-101.
- 4.21. The Notes have been assigned approved ratings within the meaning of NI 44-101, namely "Baa2" with a negative outlook by Moody's Investors Service, Inc. and "BBB+" with a negative outlook by Standard & Poor's Corporation.
- 4.22. The Notes will not be listed on any securities exchange.
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 pursuant to the Legislation is that the Reporting Requirements shall not apply to the Corporation and the Insider Requirements shall not apply to any insider of the Corporation, so long as:
 - 7.1. the business of the Corporation continues to be the same as the business of the Trust, in that the business of the Corporation continues to be the management and oversight, through ownership or control, of all of the material assets of the Trust, including, without limitation, the Trust's entire investment in the Syncrude project;
 - 7.2. the Trust remains a reporting issuer or the equivalent under the Legislation and continues to comply with all timely and continuous disclosure requirements thereunder;

2003 BCSECCOM 339

- 7.3. all financial statements filed by the Trust under the Legislation are prepared on a consolidated basis in accordance with Canadian GAAP;
- 7.4. the Corporation shall comply with the requirements of the Legislation to issue a news release and file a report with the Decision Makers upon the occurrence of a material change in the affairs of the Corporation that is not a material change in the affairs of the Trust;
- 7.5. the Trust remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities of the Corporation;
- 7.6. 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;
- 7.7. the Corporation does not distribute additional securities other than: (i) the Notes or other debt securities contemplated by paragraph 7.8 below; (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 Legislation;
- 7.8. 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 Legislation), 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;
- 7.9. the Corporation files the annual comparative audited consolidated financial statements of the Trust and, either separately or as a note to the consolidated financial statements of the Trust, a comparative audited summary of the Corporation's financial results for its most recently completed financial year, including the following line items:
 - (a) oil and gas revenue;
 - (b) net earnings from continuing operations before extraordinary items;
 - (c) operating income before other expenses;
 - (d) net earnings;
 - (e) current assets;

2003 BCSECCOM 339

- (f) non-current assets;
- (g) current liabilities; and
- (h) non-current liabilities,

and including as a note thereto a brief explanation of the percentage ownership interest of the Corporation in the Syncrude project and the proportion such ownership interest bears to the aggregate ownership interest of the Trust in the Syncrude project;

7.10. the Corporation files the interim comparative consolidated financial statements of the Trust and, either separately or as a note to the financial statements of the Trust, a comparative summary of the Corporation's financial results for its most recently completed interim period, including the following line items:

- (a) oil and gas revenue;
- (b) operating income before other expenses;
- (c) net earnings from continuing operations before extraordinary items; and
- (d) net earnings;

and including as a note thereto a brief explanation of the percentage ownership interest of the Corporation in the Syncrude project and the proportion such ownership interest bears to the aggregate ownership interest of the Trust in the Syncrude project;

7.11. if, in the future, the Legislation is amended to require or the Decision Makers make rules requiring interim financial statements to include a balance sheet, the disclosure included in paragraph 7.10 above would also be required to include a summary of the Corporation's balance sheet, including the following line items:

- (a) current assets;
- (b) non-current assets;
- (c) current liabilities; and
- (d) non-current liabilities;

7.12. the filings referred to in paragraphs 7.9, 7.10 and 7.11 above are to be made within the time limits and in accordance with applicable fees required by the Legislation for the filing of audited annual comparative financial statements and unaudited interim comparative financial statements, respectively, provided that the first filing to be made by the Corporation under paragraph 7.10 shall be in respect of the second

2003 BCSECCOM 339

quarter ending June 30, 2003 and the first filing to be made by the Corporation under paragraph 7.9 shall be in respect of the financial year ending December 31, 2003.

DATED at Calgary, Alberta on this 21st day of May, 2003.

Agnes Lau, CA
Deputy Director, Capital Markets