



## **K&S Corporation Limited expands through merger with Scott Corporation Limited**

- **K&S and Scott Corporation announce merger by recommended takeover bid**
- **Scott Corporation shareholders to receive \$0.64 of value<sup>1</sup>**
- **Merged group valued at over \$200 million**

### **Merger Summary**

K&S Corporation Limited ("K&S") (ASX: KSC) is pleased to announce its intention to merge with Scott Corporation Limited ("SCC") (ASX: SCC) by way of a conditional off-market takeover bid by K&S for all of the issued shares in SCC ("Offer").

SCC shareholders who accept the Offer will receive either \$0.59 cash or 0.345 K&S shares under the Offer in consideration for each of their SCC shares, plus a fully-franked special dividend to be paid by SCC of \$0.05 per SCC share. For SCC shareholders who elect to receive cash this equates to a total value of \$0.64 per SCC share. The fully franked dividend will provide additional value of \$0.02 per SCC share for those shareholders who can capture the full benefit from franking on the SCC dividend.

The members of SCC's independent board committee<sup>2</sup> intend to recommend the Offer, subject to there being no superior proposal and an independent expert determining that the Offer is fair and reasonable. Each member of SCC's independent board committee intends to accept the Offer in respect of their SCC shareholdings, in the absence of a superior proposal and subject to an independent expert determining that the Offer is fair and reasonable.

SCC's major shareholder, A.A. Scott Pty Ltd, has advised SCC's independent board committee that it supports the Offer and intends to accept, in the absence of a superior proposal and subject to (a) the independent board committee recommending acceptance of the Offer and (b) the independent expert to be appointed by SCC concluding that the Offer is fair and reasonable. A.A. Scott Pty Ltd has also advised that, if it accepts the Offer, it intends to elect to receive the scrip consideration alternative.

### **Overview of SCC**

SCC is a national carrier with expertise in the transport of bulk solids, liquids and explosives by road, rail and sea. With a blue chip contracted customer base, SCC reported annual revenue of \$187 million and net profit after tax of \$4.33 million for FY13.

SCC has four operating divisions catering to a diverse range of transport and logistics needs. Chemtrans carries dangerous acids, liquids, chemicals and other specialist goods. Bulktrans carries dry bulk goods including coal, agricultural and waste products and has historically focussed on New South Wales. Energytrans carries fuels and lubricants primarily into the mining sector in Queensland.

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<sup>1</sup> For those SCC shareholders who elect to receive cash. Franking credits attached to the proposed \$0.05 per SCC Share special dividend will provide additional value of approximately 2 cents per SCC share for SCC Shareholders who are able to capture the full benefit of franking.

<sup>2</sup> Comprising Brett Johnson and David Keane. See also page 3.



Hyde Park Tank Depot in Melbourne is a one-stop-shop for tanker and ISO container cleaning and repairs.

### **Compelling for SCC Shareholders**

The chairman of SCC's independent board committee, Mr Brett Johnson, said:

"Scott Corporation's independent board committee believes that K&S Corporation's offer recognises the strategic value of our business, our blue chip customer base, and our investment in a modern fleet of specialised assets."

"Scott Corporation's independent board committee intends to unanimously recommend the K&S Corporation offer, subject to there being no superior proposal and an independent expert determining that the K&S Corporation offer is fair and reasonable."

K&S' Deputy Chairman and lead independent director, Mr Greg Boulton, said:

"K&S Corporation's Board views a merger with Scott Corporation as an excellent way to expand the scope and scale of our existing business."

"Scott Corporation operates in different functional and geographic markets to K&S Corporation and offers an opportunity to diversify our business. With its exposure to the resources sector, we see Scott Corporation's business as being highly complementary to K&S Corporation."

"The Offer comprises a 33.3% premium to the last closing price of Scott Corporation shares before it was announced that K&S Corporation had approached Scott Corporation."

"Scott Corporation Shareholders who elect to receive K&S Corporation shares as consideration under the offer will benefit from being part of a larger and more diversified transport and logistics group with greater access to capital to fund future growth. Those Shareholders are also expected to benefit from the larger free float and increased liquidity in the shares of K&S Corporation."

### **Offer Consideration**

SCC Shareholders who accept the Offer can elect to receive either \$0.59 cash or 0.345 K&S shares in consideration for each SCC share, and will also be paid a fully-franked special dividend of \$0.05 per SCC share. For SCC shareholders who elect cash, this provides total value of \$0.64 per SCC share, valuing SCC at approximately \$48.26 million<sup>3</sup>. The fully franked dividend will provide additional value of \$0.02 per SCC share for those shareholders who can capture the full benefit from franking on the SCC dividend.

The total value of \$0.64 per SCC share represents a:

- 33.3% premium over the closing price of \$0.48 per SCC share on ASX on 4 November 2013, the last day on which SCC shares traded on the ASX before it was announced that SCC had been approached by K&S in relation to a potential transaction at the corporate level;
- 26.7% premium over the 30 day volume weighted average price of SCC shares on ASX up to and including 7 November 2013; and
- 28% premium over the 90 day volume weighted average price of SCC shares on ASX up to and including 7 November 2013.

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<sup>3</sup> Based on the 75,402,031 SCC shares outstanding.



## **Offer Conditions**

The Offer is subject to conditions, including the following key conditions:

- by the close of the Offer K&S having a relevant interest in greater than 75% of the SCC shares held by shareholders who are not associated with K&S (which excludes shares held by SCC's major shareholder AA Scott Pty Ltd);
- no material adverse change;
- the independent expert appointed by SCC opining that the Offer is fair and reasonable;
- approval by minority shareholders of K&S (ie, shareholders other than AA Scott Pty Ltd) of the acquisition of AA Scott Pty Ltd's shareholding in SCC for the purposes of ASX Listing Rule 10.1, Chapter 2E of the Corporations Act, and approval by the shareholders of K&S under s 260B of the Corporations Act in respect of financial assistance; and
- business protection conditions such as no prescribed occurrences, conduct of business in the ordinary course (subject to financial thresholds), no untrue statements, no break fees and no adverse enactments.

The Offer conditions are set out in Annexure 1 of this announcement.

## **Offer Particulars**

Full particulars of the Offer will be provided in the Bidder's Statement. K&S expects to dispatch its Bidder's Statement containing detailed information relevant to the Offer to all SCC shareholders by mid-December 2013. Scott Corporation will prepare a Target's Statement, which will contain the recommendation of the independent board committee and an independent expert's report.

If all SCC shareholders accept the scrip component of the bid consideration, SCC Shareholders will represent 22% of the combined entity.

## **SCC Independent Board Committee**

The Board of SCC formed a sub committee of independent directors, comprising Brett Johnson and David Keane, to evaluate and negotiate K&S' proposal. This committee will be responsible for all aspects of SCC's response to the Offer, including engaging with K&S and preparing the Target's Statement.

## **Exclusivity**

Prior to this announcement K&S and SCC executed a Confidentiality Agreement for the purposes of undertaking due diligence and evaluating a potential offer. The Confidentiality Agreement includes customary exclusivity arrangements that apply until the Offer is declared unconditional.

The exclusivity arrangements include a "no-shop" restriction, a "no-talk" restriction subject to a customary fiduciary out, an obligation to notify K&S of proposals made by third parties subject to a customary fiduciary out, and a right for K&S to match any third party proposal. The exclusivity arrangements do not include any break fee payable by SCC.

A summary of the exclusivity arrangements will be included in the Target's Statement.

## **Advisers**

Baker & McKenzie is acting as legal adviser to K&S.

Minter Ellison is acting as legal adviser to SCC.



### **Contact details**

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## **Annexure 1 - Detailed Conditions of the Offer**

- 1.1 **(Minimum acceptance)** At the end of the Offer Period, K&S has acquired Relevant Interests in at least 75% (by number) of SCC Non-Associated Shares.
- 1.2 **(K&S shareholder approval)** K&S's shareholders approve the:
- (a) acquisition by K&S of AA Scott Pty Ltd's holding of SCC Shares, pursuant to ASX Listing Rule 10.1 and Chapter 2E of the Corporations Act and for all other purposes; and
  - (b) the giving of financial assistance in connection with the Offer pursuant to section 260A(1)(b) of the Corporations Act and for all other purposes.
- 1.3 **(No Target Material Adverse Change)** Between the Announcement Date and the end of the Offer Period (each inclusive), no Target Material Adverse Change occurs.
- 1.4 **(Conduct of business)** Between the Announcement Date and the end of the Offer Period (each inclusive) none of the following occur:
- (a) SCC or any of its subsidiaries acquires (including by way of subscription for equity), offers to acquire, agrees to acquire, leases, enters into a binding commitment to acquire or grants a person an irrevocable option to require it to acquire or lease, any assets for an aggregate consideration of greater than \$250,000, or makes an announcement in relation to such an acquisition, offer or agreement;
  - (b) SCC or any of its subsidiaries leases, sub-leases, disposes of, offers to lease, sub-lease or dispose of, agrees to lease, sub-lease or dispose of or grants a person an irrevocable option to require it to lease, sub-lease or dispose of, any entities, businesses or assets (or any interest in one or more assets) for an aggregate consideration of greater than \$250,000 or makes an announcement in relation to such a lease, sub-lease, disposition, agreement or option;
  - (c) SCC or any of its subsidiaries enters into, offers or agrees to enter into or announces an intention to enter into a joint venture, partnership or other similar arrangement or makes an announcement in relation to such entry, offer or agreement;
  - (d) SCC or any of its subsidiaries enters into, offers to enter into, agrees to enter into or announces an intention to enter into, a transaction that has the same economic effect as any of the things in paragraphs 1.4(a), 1.4(b) or 1.4(c);
  - (e) SCC or any of its subsidiaries enters into, offers to enter into, agrees to enter into or announces an intention to enter into any contract or commitment which requires one or more payments or the foregoing of revenue by SCC or any of its subsidiaries of an amount in aggregate in excess of \$250,000 or under which SCC and subsidiaries may earn revenue in excess of \$1 million over the duration of the contract or commitment;
  - (f) SCC or any of its subsidiaries:
    - (i) enters into, offers to enter into, agrees to enter into or announces an intention to enter into any contract, agreement or commitment with any bank or other financial institution which provides for SCC or any of its subsidiaries to



borrow or raise money from, or establish or maintain any debit balance with, the bank or financial institution;

- (ii) in relation to money borrowed or raised by SCC or any of its subsidiaries from, and debit balances of SCC and its subsidiaries with, any bank or other financial institution, increases the levels of those borrowings or debit balances from their levels as at the Announcement Date (except for draw-downs on existing working capital or overdraft facilities in the ordinary course of business); or
- (iii) exceeds current bank borrowing or cash reserve limitations;
- (g) SCC or any of its subsidiaries undertakes, agrees to undertake, enters into a binding commitment to undertake or announces an intention to undertake, capital expenditure in an aggregate amount in excess of \$250,000;
- (h) SCC declares, pays, determines or distributes any dividend, distribution, bonus or other share of its profits or assets or returns or agrees to return any capital to its members (or announces or recommends any of the foregoing), other than the Agreed Dividend; or
- (i) SCC or any of its subsidiaries issues or grants any option over any of its securities, except in each case to the extent that the relevant matter mentioned in paragraphs 1.4(a) to 1.4(g) (but not paragraphs 1.4(h) or 1.4(i)):
- (j) is subject of, or otherwise contemplated by, the 2014 operating budget of SCC and its subsidiaries as disclosed to K&S prior to the Announcement Date; or
- (k) occurs with the prior written consent of K&S (such consent not to be unreasonably withheld or delayed).

1.5 **(No Prescribed Occurrence)** Between the Announcement Date and the end of the Offer Period (each inclusive) none of the following occur without the prior written approval of K&S:

- (a) SCC converts all or any of its shares into a larger or smaller number;
- (b) SCC or any of its subsidiaries resolves to reduce its share capital in any way or reclassifies, combines, splits, redeems or repurchases, directly or indirectly, any of its shares;
- (c) SCC or any of its subsidiaries:
  - (i) enters into a buy-back agreement; or
  - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) SCC or any of its subsidiaries issues shares, securities or other instruments convertible into shares, grants an option over its shares, or agrees to make such an issue or grant such an option;
- (e) an Insolvency Event occurs in relation to SCC or any of its Subsidiaries;



- (f) SCC or any of its subsidiaries disposes or agrees to dispose of, the whole, or a substantial part, of its business or property; or
  - (g) SCC or any of its subsidiaries charges, or agrees to charge, the whole, or a substantial part, of its business or property.
- 1.6 **(No untrue statements)** Between the Announcement Date and the end of the Offer Period, K&S does not become aware that any document filed by or on behalf of SCC with ASX or ASIC contains a statement which is incorrect or misleading in any material particular or from which there is a material omission which would have had, or could reasonably be expected to have, an impact upon the making or completion of the Offer, or the terms on which K&S would make the Offer.
- 1.7 **(Independent Expert Report)** Before the end of the Offer Period, the Independent Expert opines in a report (and does not alter or amend that opinion) to the effect that the Offer is fair and reasonable.
- 1.8 **(No related party transaction)** Except for any transaction publicly announced by SCC prior to the Announcement Date (including as to the extent or magnitude of the transaction), during the period from the Announcement Date to the end of the Offer Period (each inclusive) neither SCC nor any of its Subsidiaries enters into or offers or agrees to enter into any agreement, arrangement or understanding (whether subject to conditions or not) to give a director, senior manager, related party (as that term is defined in the Corporations Act taking into account the operation of Part 5C.7 of the Corporations Act) of SCC or any of its Subsidiaries, or any associate of any of the foregoing, a benefit (including a payment, an agreement to employ him or her or engaging their services for a fixed period).
- 1.9 **(No break fees)** Between the Announcement Date and the end of the Offer Period, SCC does not agree (whether conditionally or unconditionally) to make any payment by way of break fee, inducement fee, cost reimbursement or otherwise, to any person other than K&S or an associate of K&S or forgo any amount to which it would otherwise be entitled, in connection with a proposal by that person (or any associate of that person) for:
  - (a) a takeover bid in relation to securities in, or scheme of arrangement under Part 5.1 of the Corporations Act proposed by, SCC;
  - (b) the acquisition by that person or any associate of that person of all or substantially all the assets and operations of SCC or any of its subsidiaries; or
  - (c) any transaction having a similar economic effect to any of the transactions referred to in paragraphs (a), (b) or (c) of this Condition 1.9.

This Condition 1.9 does not apply to a payment by way of remuneration for professional services or to directors of SCC for the discharge of their duties in connection with the Offer.
- 1.10 **(No hostilities)** Between the Announcement Date and the end of the Offer Period, no hostilities commence and there is no major escalation in any hostilities in existence as at the Announcement Date (whether war is declared or not) involving any one or more of Australia, the United States of America, the United Kingdom any member state of the European Union, Indonesia, Philippines, Japan, Russia or the People's Republic of China (other than peace keeping functions undertaken at the request of the United Nations, the North Atlantic Treaty Organisation or the European Union), no terrorist act is perpetrated on any of those countries





or any diplomatic or political establishment of any of those countries elsewhere in the world, and no national emergency is declared in any of those countries in each case, which has had, or could reasonably be expected to have, a material adverse effect on the assets, operations or prospects of SCC, or K&S or their respective subsidiaries).

- 1.11 **(No enactments)** Between the Announcement Date and the end of the Offer Period, no law, regulation, or policy of a Government Agency is enacted, made, proclaimed or decreed, or is proposed to be enacted, made, proclaimed or decreed, which:
- (a) restrains, prohibits or impedes or threatens to restrain, prohibit or impede or may otherwise materially adversely impact upon the making of the Offer;
  - (b) requires or purports to require the variation of the terms of the Offer or the completion of any transaction contemplated by this Bidder's Statement (including implementing the intentions expressed in this Bidder's Statement); or
  - (c) seeks to require the divestiture of any SCC Shares or the divestiture of any assets held by SCC, K&S or any of their respective related bodies corporate,

or would do so (in respect of any or all of the foregoing) if enacted, made, proclaimed or decreed as proposed.

## Definitions

**AIFRS** means Australian Equivalents of International Financial Reporting Standards.

**Agreed Dividend** means a fully franked dividend of \$0.05 per SCC Share to be announced by SCC after the Announcement Date.

**Announcement Date** means the date of this announcement.

**Approval** means:

- (a) any approval, consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, direction, declaration, authority, waiver, modification or exemption from, by or with a Government Agency; or
- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a government agency intervened or acted in any way after lodgement, filing, registration or notification:
  - (i) the expiry of any applicable period without such intervention or action; or
  - (i) the receipt of a statement in writing from the relevant Government Agency that it does not intend to intervene or take action.

**Controller** has the meaning given in section 9 of the Corporations Act.

**Government Agency** means, whether foreign or domestic:

- (a) a government, whether federal, state, territorial or local or a department, office or minister of a government acting in that capacity; or





- (b) a commission, delegate, instrumentality, agency, board, or other government, semi-government, judicial, administrative, monetary or fiscal body, department, tribunal, entity or authority, whether statutory or not, and includes any self-regulatory organisation established under statute or any stock exchange.

**Insolvency Event** means:

- (a) process is filed in a court seeking an order that it be wound up or that a Controller be appointed to it or any of its assets, unless the application is withdrawn, struck out or dismissed within seven days of it being filed;
- (b) an order is made that it be wound up or that a Controller be appointed to it or any of its assets;
- (c) a resolution that it be wound up is passed or proposed;
- (d) a liquidator, provisional liquidator, Controller or any similar official is appointed to, or takes possession or control of, all or any of its assets or undertaking;
- (e) an administrator is appointed to it, a resolution that an administrator be appointed to it is passed or proposed, or any other steps are taken to appoint an administrator to it;
- (f) it enters into, or resolves to enter into, an arrangement, compromise or composition with any of, or any class of, its creditors or members, or an assignment for the benefit of any of, or any class of, its creditors, or process is filed in a court seeking approval of any such arrangement, compromise or composition;
- (g) a reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors is proposed or effected;
- (h) any action is taken by ASIC with a view to its deregistration or its dissolution, or an application is made to ASIC that any such action be taken;
- (i) it is insolvent within the meaning of section 95A of the Corporations Act, as disclosed in its accounts or otherwise, states that it is unable to pay its debts or is presumed to be insolvent under any applicable law;
- (j) as a result of the operation of section 459F(1) of the Corporations Act, it is taken to have failed to comply with a statutory demand;
- (k) it stops or suspends or threatens to stop or suspend the payment of all or a class of its debts or the conduct of all or a substantial part of its business;
- (l) any event or circumstance set out in section 461(1) of the Corporations Act occurs in relation to it; or
- (m) anything having a substantially similar effect to any of the events specified in paragraphs (a) to (l) inclusive happens to it under the law of any jurisdiction.

**Offer** means the offer to be made by K&S to acquire all of the SCC Shares.

**Offer Period** means the period during which the Offer will remain open for acceptance.



**Relevant Interest** has the meaning given to that term in sections 608 and 609 of the Corporations Act.

**SCC Non-Associated Shares** means SCC Shares other than SCC Shares:

- (a) in which K&S or any associate of K&S has a Relevant Interest at the date of first offer under the Offer; or
- (b) issued to K&S or any associate of K&S during the Offer Period.

**SCC Shares** means fully paid ordinary shares in the capital of SCC.

**Target Material Adverse Change** means one or more occurrences or any fact, matter or circumstance (whenever occurring or reasonably likely to occur, and including without limitation any exercise of rights to terminate any contract to which SCC is a party) that is announced or becomes known to K&S that individually, or when aggregated with all such occurrences, facts, matters or circumstances, has had or is reasonably likely to have one of the following effects:

- (a) to materially adversely affect the status or terms of any Approval that is applicable to SCC or any of its subsidiaries and that is material to the operation of their business (as a whole) as conducted on the Announcement Date;
- (b) to diminish the total consolidated net assets of SCC and its subsidiaries (calculated on the basis of AIFRS) by \$1.7 million or more;
- (c) the recognition of any impairment to any assets of SCC or its Subsidiaries, or any write down of assets of SCC or its Subsidiaries, in excess of \$1 million;
- (d) to diminish the annualised consolidated net profit after tax of SCC and its subsidiaries (calculated on the basis of AIFRS) by \$500,000 or more; or
- (e) to otherwise materially adversely affect the business, assets, financial condition, results, operations, reputation or prospects of SCC and its subsidiaries (as a whole), including:
  - (i) any material default by SCC or any of its subsidiaries under their existing financing facilities;
  - (ii) any material litigation threatened or commenced against SCC or any of its subsidiaries; or
  - (iii) the termination of any material contract of SCC or any of its subsidiaries,

unless that occurrence, fact, matter or circumstance:

- (f) was actually known (including as to the extent or magnitude of the fact, matter or circumstance) to K&S as at the Announcement Date; or
- (g) was publicly announced by SCC or otherwise fully and fairly disclosed in public filings by SCC or any of its subsidiaries (including in each case, disclosure as to the extent or magnitude of the fact, matter or circumstance) prior to the Announcement Date.