

# 2011 BCSECCOM 520

November 21, 2011

## Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* - Securities Act, s.88 - Cease to be a reporting issuer - The securities of the issuer are beneficially owned by not more than 50 persons and are not traded through any exchange or market - The issuer falls within the definition of “closely held reporting issuer” contained in BC Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status* as the securities of the issuer are beneficially owned by not more than 50 persons and are not traded through any exchange or market

Applicable British Columbia Provisions  
*Securities Act*, R.S.B.C. 1996, c. 418, s.88

In the Matter of  
the Securities Legislation of  
Alberta, British Columbia and Ontario  
(the Jurisdictions)

and

In the Matter of  
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of  
North American Petroleum Corporation USA  
(the Filer)

## Decision

### Background

- ¶ 1 The securities regulatory authority or regulators in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the Filer is not a reporting issuer in the Jurisdictions in accordance with the Legislation (the Exemptive Relief Sought).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a coordinated review application):

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- (a) the Alberta Securities Commission is the principal regulator for this application; and
- (b) this decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

### **Interpretation**

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined herein.

### **Representations**

- ¶ 3 This decision is based on the following facts represented by the Filer:
1. the Filer was incorporated pursuant to the laws of the State of Delaware in April, 2005 and is a valid and subsisting corporation under the laws of the State of Delaware;
  2. the principal place of business of the Filer and its head office are in Tulsa, Oklahoma and its registered office is in Wilmington, Delaware;
  3. the Filer was the wholly owned subsidiary of Petroflow Energy Ltd. (Petroflow), a corporation continued under the laws of Canada with its head office in Tulsa, Oklahoma and its registered office in Calgary, Alberta;
  4. the assets of Petroflow consisted almost exclusively of equity interests in the Filer;
  5. Petroflow is a reporting issuer in the Provinces of Alberta, British Columbia and Ontario;
  6. the Filer had one wholly owned subsidiary: Prize Petroleum, LLC (Prize), an Oklahoma limited liability company;
  7. the Filer, Petroflow and Prize were unable to pay their outstanding debts;
  8. on May 25, 2010, the Filer and Prize filed a voluntary petition with the United States Bankruptcy Court for the District of Delaware (U.S. Court) for relief under Chapter 11 of the United States Bankruptcy Code (Bankruptcy Code);
  9. on August 20, 2010, Petroflow filed a voluntary petition with the U.S. Court under Chapter 11 of the Bankruptcy Code;

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10. on September 14, 2010, Petroflow obtained a recognition order of its Chapter 11 case under the *Companies' Creditors Arrangement Act*, Canada (CCAA);
11. on June 24, 2011, the Debtors submitted a Joint Chapter 11 Plan to the U.S. Court, together with a Disclosure Statement;
12. on September 14, 2011, the U.S. Court approved a plan under Chapter 11 of the Bankruptcy Code (Chapter 11 Plan) to reorganize the financial affairs of the Filer, restructure the share capital of the Filer, satisfy the claims of unsecured creditors of the Filer and Petroflow, cancel all of the securities of Petroflow and thereby allow the Filer to conduct a restructuring of its operations on a going concern basis and continue as a private corporation with a new board of directors;
13. Petroflow was subject to cease trade orders in Alberta, British Columbia and Ontario for its failure to file required filings under applicable securities laws. Petroflow sought and received an order partially revoking the cease trade orders in order to permit the cancellation of all of its securities in connection with the Chapter 11 Plan;
14. the authorized capital of the Filer was reorganized in accordance with the Chapter 11 Plan such that the Filer is authorized to issue 100,000,000 shares designated as "Common Stock", and 50,000,000 shares of preferred stock, with 15,000,000 shares designated as "Series A Convertible Preferred Stock", 5,000,000 shares designated as "Series B Convertible Preferred Stock" and 5,000,000 shares designated as "Series C Convertible Preferred Stock";
15. the following securities of the Filer were issued in accordance with the Chapter 11 Plan:
  - (a) 8,911,713 shares of Series A Convertible Preferred Stock were issued to certain investors in the Filer;
  - (b) 1,614,600 shares of Series B Convertible Preferred Stock of the Filer were issued, and additionally \$335,873.67 was paid, to unsecured creditors of the Filer;
  - (c) 3,154,136 shares of Series C Convertible Preferred Stock were issued to unsecured creditors of Petroflow;

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- (d) 6,764,705 shares of common stock of the Filer are allocated for issuance upon exercise of the options granted under the Filer's management equity plan; and
  - (e) approximately 19,000,000 shares of common stock of the Filer are allocated for issuance to holders of the threshold amount or more of common shares of Petroflow, comprising Class 5A under the Chapter 11 Plan;
16. pursuant to the Chapter 11 Plan, holders of fewer than the threshold amount of common shares of Petroflow (Petroflow Other Interests) are entitled to receive, at the sole option of the Filer no later than the second anniversary of the effective date of the Chapter 11 Plan, their share of common shares of the Filer or cash;
  17. Petroflow Other Interests are not securities of the Filer under the Legislation;
  18. the securities of the Filer issued in accordance with the Chapter 11 Plan are subject to transfer restrictions;
  19. if common shares of the Filer are issued to holders of Petroflow Other Interests in accordance with the Chapter 11 Plan, the Filer will file a prospectus in Canada in connection therewith with the applicable Canadian securities regulatory authorities;
  20. as a result of the reorganization in accordance with the Chapter 11 Plan and the recognition order issued under the CCAA, the Filer became a reporting issuer in the Provinces of Alberta, British Columbia and Ontario;
  21. the outstanding securities of the Filer (including debt securities) are beneficially owned, directly or indirectly by fewer than 51 securityholders in total in Canada and fewer than 15 securityholders in each of the jurisdictions of Canada;
  22. the Filer is applying for a decision that it is not a reporting issuer in all of the Jurisdictions;
  23. on September 30, 2011, the Filer issued a news release which confirmed that the Filer will submit an application to the securities regulatory authorities in the Jurisdictions to cease to be a reporting issuer in the Jurisdictions and, if the Exemptive Relief Sought is granted, the Filer will no longer be a reporting issuer in any jurisdiction of Canada;

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- 24. the Filer is not in default of any of its obligations under the Legislation as a reporting issuer as of the date hereof;
- 25. the Filer is not eligible to use the simplified procedure under CSA Staff Notice 12-307 *Applications for a Decision that an Issuer is not a Reporting Issuer* because it is a reporting issuer in British Columbia;
- 26. the Filer did not voluntarily surrender its status as a reporting issuer in British Columbia under Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status* in order to avoid the minimum 10 day waiting period under such instrument;
- 27. the Filer has no current intention to seek financing by way of an offering of securities;
- 28. no securities of the Filer are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;
- 29. the Filer, upon the receipt of a decision, will no longer be a reporting issuer or the equivalent thereof in any jurisdiction in Canada;

### **Decision**

- ¶ 4 Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemptive Relief Sought is granted.

“original signed by”

Blaine Young

Associate Director, Corporate Finance