

Citation: 2013 BCSECCOM 386

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions – Securities Act* s. 88 Cease to be a reporting issuer in BC – The issuer’s securities are traded only on a market or exchange outside of Canada – Canadian residents own less than 2% of the issuer’s securities and represent less than 2% of the issuer’s total number of security holders; the issuer does not intend to do a public offering of its securities to Canadian residents, will not be a reporting issuer in a Canadian jurisdiction, is subject to the reporting requirements of UK securities laws, and all shareholders receive the same disclosure

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 88

September 13, 2013

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

and

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

and

In the Matter of
Afren plc
(the Filer)

Decision

Background

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

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

- (a) the Ontario 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

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

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is a corporation that was formed under the laws of England and Wales on December 3, 2004. The Filer's registered and head office is located at Kinnaird House, 1 Pall Mall East, London, England, SW1Y 5AU.
2. The Filer is an independent upstream oil and gas exploration and production company and has a portfolio of 28 assets across 12 countries. The Filer does not have any operations in Canada.
3. The Filer is a reporting issuer in each of the Jurisdictions and is not in default of securities legislation in any of the Jurisdictions.
4. The Filer became a reporting issuer in the Jurisdictions under the Legislation following its acquisition, pursuant to a scheme of arrangement under the laws of the British Virgin Islands (the Arrangement), of Black Marlin Energy Holdings Limited (Black Marlin), a corporation which, at the time of the Arrangement, was a reporting issuer in each of the Jurisdictions, on October 7, 2010.
5. Under the Arrangement, the Filer acquired all of the issued and outstanding common shares of Black Marlin. Under the terms of the Arrangement, each Black Marlin shareholder received 0.3647 of an ordinary share of the Filer for each common share of Black Marlin held. Upon completion of the Arrangement, Black Marlin became a wholly-owned subsidiary of the Filer.
6. The authorized share capital of the Filer as of June 14, 2013 consisted of 1,200 million ordinary shares of 1 pence each. As of June 14, 2013, there were 1,089,441,697 ordinary shares issued and outstanding.
7. The Filer's securities are listed and posted for trading on a major foreign exchange, being the London Stock Exchange. The Filer is not in default of any of the requirements of the London Stock Exchange.
8. None of the Filer's securities are or have been listed, traded or quoted on a marketplace in Canada as defined in National Instrument 21-101 *Marketplace Operation* and the Filer does not intend to have its securities listed, traded or quoted on such a marketplace in Canada.
9. The Filer is a "designated foreign issuer" under National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*.

10. In support of the representations set forth in paragraph 12 below concerning the percentage of outstanding securities and the total number of security holders in Canada, the Filer sought and obtained information from the Filer's registrar, Computershare Investor Services PLC (the Registrar). The Filer directed the Registrar to undertake a thorough and diligent examination of its share register for the purposes of determining the number, holdings, identity and geographic location of the holders of its outstanding ordinary shares. The Filer believes that these inquiries were reasonable, given that its share register and the Registrar are the only official sources of information on the Filer's security holders.
11. Based on the Filer's diligent inquiries described above and information provided by the Registrar, as of June 14, 2013, the Filer had 1,089,441,697 ordinary shares outstanding, of which only 66,010 shares were held by four registered shareholders with registered addresses in Canada, representing less than 0.01% of the total number of ordinary shares issued and outstanding on June 14, 2013.
12. Accordingly, based solely on the foregoing, as of June 14, 2013, residents of Canada:
 - (a) do not directly or indirectly beneficially own more than 2% of each class or series of the outstanding securities (including debt securities) of the Filer worldwide; and
 - (b) do not directly or indirectly comprise more than 2% of the total number of securityholders of the Filer worldwide.
13. The Filer is unable to rely on the simplified procedure set out in CSA Notice 12-307 in order to apply for the relief sought because the Filer's securities are traded on the London Stock Exchange, the Filer is a reporting issuer in British Columbia and it has more than 51 security holders in total worldwide. The Filer does not qualify to use the procedures in BC Instrument 11-502 - Voluntary Surrender of Reporting Issuer Status to cease to be a reporting issuer in British Columbia because it has more than 51 securityholders and its securities are traded on the London Stock Exchange.

No Canadian capital markets activity

14. The Filer has no current intention to seek public financing by way of an offering of securities in any jurisdiction in Canada.
15. In the 12 months prior to the date of the Application, the Filer has not taken any steps that indicate there is a market for its securities in Canada and, in particular, has not conducted a prospectus offering in Canada nor has it established or maintained a listing on a Canadian marketplace or exchange.

No prejudice to Canadian investors

16. The Filer is subject to all applicable corporate requirements of a corporation formed under England and Wales law and the applicable rules of the London Stock Exchange, which is a major foreign exchange. The Filer is not in default of any of the requirements of England and Wales law applicable to it.

17. On the date of the Application, the Filer issued and filed a press release announcing that it has submitted an application to the Decision Makers for a decision that is not a reporting issuer in the Jurisdictions and, if that decision is granted, the Filer will no longer be a reporting issuer or the equivalent in any jurisdiction in Canada.
18. The Filer hereby undertakes in favour of the securities regulatory authorities of the Jurisdictions that it will deliver to its securityholders resident in Canada, in the same manner and at the same time as delivered to its securityholders resident in England and Wales, all disclosure material required by England and Wales securities laws to be so delivered.

Decision

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.

Edward P. Kerwin
Ontario Securities Commission

Sarah B. Kavanagh
Ontario Securities Commission