

# 2010 BCSECCOM 631

November 12, 2010

## **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 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  
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Québec  
(the Jurisdictions)

and

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

and

In the Matter of  
Mahalo Energy Ltd.  
(the Filer)

## Decision

## **Background**

The securities regulatory authority or regulator 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.

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) The 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**

The Decision is based on the following facts represented by the Filer:

1. The Filer was incorporated under the *Business Corporations Act* (Alberta) on April 21, 2004.
2. The Filer's head office is located in Calgary, Alberta.
3. The Filer is currently a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Québec.
4. The authorized share capital of the Filer consists of an unlimited number of class A common shares (the Class A Shares) and an unlimited number of class B common shares (the Class B Shares) of which 2,525,000 Class A Shares and 2,525,000 Class B Shares are issued and outstanding as of the date hereof.
5. On May 22, 2009, the Filer was granted protection from its creditors under the Companies' Creditors Arrangement Act (the CCAA) pursuant to an initial order granted by the Court of Queen's Bench of Alberta on May 22, 2009, which order has been extended several times (the Initial Order). All proceedings against the Filer were stayed pursuant to the Initial Order, the purpose of which is to allow the Filer time to solicit and implement a Court approved CCAA plan of arrangement (the Plan).
6. The Filer has entered into an agreement with Alpine Capital Corp. (Alpine) and three other investors identified by Alpine (the New Investors) to conclude a process under the Plan that includes taking the Filer private.
7. On September 16, 2010, the Filer received a sanction order (the Sanction Order) from the Court of Queen's Bench of Alberta approving the Plan. Among other things, the Plan approved the creation and issuance of the Class A Shares and the Class B Shares (and the cancellation of the former common shares (the Common Shares)).

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8. Pursuant to the Plan, the Filer:
  - (a) issued 2,525,000 Class A Shares to Alpine and the New Investors for cash consideration of \$2,525,000;
  - (b) issued 2,525,000 Class B Shares to 30 unsecured creditors for settlement, in part, of their outstanding claims under the Plan;
  - (c) redeemed and cancelled all of the Common Shares for nil consideration; and
  - (d) cancelled all other securities of the Filer (other than the Class A Shares and Class B Shares).
9. As ordered by the Sanction Order, the former Common Shares held by the public shareholders were redeemed for nil and cancelled. As such there are no longer any public shareholders of the Filer and only four holders of Class A Shares and 30 holders of Class B Shares.
10. The outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 51 security holders in total in Canada and the Filer has fewer than 15 security holders in each Jurisdiction (except Alberta, where it has 34 security holders).
11. The transactions contemplated by the Plan have closed in escrow pursuant to an escrow agreement among Alpine, the Filer and Burnet, Duckworth & Palmer LLP whereby the Class A Shares and the subscription proceeds for such shares have been placed in escrow with Burnet, Duckworth & Palmer LLP with an irrevocable direction that they be released upon receipt of this cease to be a reporting issuer order as well as the full revocation orders from each of the Jurisdictions (collectively, the Orders) and, provided that, no order, ruling or determination having the effect of ceasing, suspending or restricting trading in any securities of the Filer shall otherwise be outstanding.
12. Once the Orders have been received, the escrow agreement provides that Burnet, Duckworth & Palmer LLP will release the share certificates to the holders of Class A Shares and disburse the subscription proceeds to the Filer. Upon satisfaction of the escrow release conditions, the Plan will be concluded and completed in all respects.
13. Each holder of Class A Shares has consented to the Filer making this application and each holder of Class B Shares has knowledge of this

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application by virtue of the fact that each of the creditors receiving Class B Shares has voted in favour of the Plan, which contains details pertaining to this order. In addition, each Class B share holder was given notice of creditor approval of the Plan.

14. The Filer has had its former Common Shares delisted from the NEX on October 6, 2010 and no securities of the Filer are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*.
15. The Filer is applying for a decision that it is not a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer.
16. The Filer is not in default of any of its obligations as a reporting issuer, other than the obligation to file: (a) audited annual financial statements, related management's discussion and analysis and certifications for the year ended December 31, 2009 (the Annual Filings); (b) its interim unaudited financial statements, management's discussion and analysis and certifications for the period ended March 31, 2010 (the Interim Filings); and (c) the Filer is in default of the following requirements under OSC Rule 13-502 Fees (Rule 13-502): (i) the Filer should have filed an applicable form under Rule 13-502 in respect of its year ended December 31, 2009; and (ii) the Filer has not paid the late filing fees in respect of this late payment.
17. 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: (a) it is in default of filing the Annual Filings and the Interim Filings; and (b) it has more than 15 securityholders resident in Alberta.
18. The Filer did not voluntarily surrender its status as a reporting issuer in British Columbia pursuant to BC Instrument 11-102 *Voluntary Surrender of Reporting Issuer Status* (the BC Instrument) in order to avoid the 10-day waiting period under the BC Instrument.
19. The Filer, upon the receipt of the decision, will no longer be a reporting issuer or the equivalent thereof in any jurisdiction in Canada.

### 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.

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The decision of the Decision Makers under the Legislation is that the Filer is deemed to have ceased to be a reporting issuer and that the Filer's status as a reporting issuer is revoked.

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