

Citation: 2019 BCSECCOM 434

**Headnote**

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions – Securities Act*, s. 88 – The securities of the issuer are beneficially owned by more than 50 persons and are not traded through any exchange or market - The issuer is undergoing restructuring under U.S. bankruptcy law; under the plan of reorganization, equity securities of the issuer were cancelled and the creditors became new shareholders of the issuer; following implementation of the plan, there are no Canadian securityholders of the issuer.

**Applicable Legislative Provisions**

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

November 29, 2019

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

and

In the Matter of  
the Process for Cease to be a Reporting Issuer Applications

and

In the Matter of  
PetroQuest Energy, Inc.  
(the Filer)

Order

**Background**

¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for an order under the securities legislation of the Jurisdictions (the Legislation) that the Filer has ceased to be a reporting issuer in all jurisdictions of Canada in which it is a reporting issuer (the Order Sought).

Under the Process for Cease to be a Reporting Issuer Applications (for a dual application):

- (a) the British Columbia Securities Commission is the principal regulator for this application, and

(b) this order is the order of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

### **Interpretation**

¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this order, unless otherwise defined.

### **Representations**

¶ 3 This order is based on the following facts represented by the Filer:

1. the Filer was incorporated under the laws of British Columbia and continued under the laws of the State of Delaware;
2. the Filer is an independent oil and gas company with primary operations in Texas and Louisiana; since the Filer's incorporation, the Filer's assets have been located, and its operations have been based, outside of Canada;
3. the Filer's headquarters and executive offices are located in Lafayette, Louisiana; all of the executive officers and directors of the Filer are resident outside of Canada;
4. prior to the Effective Date (as defined below), the Filer had: (i) 25,587,000 shares of class A common stock (Common Stock); and (ii) 1,495,000 shares of 6.875% series B cumulative convertible perpetual preferred shares (the Series B Preferred Stock) outstanding;
5. prior to the Effective Date, the Filer had the following notes (Old Notes) outstanding:
  - (a) 10% second lien senior secured notes due in 2021 (the 2021 Notes), of which an aggregate principal amount of \$144.7 million was initially issued; and
  - (b) 10% second lien senior secured payment-in-kind notes due 2021 (the 2021 PIK Notes), of which an aggregate principal amount of \$243.5 million was initially issued;
6. the Filer's capital structure also included a multi-draw term loan agreement (Multi-Draw Term Loan Agreement) which provided a multi-advance term loan facility with borrowing availability for three years in a principal amount of up to \$50 million;
7. the Filer's Common Stock was quoted on the OTCQX market until the Effective Date (as defined below) when it was extinguished under the Plan (as defined below); as of the Effective Date (as defined below), the Common Stock was not traded on a national securities exchange and no broker dealer was making an active market in the Common Stock;
8. the Filer is subject to, and in compliance with, all requirements applicable to it as a registrant under the 1934 Act and U.S. federal securities law;
9. on November 6, 2018, the Filer and its wholly-owned direct and indirect subsidiaries (collectively, the Debtors) entered into a restructuring support agreement (the Restructuring

Support Agreement) with (i) certain holders, collectively owning or controlling 81.83% of the Filer's outstanding 2021 Notes; (ii) certain holders, collectively owning or controlling 84.76% of the Filer's outstanding 2021 PIK Notes; and (iii) certain lenders under the Multi-Draw Term Loan Agreement; the Restructuring Support Agreement contemplated the reorganization of the Debtors pursuant to a plan of reorganization (the Plan);

10. on November 6, 2018, the Debtors filed voluntary petitions seeking relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of Texas (the U.S. Bankruptcy Court) in accordance with the Restructuring Support Agreement;
11. the Plan was approved by debtholders of the Filer and confirmed by the U.S. Bankruptcy Court on January 31, 2019, as modified on January 28, 2019, and became effective on February 8, 2019 (the Effective Date);
12. under the Plan, on the Effective Date, among other things:
  - (a) all of the Filer's previously issued Common Stock and Series B Preferred Stock were extinguished without recovery;
  - (b) a new class of common stock of the Filer (New Common Stock) was created;
  - (c) in exchange for the cancellation and discharge of the Old Notes, the Filer issued:
    - (i) 8,900,000 shares of New Common Stock on a pro rata basis and \$80 million principal amount of 10% second lien senior secured payment-in-kind notes due 2024 (the 2024 PIK Notes) to the former holders of the Old Notes;
    - (ii) 300,000 shares of New Common Stock to certain former holders of the Old Notes for their commitment to backstop the Filer's new Exit Facility (as defined below);
  - (d) the Filer issued (i) one share of the successor's class B common stock (Class B Common Stock); and (ii) one share of the successor's class C common stock (Class C Common Stock);
  - (e) the Filer entered into a new \$50 million senior secured term loan agreement (the Exit Facility);
  - (f) the Filer entered into a registration rights agreement with certain holders of the New Common Stock and 2024 PIK Notes; and
  - (g) the Filer adopted a management incentive plan (the Management Incentive Plan), which provides for the issuance of equity-based awards (Awards), with 1,344,000 New Common Stock being reserved for issuance under the Management Incentive Plan;

13. the authorized capital of the Filer currently consists of: (i) 64,999,998 shares of New Common Stock; (ii) one share of Class B Common Stock; (iii) one share of Class C Common Stock; and (iv) 10,000,000 preferred shares, at par value; there are currently 9,061,636 shares of New Common Stock, one share of Class B Common Stock, one share of Class C Common Stock and no preferred shares issued and outstanding;
14. under the Management Incentive Plan, since the Effective Date:
  - (a) 1,143,957 Awards have been granted;
  - (b) 263,599 Awards have vested for 171,120 shares of New Common Stock; and
  - (c) 880,358 Awards remain unvested;
15. the Filer has no securities issued and outstanding other than as set out in paragraphs 13 and 14 above;
16. the Filer hired Broadridge Financial Solution (Broadridge) to provide it with a report on the Filer's beneficial owners and to identify potential securityholders of the Filer for the purposes of ascertaining: (i) the number of securities of the Filer (of each class or series) directly or indirectly beneficially owned by residents of Canada; and (ii) the number of securityholders of the Filer resident in Canada;
17. the Filer obtained a beneficial ownership analysis report dated September 19, 2019 from Broadridge, which provides a geographical breakdown of beneficial holders of securities of the Filer (the Report);
18. based on the information provided in the Report, there is an aggregate of 9,061,636 New Common Stock issued and outstanding, which are held by 94 securityholders worldwide, all of which are former Old Note holders and none are residents in Canada;
19. the Class B Common Stock is held by three investors, none of whom are resident in Canada;
20. the Class C Common Stock is held by one investor, who is not a resident in Canada;
21. there are currently three Award holders, none of whom are resident in Canada and the Filer expects that none of the future recipients of Awards will be resident in Canada;
22. as at the Effective Date, the Filer has terminated its reporting obligations under the 1934 Act and U.S. federal securities law; while the Filer continues to file its public documents on EDGAR on a voluntary basis following the Effective Date, the Filer intends to cease reporting in the U.S. upon receipt of the Order Sought;
23. the Filer has no current intention to seek public financing by way of an offering of securities;

24. the Filer has no current intention to list its securities on any exchange in Canada or have its securities traded on a marketplace or any other facility in Canada for bringing together buyers and sellers where trading data is publicly reported;
25. although the Filer's New Common Stock is eligible for trading in the Grey Market under the symbol "QWST", no trades have been reported since February 8, 2019; on or after July 31, 2012, the Filer has not administered or directed any business in any jurisdictions in Canada, carried out any promotional activities in any jurisdictions in Canada or distributed securities to any person residing in any jurisdictions in Canada;
26. the Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*;
27. other than as represented in the Order, no securities of the Filer, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;
28. the Filer is a reporting issuer in British Columbia and Ontario and is not in default of securities legislation in any jurisdictions;
29. the Filer is not eligible to use the simplified procedure in section 19 of National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications* (NP 11-206) as it has more than 51 securityholders worldwide;
30. the Filer is applying for an order that the Filer has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer; and
31. upon the grant of the Order Sought, the Filer will no longer be a reporting issuer in any jurisdiction of Canada.

### **Order**

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

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

John Hinze  
Director, Corporate Finance  
British Columbia Securities Commission