

Citation: 2013 BCSECCOM 90

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* - Exemption from the requirements of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (NI 51-101) - A reporting issuer wants relief from all the requirements of NI 51-101 - The reporting issuer would be an “SEC foreign issuer” as defined in National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* but for the fact that it is not incorporated outside of Canada; the reporting issuer is subject to and complies with the disclosure requirements of US securities laws in connection with its oil and gas activities; the reporting issuer will file copies of its US oil and gas disclosure in Canada; Canadian residents holding a de minimis number of shares own less than 10% of the issuer's securities and represent less than 10% of the reporting issuer's total number of security holders

Applicable British Columbia Provisions

National Instrument 51-101, s. 8.1

March 15, 2013

In the Matter of
the Securities Legislation of
British Columbia (the Jurisdiction)

and

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

and

In the Matter of
MFC Industrial Ltd.
(the Filer)

Decision

Background

- ¶ 1 The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) for an exemption from the requirements of National

Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (NI 51-101) (the Exemption Sought).

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

- (a) the British Columbia Securities Commission is the principal regulator for this application, and
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta and Québec.

Interpretation

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

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:
- 1. the Filer:
 - (a) is a global commodity supply chain and integrated commodities company,
 - (b) is principally operated from offices outside Canada,
 - (c) exists under the laws of the Province of British Columbia, and
 - (d) has its corporate records office located in Vancouver, British Columbia;
 - 2. all of the Filer's senior executive officers and all of its directors are non-Canadian residents;
 - 3. the Filer's authorized capital consists of an unlimited number of common shares, class A common shares, and class A preference shares, issuable in series; as of November 27, 2012, the Filer had 62,552,126 common shares (Common Shares) outstanding;
 - 4. as of November 15, 2012, Common Shares were held by 29 Canadian registered holders holding approximately 3,101 Common Shares, representing less than 0.01% of the Common Shares;
 - 5. as of October 25, 2012, 99.96% of the Filer's Common Shares were held by registered United States holders;
 - 6. as of November 15, 2012, Canadian beneficial holders held 1,168,934 Common Shares, representing approximately 1.8% of the outstanding Common Shares;

7. as of November 15, 2012, Canadian beneficial holders of Common Shares comprised approximately 16% of the aggregate number of beneficial holders of Common Shares;
8. as of November 15, 2012, Canadian beneficial holders of Common Shares holding 100 or more Common Shares comprised less than 3% of the aggregate number of beneficial holders of Common Shares;
9. the Filer is a reporting issuer in British Columbia, Alberta and Québec (Reporting Jurisdictions);
10. the Filer is not in default of securities legislation in any of the Reporting Jurisdictions;
11. the Filer's Common Shares are listed and posted for trading on the New York Stock Exchange (NYSE), and are registered under the United States *Securities Act of 1934*; the Filer's Common Shares are not listed on any stock exchange in Canada;
12. in September 2012, the Filer, through its subsidiary, indirectly acquired all of the outstanding shares of Compton Petroleum Corporation (Compton); the oil and gas assets indirectly acquired by the Filer are primarily in Western Canada;
13. the Filer is currently subject to the United States Securities and Exchange Commission (SEC) reporting requirements and, subsequent to the acquisition of Compton, is subject to Canadian oil and gas disclosure requirements (Canadian Requirements) and SEC oil and gas reporting requirements (SEC Requirements);
14. the Filer's peer group consists of issuers who are listed on the Russell 2000 Index and are listed on the NYSE that are subject only to SEC Requirements; and
15. the Filer is not an "SEC Foreign Issuer" as defined in National Instrument 71-102 *Continuous Disclosure and other Exemptions Relating to Foreign Issuers* because it is not incorporated under the laws of a foreign jurisdiction.

Decision

- ¶ 4 The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted, provided that:

- (a) residents of Canada do not hold more than 10% of the aggregate number of outstanding Common Shares;
- (b) residents of Canada holding more than 100 Common Shares do not comprise more than 10% of the aggregate number of registered and beneficial holders of Common Shares;
- (c) the Filer is subject to and complies with the SEC requirements;
- (d) the Filer issues in Canada, and files on SEDAR, a news release stating that it will provide its oil and gas disclosure in accordance with SEC Requirements rather than in accordance with NI 51-101;
- (e) the Filer, in its oil and gas disclosure, includes a notification about the differences between NI 51-101 disclosure requirements and SEC requirements; and
- (f) the Filer files on SEDAR the materials required by the SEC Requirements as soon as practicable after filing the materials with the SEC.

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