

# 2012 BCSECCOM 346

August 30, 2012

## **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, New Brunswick,  
Nova Scotia, Prince Edward Island and Newfoundland and Labrador  
(the Jurisdictions)

and

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

and

In the Matter of  
PetroMagdalena Energy Corp.  
(the Filer)

## Decision

### **¶ 1 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 in each Jurisdiction (the Exemptive Relief Sought).

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

## 2012 BCSECCOM 346

- (a) the Ontario 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.

### ¶ 2 **Interpretation**

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

### ¶ 3 **Representations**

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

1. the Filer is a corporation governed by the *Business Corporations Act* (British Columbia) (the BCBCA);
2. the Filer's corporate and head office is located at 333 Bay Street, Suite 1100, Toronto, Ontario M5H 2R2 and its registered office is located at 1188 West Georgia Street, Suite 650, Vancouver, British Columbia V6E 4A2;
3. the Filer is a reporting issuer in each of the Jurisdictions and no other Canadian provinces or territories;
4. the Filer's authorized share capital consists of an unlimited number of common shares (the Common Shares) and an unlimited number of preferred shares; the Filer has 149,391,520 issued and outstanding Common Shares and no issued and outstanding preferred shares;
5. on July 27, 2012, the Filer completed a court approved plan of arrangement (the Arrangement) under the provisions of Division 5 of Part 9 of the BCBCA; pursuant to the Arrangement, among other things:
  - (a) 0942183 B.C. Ltd. (the Purchaser), a wholly-owned subsidiary of Pacific Rubiales Energy Corp., acquired ownership and control of all of the issued and outstanding Common Shares not previously owned by it or its affiliates; and
  - (b) each option of the Filer with an exercise price per Common Share less than the consideration paid per Common Share under the Arrangement and each common share purchase warrant (each a

## 2012 BCSECCOM 346

Warrant) of the Filer was disposed of to the Filer. All options and Warrants were immediately thereafter cancelled;

6. the Filer's Common Shares and Warrants were delisted from the TSX Venture Exchange (the Exchange) effective as of close of trading on July 30, 2012;
7. prior to August 27, 2012, the Filer had outstanding 9.0% Senior A notes due May 5, 2014 (the Notes) issued under a note indenture made as of May 5, 2011 (the Note Indenture) between the Filer and Equity Financial Trust Company (the Trustee) as supplemented by the first supplemental indenture dated July 21, 2012;
8. in accordance with the terms of the Note Indenture, on July 27, 2012, the Filer provided to the Trustee notice (the Redemption Notice) that it will redeem the Notes on August 27, 2012 (the Redemption Date); the Redemption Notice was published in the Globe & Mail newspaper;
9. on the Redemption Date, all of the Notes were redeemed for cash consideration equal to 110% of the principal amount of such Notes plus accrued and unpaid interest thereon up to but excluding the Redemption Date;
10. the Notes were delisted from the Exchange effective as of close of trading on August 27, 2012;
11. the Filer has no plans to conduct a public offering or private placement of its securities in Canada;
12. the Filer did not voluntarily surrender its status as a reporting issuer in British Columbia under British Columbia Instrument 11-502 - *Voluntary Surrender of Reporting Issuer Status* (the BC Instrument) because it could not meet the required minimum 10 day waiting period under the BC Instrument as it would not be a "closely held reporting issuer" as defined under the BC Instrument prior to August 27, 2012;
13. the Filer is not eligible to use the simplified procedure under CSA Notice 12-307 *Applications for a Decision that an Issuer is not a Reporting Issuer* because it is a reporting issuer in British Columbia;
14. all of the Common Shares are owned by the Purchaser and the Common Shares are the only outstanding securities of the Filer;

## 2012 BCSECCOM 346

15. as of August 28, 2012, the outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the Jurisdictions and fewer than 51 security holders in total worldwide;
16. 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;
17. upon the grant of Exemptive Relief Sought, the Filer will no longer be a reporting issuer or the equivalent in any jurisdiction in Canada;
18. the Filer is not in default of any of its obligations under securities legislation in any Jurisdiction as a reporting issuer; and
19. in the absence of the Exemptive Relief Sought, the Filer will be in default of its obligation to file its interim financial statements and related management discussion and analysis for the period ended June 30, 2012 if it does not file such documents by August 29, 2012.

### ¶ 4 **Decision**

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

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

*"Margot C. Howard"*  
Commissioner  
Ontario Securities Commission

*"Christopher Portner"*  
Commissioner  
Ontario Securities Commission