

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 44-101 *Short Form Prospectus Distributions* ss. 2.2 and 8.1 - An issuer wants relief from the qualification criteria in NI 44-101 so it can file a short form prospectus - The issuer is a new reporting issuer that is the continuation of an existing business; the issuer filed an information circular which contained prospectus-level disclosure of the issuer; the issuer will incorporate by reference the financial statements of the existing business before it files its first annual financial statements under NI 51-102 *Continuous Disclosure Obligations* that give effect to the “spin-out” transaction

Securities Act, ss. 11 and 169 – *Confidentiality* - An applicant wants to keep an application and order confidential for a limited amount of time after the order is granted - The record provides intimate financial, personal or other information. The disclosure of the information before a specific transaction would be detrimental to the person affected; the information will be made available after a specific date

Applicable Legislative Provisions

National Instrument 44-101 *Short Form Prospectus Distributions*, ss. 2.2 and 8.1
Securities Act, R.S.B.C. 1996, c. 418, ss. 11 and 169

October 13, 2023

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

and

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

and

In the Matter of
Lithium Americas Corp.
(formerly 1397468 B.C. Ltd.)
(the Filer)

Decision

¶ 1 Background

The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the Filer be exempted from the requirement in subsection 2.2(d) of National Instrument 44-101 *Short Form Prospectus Distributions* (NI 44-101) (the Short Form Prospectus Issuer Exemption Sought) to have current annual financial statements and a current AIF, as such terms are defined in NI 44-101, in at least one jurisdiction in which the Filer

is a reporting issuer, in order to satisfy the qualification criteria for short form prospectus eligibility in respect of any prospectus filed by the Filer (the AIF and Annual Financial Statement Requirement).

Furthermore, the Decision Maker has received a request from the Filer for a decision that the application and this decision be kept confidential and not be made public until the earlier of: (a) the date on which the Filer issues a news release announcing that the Filer has entered into an agreement relating to an offering of securities under a preliminary short form prospectus or a short form prospectus; (b) the date on which the Filer otherwise publicly announces an offering of securities under a preliminary short form prospectus or a short form prospectus; (c) the date on which the Filer files a preliminary short form prospectus or a short form prospectus relating to an offering of securities; (d) the date on which the Filer files a preliminary short form base shelf prospectus or a short form base shelf prospectus relating to the qualification of securities of the Filer; (e) the date on which the Filer files a notice declaring its intention to be qualified to file a short form prospectus; (f) the date on which the Filer advises the principal regulator that there is no longer any need for the application and the decision document to remain confidential; and (g) the date that is 90 days after the date of the decision document (the Confidentiality Sought).

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

- (a) the British Columbia Securities Commission is the principal regulator for the application,
- (b) the Filer has provided notice that section 4.7(1)(e) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon and Nunavut, and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

¶ 2 Interpretation

Terms defined in National Instrument 14-101 *Definitions*, NI 44-101, and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

¶ 3 Representations

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

1. the Filer exists under the *Business Corporations Act* (British Columbia) (the BCBCA) and was incorporated for the purpose of completing the Separation (as defined below);
2. the Filer's principal and head office is located in Vancouver, British Columbia;
3. the Filer's financial year end is December 31;
4. prior to completion of the Separation, the Filer had no assets or liabilities, had conducted no operations and did not issue any shares in its capital stock;
5. the Filer's authorized capital consists of an unlimited number of common shares (the LAC Common Shares);

6. as at October 3, 2023, there are 160,047,671 LAC Common Shares outstanding. The LAC Common Shares are listed for trading on the Toronto Stock Exchange (the TSX) and the New York Stock Exchange (the NYSE) under the symbol "LAC";
7. on October 3, 2023 (the Effective Date), old Lithium Americas Corp. (renamed Lithium Americas (Argentina) Corp. following completion of the Separation) (Old Lithium Americas Corp, pre-Separation, and Lithium Argentina, post-Separation) and the Filer completed a reorganization of Old Lithium Americas Corp.'s business, effected by way of a plan of arrangement under the laws of British Columbia, into two separate companies by way of spin-out of Old Lithium Americas Corp.'s North American business and assets, including Old Lithium Americas Corp.'s Thacker Pass mineral project located in Nevada (collectively, the Spin-Out Business), as a result of which such business and assets were transferred to the Filer and shareholders of Old Lithium Americas Corp. received LAC Common Shares in a series of share exchanges (the Separation), and the LAC Common Shares were listed on the TSX and the NYSE and the Filer became a reporting issuer in each of the provinces and territories of Canada;
8. the Filer has a current and complete continuous disclosure record of a reporting issuer except for the AIF and Annual Financial Statement Requirement (as it was formed on January 23, 2023 and has not yet completed a financial year since becoming a reporting issuer);
9. the Separation was effected by way of a plan of arrangement under the laws of British Columbia and was approved by the shareholders of Old Lithium Americas Corp. at a meeting of such shareholders to consider the Separation, which was held on July 31, 2023 (the Meeting), and the final order of the Supreme Court of British Columbia was received on August 4, 2023;
10. the Spin-Out Business forms the primary business of the Filer for the purposes of section 32.1(1)(b) of Form 41-101F1 *Information Required in a Prospectus* (Form 41-101F1);
11. pursuant to the Separation, on the Effective Date, each participating shareholder of Old Lithium Americas Corp. received one common share of Lithium Argentina, and one LAC Common Share in exchange for each common share of Old Lithium Americas Corp. held;
12. in connection with the Meeting and in accordance with National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), Old Lithium Americas Corp. prepared and mailed a management information circular dated June 16, 2023 (the Circular) to its shareholders; a copy of the Circular was filed on Old Lithium Americas Corp.'s SEDAR profile on June 23, 2023;
13. the Circular provided full, true and plain disclosure of all material facts related to the Filer and the Spin-Out Business, which themselves have been the subject of continuous disclosure on an ongoing basis in accordance with Old Lithium Americas Corp.'s responsibilities as a reporting issuer prior to the Separation; the Circular includes (i) all of the financial statements which were required to be included in the Circular by section 14.2 of Form 51-102F5 *Information Circular* (Form 51-102F5) and, by extension, Form 41-101F1; and (ii) the information that would have otherwise been required to be included in a current AIF filed by an issuer who owned the Spin-Out Business as at, and for the year ended, December 31, 2022; the following relevant financial and other disclosure of the Filer was

included in the Circular:

- (a) audited (nil) financial statements of the Filer for the period from incorporation on January 23, 2023 to March 31, 2023;
 - (b) audited carve-out financial statements for the Spin-Out Business for the years ended December 31, 2022, 2021 and 2020 and related MD&A (the Audited Carve-Out Financial Statements and related MD&A);
 - (c) unaudited carve-out interim financial statements for the Spin-Out Business for the period ended March 31, 2023 and the comparative periods and related MD&A (the Q1 Carve-Out Interim Financial Statements and related MD&A);
 - (d) unaudited pro forma financial statements of the Filer for the period ended March 31, 2023; and
 - (e) narrative description of the Filer and its business, contained in Schedule H – Information Concerning New LAC Post-Arrangement (the Alternative AIF Disclosure);
14. in accordance with item 14.2 of Form 51-102F5, the Circular includes prospectus-level disclosure for the Filer, including financial statements, required under NI 41-101 and Form 41-101F1, which is the form of prospectus that the Filer would have been eligible to use immediately prior to the sending and filing of the Circular, for a distribution of securities in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Québec, Saskatchewan and Yukon;
15. the Filer has filed excerpts from the Circular, namely the Audited Carve-Out Financial Statements and related MD&A, and the Alternative AIF Disclosure, with such additions, deletions, revisions and updates necessary to file such excerpts on a stand-alone basis (which may include the addition of glossaries, updating of certain cross-references within documents, and the deletion of duplicative disclosure that is otherwise included in other of the Filer's information and disclosure documents separately filed), as applicable;
16. with the completion of the Separation, the Filer believes that it is favourably positioned to access external funding sources and may wish to complete a public offering of its securities in the near term should market conditions permit; in light of the short time frames associated with financings undertaken in current market conditions, and based on input provided to the Filer by investment dealers regarding the need for expedited time periods between the launching and closing of an offering, the Filer wishes to be eligible to file short form prospectuses under NI 44-101 (the qualification criteria for short form prospectus eligibility are outlined in Section 2.2 of NI 44-101);
17. the Spin-Out Business forms the primary business of the Filer and the Filer has a current and complete continuous disclosure record of a reporting issuer except for current annual financial statements and a current AIF as such terms are defined in NI 44-101 (as it was formed on January 23, 2023 and has not yet completed a financial year since becoming a reporting issuer);
18. the Filer satisfies all of the qualification criteria for short form prospectus eligibility in section 2.2 of NI 44-101, with the exception of subsection 2.2(d) which requires the Filer to have

filed current annual financial statements and a current AIF as such terms are defined in NI 44-101;

19. upon the completion of the Separation, the Filer became a reporting issuer in each of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Québec, Saskatchewan and Yukon;
20. the Filer has filed a joint press release announcing the closing of the Separation, a Notice of Change in Corporate Structure of the Filer in connection with the closing of the Separation, the technical report titled Feasibility Study National Instrument 43-101 *Technical Report* for the Thacker Pass Project, Humboldt County, Nevada, USA with an effective date of November 2, 2022 (or any update thereto), the Audited Carve-Out Financial Statements and related MD&A, the Alternative AIF Disclosure, and all periodic and timely disclosure documents (including the required interim financial statements and MD&As for periods subsequent to the Q1 Carve-Out Interim Financial Statements and related MD&A) that it is required to file (i) under applicable securities legislation, (ii) pursuant to an order issued by the securities regulatory authority, or (iii) pursuant to any undertaking to the securities regulatory authority;
21. the LAC Common Shares are listed on the TSX and the NYSE, and the Filer is not an issuer: (i) whose operations have ceased, or (ii) whose principal asset is cash, cash equivalents or its exchange listing;
22. under NI 51-102, the Filer is not required to file annual financial statements or an AIF until 90 days after its first completed financial year, being the year ending December 31, 2023; the Filer may wish to file a short form prospectus or short form prospectuses under NI 44-101 prior to the point at which it will meet the AIF and Annual Financial Statement Requirement;
23. following completion of the Separation, the Filer filed stand-alone versions of the Audited Carve-Out Financial Statements and related MD&A and the Alternative AIF Disclosure, which contain the Filer's material information in lieu of the Filer satisfying the AIF and Annual Financial Statement Requirement, and would incorporate these documents (along with all other required documents) by reference in any preliminary short form prospectus and short form prospectus filed by it in lieu of annual financial statements and related MD&A and AIF for the year ended December 31, 2022;
24. the Filer is not eligible for the exemption for new reporting issuers under subsection 2.7(1) of NI 44-101 because it has not filed a long form prospectus;
25. the Filer is not eligible for the exemption for successor issuers under subsection 2.7(2) of NI 44-101 because the Spin-Out Business was only a portion of Old Lithium Americas Corp.'s business prior to the completion of the Separation; and
26. except for not meeting the AIF and Annual Financial Statement Requirement, the Filer otherwise is qualified to file a prospectus in the form of a short form prospectus in accordance with NI 44-101.

Decision

- ¶ 4 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 Short Form Prospectus Issuer Exemption Sought is granted, provided that:

- (a) the Filer is not exempt from the requirements in NI 51-102 to file annual financial statements or to file an AIF, within the prescribed period after its financial year end;
- (b) the Filer has not yet been required to file annual financial statements or an AIF under NI 51-102;
- (c) the Filer has not yet filed annual financial statements or an AIF under NI 51-102;
- (d) the Filer includes or incorporates by reference in each preliminary short form prospectus and short form prospectus, if either is filed, the Filer's information and disclosure that would otherwise have been required to have been included in a current AIF including the Alternative AIF Disclosure;
- (e) the Filer will incorporate by reference in any preliminary short form prospectus and short form prospectus filed by the Filer the Audited Carve-Out Financial Statements and related MD&A, in lieu of the current annual financial statements and related management's discussion and analysis for the year ended December 31, 2022;
- (f) if the Filer files a short form prospectus before the Filer's financial statements for the period ended June 30, 2023 are required to be filed, the Q1 Carve-Out Interim Financial Statements and related MD&A will be included in or incorporated by reference into the Filer's short form prospectus;
- (g) if the Filer files a short form prospectus after the Filer's financial statements for the period ended June 30, 2023 are required to be filed and before the Filer's financial statements for the period ended September 30, 2023 are required to be filed, the unaudited carve-out interim financial statements for the Spin-Out Business for the period ended June 30, 2023 and the comparative periods and related MD&A will be included in or incorporated by reference into the Filer's short form prospectus; and
- (h) if the Filer files a short form prospectus after the Filer's financial statements for the period ended September 30, 2023 are required to be filed and before the Filer's financial statements for the year ended December 31, 2023 are required to be filed, the unaudited carve-out interim financial statements for the Spin-Out Business for the period ended September 30, 2023 and the comparative periods and related MD&A will be included in or incorporated by reference into the Filer's short form prospectus.

Furthermore, the decision of the principal regulator is that the Confidentiality Sought is granted.

John Hinze
Director, Corporate Finance
British Columbia Securities Commission