

ALBERTA SECURITIES COMMISSION

ORDER

Citation: Re Chemtrade Electrochem Inc., 2017 ABASC 79

Date: 20170510

Chemtrade Electrochem Inc.

Background

1. Chemtrade Electrochem Inc. (the **Filer**) has applied to the Alberta Securities Commission (the **Commission**) for an order pursuant to section 171(3) of the *Business Corporations Act* (Alberta) (the **ABCA**) authorizing the Filer to dispense with an audit committee.

Representations

2. This order is based on the following facts represented by the Filer:
 - (a) The Filer is a corporation governed by the ABCA, having its registered office in Calgary, Alberta and is a distributing corporation under the ABCA.
 - (b) The Filer is a reporting issuer in each of the provinces of Canada.
 - (c) The Filer is a direct, wholly-owned subsidiary of Chemtrade Logistics Inc. (**CLI**) and an indirect, wholly-owned subsidiary of Chemtrade Logistics Income Fund (the **Fund**).
 - (d) The Fund is a limited purpose trust established on July 11, 2001 under the laws of the Province of Ontario and governed by an amended and restated declaration of trust dated May 12, 2016.
 - (e) The Fund is a reporting issuer in each of the provinces and territories of Canada.
 - (f) CLI is a corporation governed under the *Business Corporations Act* (Ontario). CLI's registered office is in Toronto, Ontario. CLI is a direct, wholly-owned subsidiary of the Fund.
 - (g) On March 10, 2017, 1993754 Alberta Ltd. (the **Purchaser**), an indirect wholly-owned subsidiary of the Fund, acquired all of the outstanding common shares of Canexus Corporation (the **Common Shares**) by way of a court-approved plan of arrangement under the ABCA (the **Arrangement**). The Common Shares were delisted by the Toronto Stock Exchange (the **TSX**) at the close of markets on March 13, 2017.
 - (h) Pursuant to the Arrangement, following the acquisition of the Common Shares by the Purchaser, each Common Share was exchanged for one Class A Redeemable Common Share of Canexus Corporation (the **Class A Shares**). All of the Class A Shares are directly held by CLI.

- (i) Following completion of the Arrangement, Canexus Corporation amalgamated with the Purchaser, and then with a subsidiary of the Purchaser, with the resulting entity's name being changed to "Chemtrade Electrochem Inc."
- (j) The Filer's capital structure is comprised of: (a) Class A Shares, held by CLI; (b) publicly-held convertible debentures (the **Convertible Debentures**); and (c) publicly-held senior unsecured notes (the **Senior Unsecured Notes**).
- (k) The Convertible Debentures and the Senior Unsecured Notes are governed by trust indentures, the terms of which do not contain any restrictions or covenants requiring the Filer's board of directors to have an audit committee.
- (l) The Convertible Debentures are convertible, at the option of the holder, into Class A Shares which are each redeemable for \$1.65 in cash. The Filer intends to redeem, immediately following conversion, any Class A Shares issued on conversion of Convertible Debentures. Accordingly, holders of Convertible Debentures that convert some or all of their Convertible Debentures will not continue to hold any Class A Shares.
- (m) The Filer intends to apply to have the Convertible Debentures delisted from the TSX. Following the intended delisting, the Filer is expected to become a venture issuer as defined in National Instrument 51-102 *Continuous Disclosure Obligations*.
- (n) National Instrument 52-110 *Audit Committees (NI 52-110)* prescribes requirements for audit committees of reporting issuers in Canada, subject to certain exceptions. The requirements of NI 52-110 do not apply to reporting issuers that are subsidiary entities if they satisfy the criteria set out in subsection 1.2(e) of NI 52-110 (the **Subsidiary Entity Exemption Criteria**).
- (o) The Filer satisfies the Subsidiary Entity Exemption Criteria of NI 52-110 because: (i) the Filer is a subsidiary entity within the meaning of NI 52-110; (ii) the Filer does not have any equity securities (other than non-convertible, non-participating preferred securities) trading on a marketplace; and (iii) the Filer's ultimate parent, the Fund, is an issuer that is subject to the requirements of NI 52-110.
- (p) The Filer will file interim and annual financial statements, approved by the Filer's board of directors. The Filer's financial statements will also be consolidated in the Fund's financial statements, the preparation of which is overseen by the Fund's independent audit committee.
- (q) Section 171(1) of the ABCA requires a distributing corporation to have an audit committee. Section 171(3) of the ABCA provides that a distributing corporation may apply to the Commission for an order authorizing the corporation to dispense with an audit committee, and the Commission may, if it is satisfied that the

shareholders will not be prejudiced by the order, permit the corporation to dispense with an audit committee on any reasonable conditions that it thinks fit.

Order

3. The Commission, being satisfied that granting this order would not be prejudicial to the shareholders of the Filer, orders under section 171(3) of the ABCA that the Filer is authorized to dispense with an audit committee provided that (i) the Filer immediately redeems for cash each Class A Share issued on conversion of a Convertible Debenture, and (ii) the Filer continues to satisfy the Subsidiary Entity Exemption Criteria of NI 52-110 or a successor instrument.

For the Commission:

“original signed by”

Stan Magidson
Chair and CEO

“original signed by”

Tom Cotter
Vice-Chair