

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Closed-end investment fund exempt from prospectus requirements in connection with the sale of units repurchased from existing security holders pursuant to market purchase programs and by way of redemption of units by security holders subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.A. 2000, c.S-4, sections 110 and 144

Citation: Re Secure Energy Services Inc., 2017 ABASC 112

Date: 20170623

In the Matter of the
Securities Legislation of
Alberta and Ontario (the **Jurisdictions**)

and

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

and

In the Matter of
Secure Energy Services Inc. (**Secure**) and Rene Amirault (**Amirault**)
(collectively, the **Filers**)

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filers for a decision (the **Exemption Sought**) under the securities legislation of the Jurisdictions (the **Legislation**) exempting Amirault from the requirement in Section 3.3 of National Instrument 55-104 *Insider Reporting Requirements and Exemptions* (**NI 55-104**) and Subsection 107(2) of the *Securities Act* (Ontario) (the **OSA**) to file an insider report within five days following the disposition of securities under the ASDP (as defined below), subject to certain conditions.

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

- (a) the Alberta Securities Commission is the principal regulator for this application;
- (b) the Filers have provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Newfoundland and Labrador, Nova Scotia, and Prince Edward Island; and

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 or NI 55-104 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

Secure

1. Secure is a corporation existing under the laws of the Province of Alberta and is a reporting issuer under the securities legislation of each of the provinces of Canada. Secure is not in default of securities legislation in any jurisdiction of Canada.
2. The head of office of Secure is located in Calgary, Alberta.
3. The authorized share capital of Secure consists of an unlimited number of common shares (the **Shares**) and an unlimited amount of preferred shares, issuable in series. As at March 31, 2017, Secure had 162,580,599 Shares and no preferred shares issued and outstanding.
4. The Shares are listed and posted for trading on the Toronto Stock Exchange under the symbol "SES".

Amirault

5. Amirault is the President, Chief Executive Officer and Chairman of Secure and is a reporting insider. Amirault is not in default of securities legislation in any jurisdiction of Canada.
6. Amirault Partnership (the **Seller**) is a general partnership formed under the laws of Alberta on March 21, 2017; the partners of which are Amirault and The Rene Amirault Family Trust (each a **Partner**). Amirault is the Managing Partner of the Seller.
7. The Seller holds 1,200,000 Shares of which 1,000,000 were transferred to the Seller by Amirault and 200,000 were transferred to the Seller by The Rene Amirault Family Trust.
8. Neither the Seller nor the Rene Amirault Family Trust are in default of securities legislation in any jurisdiction of Canada.

The Automatic Securities Disposition Plan

9. ScotiaMcLeod, a division of Scotia Capital Inc. (the **Administrator**), Secure and the Seller plan to enter into an automatic securities disposition plan (the **ASDP**) to facilitate the automatic sale of up to 1,200,000 Shares, which will be deposited by the Seller into

an account managed by the Administrator, to be managed in accordance with the trading parameters and other instructions set out in the ASDP.

10. The ADSP will not become effective until the Seller delivers to the Administrator a certificate from Secure confirming that Secure is aware of the ASDP and certifying that:
 - (a) to the best of Secure's knowledge, neither the Seller nor either of the Partners is in possession of material non-public information about Secure or the Shares;
 - (b) Secure is not, under its trading policy, in a blackout or similar period during which executives or employees of Secure are restricted from trading in securities of Secure;
 - (c) to the best of Secure's knowledge, there are no legal, contractual or regulatory restrictions applicable to either of the Partners or Secure that would prohibit the Seller from entering into the ASDP; and
 - (d) Amirault, both personally and as Managing Partner of the Seller and as trustee of The Rene Amirault Family Trust, has represented that the ASDP has been entered into in good faith and not as part of a plan or scheme to evade the prohibitions of Section 147 of the *Securities Act* (Alberta) (the **Act**), Section 76 of the OSA or comparable prohibitions in other securities legislation.
11. The agreement between the Seller, the Administrator and Secure provides that The Rene Amirault Family Trust cannot make changes to the ASDP.
12. Amirault can only make changes to the parameters and other instructions set out in the ASDP if all of the following conditions are met:
 - (a) Amirault, as Managing Partner of the Partnership, has delivered to Secure a certificate at least six business days prior to the date of the on which the notice is to be provided that the ASDP is to be suspended, amended or terminated, representing that Amirault is not aware of any material non-public information with respect to Secure or the Shares;
 - (b) Secure's compensation committee has approved in writing any proposed suspension, amendment or termination;
 - (c) as Amirault is a reporting insider of Secure, Amirault, on behalf of the Seller, notifies the public of the suspension, amendment or termination via a news release and a SEDI filing; and
 - (d) such amendment or modification is made in good faith and not as part of a plan or scheme to evade the prohibitions of Section 147 of the Act, Section 76 of the OSA or comparable prohibitions in other securities legislation.

13. The Administrator is a securities broker which is at arm's length to Secure and each of the Partners.
14. The Administrator has been appointed as an independent broker to effect the sales of the Shares pursuant to the terms and conditions of the ASDP. The dispositions under the ASDP will be effected by the Administrator in accordance with the predetermined instructions as to the number and dollar value of the Shares to be sold, and other relevant information.
15. Subject to the restrictions set forth in the ASDP, the Administrator shall execute the trades in such a way as to attempt to minimize the negative price impact on the market and to attempt to maximize the prices obtained for the Shares sold.
16. Except with respect to Amirault setting trading parameters in the manner described above, neither Partner has the authority to make investment decisions or influence or control any disposition effected by the Administrator pursuant to the ASDP and the Administrator will not consult with either Partner regarding any disposition.
17. Neither Partner will disclose to the Administrator any information concerning Secure that might influence the execution of any disposition under the ASDP.
18. The ASDP includes a waiting period of 30 days between the date of adoption and the date that the first disposition can be made thereunder.
19. The ASDP has been structured to comply with applicable securities legislation and guidance, including Paragraph 147(7)(c) of the Act, Paragraph 175(2)(b) of the General Regulation under the OSA and Ontario Securities Commission Staff Notice 55-701 *Automatic Securities Disposition Plans and Automatic Securities Purchase Plans*.
20. The Shares are not subject to any liens, security interests or other impediments to transfer (except for limitations imposed by any applicable laws).
21. The ASDP will automatically terminate upon the earliest to occur of:
 - (a) 5:00 p.m. (Calgary time) on the date that is 12 months after the date that the ASDP is entered into;
 - (b) should the employment at, and tenure as a director of, Secure of Amirault cease for any reason other than death, mental incapacity or retirement, 4:00 p.m. (Calgary time) on the 90th day after the date that the later of such employment and directorship ceases;
 - (c) the date on which the Administrator receives written notice from Amirault or Secure or otherwise becomes aware that Secure or any other person has publicly announced a tender or exchange offer with respect to any Shares, including a normal course issuer bid;

- (d) the date on which the Administrator receives written notice from the Seller or from Secure or otherwise becomes aware of a public announcement of a merger, acquisition, reorganization, recapitalization, or comparable transaction affecting securities of Secure as a result of which Shares are to be exchanged or converted into securities of another entity;
 - (e) the date on which the Administrator receives a written notice from Secure or otherwise becomes aware of the commencement of any proceedings in respect of or triggered by Secure's bankruptcy or insolvency;
 - (f) the date on which a total of 1,200,000 Shares have been sold under the ASDP; or
 - (g) an agreement signed by the Seller and Secure, provided that at the time: (i) the Seller is permitted to terminate the ASDP under Secure's trading policy; (ii) Amirault is not aware of or in possession of material non-public information concerning Secure or any securities of Secure and has provided a certificate to Secure to that effect; (iii) Secure has certified to the Administrator that to the best of Secure's knowledge Amirault is not in possession of material non-public information of Secure or any securities of Secure; and (iv), Secure is not, under its trading policy, in a blackout or similar period during which executives or employees of Secure are restricted from trading in securities of Secure, as certified in writing by Secure to the Administrator.
22. The ASDP will not be terminated while either Partner possesses knowledge of a material fact or material change that has not been generally disclosed and will only do so in good faith and not as part of a plan or scheme to evade the prohibitions of Section 147 of the Act, Section 76 of the OSA or comparable prohibitions in other securities legislation.
23. On establishment of the ASDP and in all cases of termination of the ASDP, Amirault on behalf of the Seller, will notify the public of such termination through a SEDI filing and news release.
24. If the Seller voluntarily terminates the ASDP, the Seller must not enter a new ASDP, either with Secure or any other party, for period of 60 days following termination of participation.

Decision

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 Exemption Sought is granted, provided that Amirault shall file a report through SEDI, by March 31 of each calendar year, of all dispositions under the ASDP during the prior calendar year not previously disclosed in a SEDI filing, disclosing either of the following:

- (a) each disposition on a transaction-by-transaction basis;

- (b) all dispositions as a single transaction using the average unit price of the securities.

“original signed by”

Tom Graham, CA
Director, Corporate Finance
Alberta Securities Commission