

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* - exemption from the prospectus requirement for certain marketing activities not expressly permitted by National Instrument 71-101 *The Multijurisdictional Disclosure System* so that investment dealers acting as underwriters or selling group members of an issuer are permitted to use standard term sheets and marketing materials and conduct road shows (each as defined under National Instrument 41-101 *General Prospectus Requirements*) in connection with future offerings under an MJDS base shelf prospectus – NI 71-101 does not contain equivalent provisions to Part 9A of National Instrument 44-102 *Shelf Distributions* – relief granted, provided that any road shows, standard term sheets and marketing materials would comply with the approval, content, use and other conditions and requirements of Part 9A of NI 44-102, as applicable.

Applicable Legislative Provisions

Securities Act, R.S.A. 2000, c. S-4, as am., s. 144

National Instrument 71-101 *The Multijurisdictional Disclosure System*, s. 11.3

Citation: Re Gran Tierra Energy Inc., 2018 ABASC 152

Date: 20180914

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
Gran Tierra Energy Inc. (the **Filer**)

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for an exemption from the prospectus requirement for certain marketing activities not expressly permitted by National Instrument 71-101 *The Multijurisdictional Disclosure System* (**NI 71-101**) so that investment dealers acting as underwriters (as defined in the Legislation) or selling group members of (a) the Filer, or (b) a selling securityholder of the Filer are permitted to (i) use standard term sheets and marketing materials, and (ii) conduct road shows in connection with future offerings under a Final MJDS Base Prospectus (as defined below) together with applicable supplements as filed by the Filer in

British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (the **Exemption Sought**).

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 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 each of British Columbia, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (together with the Jurisdictions, the **Provinces**); 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 National Instrument 41-101 *General Prospectus Requirements* have the same meaning if used in this decision, unless otherwise defined herein.

Representations

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

1. The Filer is a corporation incorporated under the laws of Delaware.
2. The principal executive offices of the Filer are located in Calgary, Alberta.
3. As of the date hereof, the Filer is a reporting issuer in each of the provinces of Canada and is an “SEC foreign issuer” as defined under National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*. The Filer is not in default of securities legislation in any of the provinces of Canada.
4. The Filer filed a registration statement on Form S-3 with the SEC on September 5, 2018 (the **Registration Statement**). The Registration Statement contains a base shelf prospectus (the **US Base Prospectus**) and will register for sale in the United States, from time to time, in one or more offerings and pursuant to one or more prospectus supplements, shares of the Filer’s common stock, shares of the Filer’s preferred stock, debt securities, warrants and subscription receipts.
5. The Filer has also filed an MJDS base shelf prospectus dated September 12, 2018 (the **Final MJDS Base Prospectus**) in the Provinces pursuant to NI 71-101 which includes the US Base Prospectus and will qualify the distribution in the Provinces, from time to time, in one or more offerings and pursuant to one or more prospectus supplements, of shares of

the Filer's common stock, shares of the Filer's preferred stock, debt securities, warrants and subscription receipts.

6. National Instrument 44-102 *Shelf Distributions* (**NI 44-102**) sets out the requirements for a distribution under a shelf prospectus in Canada, including requirements with respect to advertising and marketing activities. In particular, Part 9A of NI 44-102 entitled *Marketing In Connection with Shelf Distributions* (**Part 9A**) permits the conduct of road shows and the use of standard term sheets and marketing materials following the issuance of a receipt for a final base shelf prospectus provided that the approval, content, use and other applicable conditions and requirements of Part 9A are complied with. NI 71-101 does not contain provisions equivalent to those of Part 9A.
7. In connection with marketing an offering in Canada under the Final MJDS Base Prospectus, investment dealers acting as underwriters or selling group members of (a) the Filer or (b) a selling securityholder of the Filer may wish to conduct road shows and utilize one or more standard term sheets and marketing materials. Any such road shows, standard term sheets and marketing materials will comply with the approval, content, use and other conditions and requirements of Part 9A, as though they are applicable.
8. Canadian purchasers, if any, of securities offered under the Final MJDS Base Prospectus will only be able to purchase those securities through an investment dealer registered in the province of residence of the purchaser.

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 in respect of each future distribution under the Final MJDS Base Prospectus and applicable supplements provided that in respect of each such distribution, the conditions and requirements set out in Part 9A for standard term sheets, marketing materials and road shows are complied with in the manner in which those conditions and requirements would apply if the Final MJDS Base Prospectus were a final base shelf prospectus under NI 44-102.

For the Commission:

“original signed by”

Tom Cotter
Vice-Chair

“original signed by”

Kari Horn
Vice-Chair