

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – issuer deemed to be no longer a reporting issuer under securities legislation.

Applicable Legislative Provisions

Securities Act, RSA, 2000 cS-4, section 153

Citation: Re Critical Control Energy Services Corp., 2019 ABASC 143 Date: 20190917

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

and

In the Matter of
the Process for Cease to be a Reporting Issuer Applications

and

In the Matter of
Critical Control Energy Services Corp. (the **Filer**)

Order

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for an order under the securities legislation of the Jurisdictions (the **Legislation**) that the Filer has ceased to be a reporting issuer in all jurisdictions of Canada in which it is a reporting issuer (the **Order Sought**).

Under the Process for Cease to be a Reporting Issuer Applications (for a dual application):

- (a) the Alberta Securities Commission is the principal regulator for this application;
- (b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia; and
- (c) this order is the order 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* and MI 11-102 have the same meaning if used in this order, unless otherwise defined.

Representations

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

1. The Filer is incorporated under the *Business Corporations Act* (Alberta) (the **ABCA**) and has its head and registered office in Calgary, Alberta.
2. The Filer is a reporting issuer in British Columbia, Alberta and Ontario.
3. The Filer is applying for an order that the Filer has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer.
4. On February 12, 2019, the Filer filed an application with the Toronto Stock Exchange (the **TSX**) to voluntarily delist its common shares (the **Common Shares**) and Series A preferred shares (the **Old Preferred Shares**) from trading on the TSX (the **Delisting**). Management of the Filer (**Management**) deemed it in the best interests of the Filer to make the Delisting application, and such application was granted on February 28, 2019.
5. The Filer completed a plan of arrangement transaction under section 193 of the ABCA effective June 5, 2019 (the **Arrangement**) to, among other things, consolidate its issued and outstanding Common Shares and Old Preferred Shares, and reduce the number of securityholders holding such shares. On May 27, 2019, the Arrangement was approved at an annual general and special meeting of shareholders. Of the shareholders who cast votes: (i) 99.67% of the holders of Common Shares (**Common Shareholders**) and 99.82% of the holders of Old Preferred Shares (**Preferred Shareholders**) voted in favour of the Arrangement; and (ii) 99.52% of Common Shareholders and 99.81% of Preferred Shareholders excluding the votes held or controlled by “interested parties” as defined under Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* voted in favour of the Arrangement. The Arrangement was approved by the Alberta Court of Queen's Bench on June 4, 2019.
6. In the management information circular prepared in connection with the approval of the Arrangement, the Filer indicated to its shareholders that it would apply to the relevant Canadian securities regulatory authorities for an order declaring the Filer to no longer be a reporting issuer in each of its reporting jurisdictions.
7. Immediately prior to the Arrangement, the Filer had 46,136,587 Common Shares issued and outstanding and 4,298,490 Old Preferred Shares issued and outstanding.
8. Pursuant to the Arrangement, 11,696,409 Common Shares and 855,098 Old Preferred Shares were redeemed by the Filer for a price of \$0.08 per Common Share and \$0.42 per Old Preferred Share, respectively. Common Shares that were not redeemed were consolidated on the basis of one (1) post-Arrangement Common Share for every five and one quarter (5.25) pre-Arrangement Common Shares. Old Preferred Shares that were not redeemed were either:
 - (a) converted to Common Shares on the basis of two (2) post-Arrangement Common Shares for every one (1) Old Preferred Share; or

- (b) exchanged for a newly created class of Series B preferred shares (**New Preferred Shares**) on the basis of one (1) New Preferred Share for every one (1) Old Preferred Share.
9. Under the Arrangement, 930,488 Old Preferred Shares were converted to Common Shares and 363,659 Old Preferred Shares were converted to 363,659 New Preferred Shares.
 10. Following the Arrangement, the Filer has 12,366,049 Common Shares and 363,659 New Preferred Shares issued and outstanding.
 11. The Filer has no securities outstanding other than the Common Shares and New Preferred Shares.
 12. Management has determined that there are a maximum of 40 beneficial common securityholders and a maximum of 10 beneficial preferred securityholders inclusive of one securityholder holding both Common Shares and New Preferred Shares, for an aggregate maximum of 49 beneficial securityholders of the Filer worldwide who hold an aggregate of 12,366,049 Common Shares and 363,659 New Preferred Shares.
 13. Of the above, Management has advised that:
 - (a) in the province of Alberta there are a maximum of 23 beneficial common securityholders and a maximum of five beneficial preferred securityholders, inclusive of one securityholder holding both Common Shares and New Preferred Shares, for an aggregate maximum of 27 beneficial securityholders who hold 7,588,391 Common Shares and 23,091 New Preferred Shares, representing 61.36% of the total issued and outstanding Common Shares of the Filer and 6.35% of the total issued and outstanding New Preferred Shares of the Filer, respectively;
 - (b) in the province of Saskatchewan there is one beneficial common securityholder and no beneficial preferred securityholders for an aggregate of one beneficial securityholder who holds 5,000 Common Shares, representing 0.04% of the total issued and outstanding Common Shares of the Filer;
 - (c) in the province of Ontario there are seven beneficial common securityholders and no beneficial preferred securityholders for an aggregate of seven beneficial securityholders who holds 4,692,182 Common Shares, representing 37.94% of the total issued and outstanding Common Shares of the Filer;
 - (d) in the province of Quebec there are four beneficial common securityholders and one beneficial preferred securityholder for an aggregate of five beneficial securityholders who hold 39,782 Common Shares and 2,751 New Preferred Shares, representing 0.32% of the total issued and outstanding Common Shares of the Filer and 0.76% of the total issued and outstanding New Preferred Shares of the Filer, respectively;

- (e) in the province of British Columbia there are two beneficial common securityholders and one beneficial preferred securityholders for an aggregate of three beneficial securityholders who hold 10,444 Common Shares and 12,000 New Preferred Shares, representing 0.08% of the total issued and outstanding Common Shares of the Filer and 3.3% of the total issued and outstanding New Preferred Shares of the Filer, respectively; and
 - (f) in the United States there are three beneficial common securityholders and three beneficial preferred securityholders for an aggregate of six beneficial securityholders who hold 30,250 Common Shares and 325,817 New Preferred Shares, representing 0.24% of the total issued and outstanding Common Shares of the Filer and 89.59% of the total issued and outstanding New Preferred Shares of the Filer, respectively.
- 14. Management has determined that there are fewer than 15 beneficial securityholders in each jurisdiction other than Alberta, where there are a maximum of 27 beneficial securityholders (the **Alberta Holders**).
- 15. Management has determined in Alberta there are a maximum of 23 beneficial common securityholders and a maximum of five beneficial preferred securityholders, inclusive of one securityholder holding both Common Shares and New Preferred Shares, for an aggregate maximum of 27 beneficial securityholders who hold 7,588,391 Common Shares and 23,091 New Preferred Shares. Of the Alberta Holders, Management is unable to identify the beneficial holder of two accounts and, therefore, has assumed that each account is a separate beneficial holder. Of the above:
 - (a) 14 beneficial common securityholders hold 7,481,097 Common Shares and one beneficial preferred securityholder holds 20,000 New Preferred Shares; and
 - (b) nine beneficial common securityholders hold 107,294 Common Shares and four beneficial preferred securityholders hold 3,091 New Preferred Shares, inclusive of one securityholder holding both Common Shares and New Preferred Shares, representing 0.87% of the total issued and outstanding Common Shares of the Filer and 0.85% of the total issued and outstanding New Preferred Shares of the Filer, respectively.
- 16. In support of the representations set forth herein concerning the number of securityholders of the Filer, Management has undertaken the following investigations and analysis:
 - (a) a thorough and diligent examination of the Filer's securityholders' register;
 - (b) a thorough and diligent examination of the records of the Filer prepared by Computershare Trust Company of Canada;
 - (c) a thorough and diligent examination of the securityholders' accounts and non-objecting beneficial owner list maintained for the Filer by Canadian Depository for Securities Limited; and

- (d) a thorough and diligent examination of the geographical analysis report prepared by Broadridge Financial Solutions, Inc.
17. The Filer is unable to rely on the simplified procedure set out in National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications* as it has more than 15 securityholders in Alberta.
 18. The Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*.
 19. The outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada, other than Alberta, and fewer than 51 securityholders in total worldwide.
 20. 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.
 21. The Filer has no current intention to seek public financing by way of an offering of its securities in Canada.
 22. The Filer is not in default of the Legislation in any jurisdiction.
 23. The Filer, upon grant of the Order Sought, will no longer be a reporting issuer in any jurisdiction of Canada.

Order

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

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

“original signed by” _____
Timothy Robson
Manager, Legal
Corporate Finance
Alberta Securities Commission