

Headnote

National Policy 11-203 *Process For Exemptive Relief Applications in Multiple Jurisdictions* – Issuer granted relief from the requirement in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* that acquisition statements required by securities legislation to be audited must be accompanied by an auditor’s report that expresses an unqualified opinion – Issuer made a significant acquisition, but underlying information needed to support an unqualified auditor’s opinion on the acquisition statements is not available – Issuer can otherwise comply with the acquisition statement requirements for a business acquisition report.

Applicable Legislative Provisions

National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, ss. 3.12(2) and s. 5.1

Citation: Re ClearStream Energy Services Inc., 2019 ABASC 169

Date: 20191106

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
ClearStream Energy Services Inc. (the **Filer**)

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for a decision (the **Exemption Sought**) under the securities legislation of the Jurisdictions (the **Legislation**) to grant an exemption from the requirement in subsection 3.12(2) of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (**NI 52-107**) that an auditor's report accompanying audited acquisition statements must express an unmodified opinion.

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 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, Prince Edward Island, Nova Scotia, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut; 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* or MI 11-102 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 governed by the laws of Ontario.
2. The Filer's head office is located in Calgary, Alberta.
3. The Filer is a reporting issuer in each of the provinces and territories of Canada and is not in default of securities legislation in any jurisdiction of Canada, other than the BAR (as defined below) filing related to the Exemption Sought.
4. The common shares of the Filer are listed on the Toronto Stock Exchange under the symbol "CSM".
5. On April 29, 2019, a wholly-owned subsidiary of the Filer entered into an agreement to acquire certain assets of the production services division (the **Production Services Business** or the **Acquisition**) operated by AECOM Production Services Ltd. and certain of its indirectly wholly-owned subsidiaries (collectively, **APSL**).
6. The Acquisition was completed on June 28, 2019 for an aggregate purchase price of approximately \$42 million.
7. As the Acquisition constituted a "significant acquisition" for the Filer pursuant to section 8.3 of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**), the Filer was required to file a business acquisition report (**BAR**) by September 10, 2019. However, for the reasons set forth below, a BAR has not yet been filed in respect of this Acquisition.
8. To comply with section 8.4 of NI 51-102, the Filer's BAR must include, among other things, carve-out comparative annual financial statements for the Production Services Business with the most recently completed financial year ended December 31, 2018 being audited with unaudited December 31, 2017 comparatives, including:
 - (a) a statement of financial position as at December 31, 2018 and December 31, 2017;

- (b) a statement of comprehensive income for the financial years ended December 31, 2018 (the **2018 Income Statement**) and December 31, 2017;
 - (c) a statement of changes in equity and a statement of cash flows for the financial years ended December 31, 2018 and December 31, 2017; and
 - (d) notes to the carve-out financial statements, including a summary of significant accounting policies (collectively, the **2018 Historical Financial Statements**).
9. Subsection 3.12(2) of NI 52-107 requires the auditor's report accompanying the 2018 Historical Financial Statements to express an unmodified opinion.
 10. Although the Filer has prepared the 2018 Historical Financial Statements to the best of its knowledge using information that is presently available from APSL, the Filer's auditor has represented to the Filer that it is unable to obtain sufficient comfort with respect to the cut-off of revenue for the Production Services Business as at December 31, 2017 due to the lack of sufficient underlying information to verify opening accounts receivable and unbilled receivables. This limitation in scope was due to limitations in data available arising from a global accounting system conversion by APSL in 2017.
 11. As a result of the revenue cut-off scope limitation, the Filer's auditor was unable to determine whether adjustments to the financial performance or cash flows might be necessary for the year ended December 31, 2018 and the audit opinion on the 2018 Historical Financial Statements is modified because of the possible effects of this matter (the **Modified Matter**). The Filer's auditor has concluded that the Modified Matter would be appropriate in the context of CAS 705 *Modifications to the Opinion in the Independent Auditor's Report* given that sufficient appropriate audit evidence could not be obtained with respect to revenue cut-off as at December 31, 2017 and, while not believed to be pervasive to the 2018 Income Statement, the possible effect on the 2018 Income Statement, if any, could be material.
 12. To the best knowledge of the Filer on the basis of the due diligence conducted on the Production Services Business prior to the closing of the Acquisition, and in the Filer's preparation of the 2018 Historical Financial Statements, the Filer believes that revenue for the years ended December 31, 2018 and 2017 is not materially misstated.
 13. Apart from the requirement to provide an unmodified audit opinion on the 2018 Historical Financial Statements, the Filer is otherwise able to prepare the BAR in accordance with NI 51-102 and NI 52-107.

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 to grant the Exemption Sought, provided that the BAR:

- (a) includes the 2018 Historical Financial Statements accompanied by an auditor's report that expresses an unmodified opinion other than with respect to the Modified Matter; and
- (b) is otherwise prepared in accordance with NI 51-102 and NI 52-107.

For the Commission:

“original signed by”

Tom Cotter
Vice Chair

“original signed by”

Kari Horn
Vice Chair