

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions – Securities Act*, s. 88 – Cease to be a reporting issuer in AB - The issuer's securities are traded only on a market or exchange outside of Canada - Canadian residents own less than 2% of the issuer's securities and represent less than 2% of the issuer's total number of security holders; the issuer does not intend to do a public offering of its securities to Canadian residents, will not be a reporting issuer in a Canadian jurisdiction, is subject to the reporting requirements of UK securities laws, and all shareholders receive the same disclosure.

Applicable Legislative Provisions

Securities Act, R.S.A., 2000, c.S-4, section 153

Citation: Re Bacanora Lithium plc, 2020 ABASC 13

Date: 20200128

In the Matter of
the Securities Legislation of
Alberta (the **Jurisdiction**)

and

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

and

In the Matter of
Bacanora Lithium plc (the **Filer**)

Order

Background

The principal regulator in the Jurisdiction has received an application from the Filer for an order under the securities legislation of the Jurisdiction of the principal regulator (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 passport application):

- (a) the Alberta Securities Commission is the principal regulator for this application;
and
- (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 Saskatchewan.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* or 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 was incorporated on February 6, 2018 in England and Wales under the *Companies Act 2006*, as amended (the **UK Companies Act**). The Filer's registered office is located in London, England.
2. The Filer is a reporting issuer in Alberta, Saskatchewan and British Columbia (the **Reporting Issuer Jurisdictions**).
3. The Filer has identified Alberta as the principal regulator under the Legislation pursuant to section 8(5)(b) of National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications* (**NP 11-206**), because the Filer indirectly holds assets in Alberta by virtue of holding shares through its subsidiary in an Alberta company, Bacanora Minerals Ltd.
4. The Filer has no operations, employees or offices in Canada.
5. The Filer's ordinary shares (the **Shares**) are listed and posted for trading on the AIM market of the London Stock Exchange plc (the **AIM**).
6. The Shares have never been listed, traded or quoted on any marketplace in Canada.
7. The Filer is a designated foreign issuer pursuant to National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* and is subject to the securities laws of the United Kingdom and the rules of the AIM.
8. The Filer is not in default of any of its obligations under the securities laws of the United Kingdom or the rules of the AIM.
9. The Filer is not in default of any of its obligations under the securities laws of the Reporting Issuer Jurisdictions.
10. In support of the representations set forth in paragraph 12 below concerning the percentage of outstanding securities and total number of security holders in Canada, the Filer sought and obtained information from the Investor Relations division of the Filer's registrar, Orient Capital Ltd. (**Orient**). The Filer: (a) directed Orient to undertake a thorough and diligent examination of its share register for purposes of determining the number, holdings, identity and geographic location of the holders of its outstanding Shares; and (b) appointed Orient, as its agent, to exercise the power under Part 22, Section 793 of the UK Companies Act on behalf of the Filer and in the name of the Filer, to direct any person whom it knows, or has reasonable cause to believe, to be interested in the voting securities of the Filer, to make the disclosure required by Section 793 of the UK Companies Act (the **Searches**). Orient prepared and delivered a report to the Filer

based on its analysis of the results of the Searches indicating, amongst other things, that 99.4% of the issued and outstanding Shares were analyzed and that 1,993,006 of the Shares were beneficially held by Canadian shareholders as at October 23, 2019 (the **Orient Report**).

11. The Filer believes that these inquiries were reasonable, given that: (a) its share register and Orient are the only official sources of information on the Filer's security holders; (b) the Searches are a mandated process under the UK Companies Act requiring disclosure of beneficial outstanding Shares; and (c) the Orient Report indicates the number of and percentage of Shares beneficially held by Canadian shareholders.
12. At its last annual general meeting of shareholders, the Filer obtained shareholder approval to issue up to an additional 500,000,000 Shares without obtaining further shareholder approval, in accordance with the UK Companies Act. Based on the Filer's diligent inquiries described above and information provided by Orient: (a) as of October 23, 2019, the Filer has 192,065,236 Shares outstanding, of which 1,993,006 Shares are beneficially owned by Canadian shareholders representing 1.0% of the total number of Shares issued and outstanding on October 23, 2019; and (b) such Shares are held by 12 registered shareholders with registered addresses in Canada.
13. Accordingly, as of October 23, 2019, residents of Canada:
 - (a) do not, directly or indirectly, beneficially own more than 2% of each class or series of outstanding securities (including debt securities) of the Filer worldwide; and
 - (b) to the knowledge of the Filer, do not, directly or indirectly, comprise more than 2% of the total number security holders of the Filer worldwide.
14. The Filer files periodic and timely disclosure requirements as required under the securities laws of the United Kingdom and the rules of the AIM.
15. In the last twelve months, the Filer has not conducted any offerings of its securities or established a listing on a Canadian marketplace or exchange in Canada nor does the Filer currently intend to conduct any offerings of its securities or establish a listing on a Canadian marketplace or exchange in Canada.
16. None of the Filer's securities, including debt securities, are traded on a marketplace (as that term is defined in National Instrument 21-101 *Marketplace Operation*) in Canada or listed or quoted on any other market or exchange in Canada, and the Filer does not intend to have its securities listed, traded or quoted on such a marketplace in Canada.
17. The Shares of the Filer will remain listed on the AIM and the Filer will be subject to the periodic and timely disclosure requirements under the securities laws of the United Kingdom and the rules of the AIM.

18. The Filer undertakes to deliver to its security holders in Canada all disclosure materials required to be delivered to security holders resident in the United Kingdom, in the manner required by United Kingdom securities laws and the requirements of the AIM rules.
19. The Filer is not eligible to rely on the simplified procedure described in section 19 of NP 11-206 because the Shares are listed and posted for trading on the AIM and because the Filer is a reporting issuer in the Reporting Issuer Jurisdictions; therefore, (i) the outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by not fewer than 15 security holders in each of the jurisdictions of Canada and not fewer than 51 security holders in total worldwide; and (ii) the securities of the Filer, including debt securities, are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any facility for bringing together buyers and sellers of securities where trading data is publicly reported.
20. 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.

Order

The principal regulator is satisfied that the order meets the test set out in the Legislation for the principal regulator to make the order.

The decision of the principal regulator under the Legislation is that the Order Sought is granted.

“original signed by”

Timothy Robson
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Alberta Securities Commission