

ALBERTA SECURITIES COMMISSION

DETERMINATION *Business Corporations Act (Alberta)*

Citation: Re Baytex Energy Corp., 2020 ABASC 10

Date: 20200124

Baytex Energy Corp.

Background

1. Baytex Energy Corp. (**Baytex**) has applied to the Alberta Securities Commission (the **Commission**) for a determination under subsection 3(3) of the *Business Corporations Act* (Alberta) (the **ABCA**) that the senior notes due 2027 proposed to be distributed by Baytex (the **Senior Notes**) are not part of a distribution to the public under the ABCA.

Interpretation

2. Terms defined in National Instrument 14-101 *Definitions* have the same meaning if used in this determination, unless otherwise defined.

Representations

3. This determination is based on the following representations by Baytex to the Commission:
 - (a) Baytex is a corporation incorporated under the ABCA, is a reporting issuer or the equivalent under the securities legislation in each of the provinces of Canada and is not in default of securities laws.
 - (b) Baytex's head office is located in Calgary, Alberta.
 - (c) The Senior Notes will be distributed primarily in the United States.
 - (d) The Senior Notes will be issued and sold pursuant to exemptions from the registration requirements of the *United States Securities Act* of 1933, as amended (the **1933 Act**) to one or more of RBC Capital Markets, LLC and certain other specified persons (collectively, the **Initial Purchasers**).
 - (e) The Initial Purchasers will resell the Senior Notes to investors in transactions pursuant to Rule 144A under the 1933 Act and Regulation S under the 1933 Act or in transactions otherwise exempt from or not subject to the registration requirements of the 1933 Act.
 - (f) A portion of the Senior Notes may be distributed in one or more of the provinces of Canada to purchasers who are "accredited investors," as defined in National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**), pursuant to an exemption from the prospectus requirement contained in NI 45-106.

- (g) The Senior Notes may also be distributed in the United Kingdom or other jurisdictions, pursuant to available exemptions; Baytex will comply with relevant local laws in these jurisdictions, as applicable.
- (h) The Senior Notes will not be listed on any stock exchange in Canada or the United States.
- (i) An offering document (**Offering Document**) will be provided by the Initial Purchasers to purchasers of Senior Notes.
- (j) The Offering Document will contain disclosure substantially similar to that contained in a US prospectus, and could therefore be construed as a document similar to those referenced in subsection 3(2)(a) of the ABCA. The Offering Document is required to be filed in certain jurisdictions in Canada.
- (k) Accordingly, the Senior Notes could be considered part of a "distribution to the public" by Baytex of "debt obligations", as those terms are defined in the ABCA.
- (l) As a result, section 83 of the ABCA would require the appointment under the Indenture of at least one trustee registered under the *Loan and Trust Corporations Act* (Alberta) (the **LTCA**).
- (m) Baytex, certain of its subsidiaries and Computershare Trust Company, N.A. (**Computershare**), a trustee resident in the US, will enter into an indenture for the Senior Notes (the **Indenture**) which will be governed by, and construed in accordance with, the laws of the State of New York.
- (n) Computershare will be appointed the trustee (the **Trustee**) under the Indenture. Computershare is a national banking association, organized and existing under the laws of the United States, authorized to exercise corporate trust powers and supervised by the Comptroller of Currency.
- (o) The Indenture will be in substantially the form of an indenture that would be required under the *United States Trust Indenture Act* of 1939 if the Senior Notes were subject to registration under the 1933 Act.
- (p) The Trustee is not registered under the LTCA; however, the Indenture will require that at all times the Trustee: (i) is a corporation organized under the laws of the United States or any state thereof; (ii) is authorized under such laws to exercise corporate trustee powers; (iii) is subject to supervision or examination by the United States federal and state authorities; and (iv) together with its affiliates, has a combined capital and surplus of at least US\$100 million.
- (q) Although the terms of the Indenture will not comply with all of the provisions of Part 7 of the ABCA, the terms will be substantially in compliance with subsections 82(1) and 82(2) [conflict of interest], section 88 [evidence of compliance] and section 89 [notice of default] of the ABCA.

- (r) The Indenture does not contain the same standard of care as is found in section 90 of the ABCA but does provide that if an event of default has occurred and is continuing, the Trustee shall use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.
- (s) Holders of Senior Notes will not derive any additional material benefit from having the Indenture be subject to the ABCA and the LTCA.

Decision

- 4. The Commission, being satisfied that granting this determination would not prejudice any security holder of Baytex, determines in accordance with subsection 3(3) of the ABCA that the Senior Notes are not part of a distribution to the public pursuant to the ABCA.

“original signed by”

Timothy Robson
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