

Headnote

MI 11-102 and NP 11-203- Less than 10% of issuer's shareholders are resident Canadians- issuer exempted from NI 51-101 on condition that it file its US oil and gas disclosure- issuer exempted from NI 58-101 on the condition that it file its US corporate governance filings – issuer exempted from NI 51-102, certain insider reporting requirements and certain requirements in respect of early warning requirements and acquisition announcement provisions on the condition that it comply with NI 71-102 as though it were an SEC foreign issuer thereunder.

Applicable Legislative Provisions

National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*

National Instrument 51-102 *Continuous Disclosure Obligations*

National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)*

National Instrument 55-104 *Insider reporting requirements and exemptions*

National Instrument 58-101 *Disclosure of Corporate Governance Practices*

National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues*

Citation: Re Ultra Petroleum Corp., 2020 ABASC 30

Date: 20200306

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
Ultra Petroleum Corp. (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 under the securities legislation of the Jurisdictions (the **Legislation**) that, subject to the conditions set forth herein:

- (a) the Filer is exempt from National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (**NI 51-101**) (the **Oil and Gas Relief**);
- (b) the Filer is exempt from National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) (the **Continuous Disclosure Relief**);

- (c) the Filer is exempt from National Instrument 58-101 *Disclosure of Corporate Governance Practices* (the **Corporate Governance Relief**);
- (d) the insider reporting requirement does not apply to an insider of the Filer (the **Insider Reporting Relief**); and
- (e) an acquiror (as such term is defined in Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*) is exempt from the early warning requirements and acquisition announcement provisions (as such terms are defined in National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues*) in respect of securities of the Filer (the **Early Warning Relief**)

(collectively, 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 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 and Yukon (the **Passport Jurisdictions**); 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 and National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers (NI 71-102)* 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 incorporated under the *Business Corporations Act* (Yukon) (**YBCA**).
2. The Filer is an independent oil and gas exploration and production company, with assets exclusively located in the United States (**US**).
3. The Filer is a reporting issuer in each of the Jurisdictions and Passport Jurisdictions.
4. The Filer is not in default of its obligations as a reporting issuer under the securities legislation of any of the Jurisdictions or Passport Jurisdictions other than its technical non-compliance with the conditions in the Previous Exemptive Relief (as defined herein).

5. Other than its incorporation under the YBCA, a registered office in Yukon and its status as a reporting issuer in the Jurisdictions and Passport Jurisdictions, the Filer does not have a significant connection to any Jurisdiction or Passport Jurisdiction.
6. The Filer's head office is located in Englewood, Colorado, US, and the business of the Filer is administered exclusively from the US.
7. The Filer maintains a registered office in Yukon for the sole purpose of satisfying the records requirements of the YBCA.
8. All of the directors of the Filer are residents of the US.
9. All of the officers of the Filer are residents of the US.
10. Had the Filer been incorporated or organized under the laws of a foreign jurisdiction, it would be an SEC foreign issuer.
11. None of the securities of the Filer are listed or quoted on any exchange in Canada.
12. The issued and outstanding capital of the Filer consists of common shares (**Common Shares**).
13. Less than 10% of the number of beneficial holders of Common Shares are resident in Canada and less than 10% of the outstanding Common Shares are held, directly or indirectly, by Canadian residents.
14. The Decision Makers issued a decision document on November 11, 2005 granting relief to the Filer from compliance with certain continuous disclosure requirements under NI 51-101 and NI 51-102 and the insider reporting requirement (Ultra Petroleum Corp., 2005 ABASC 22) (the **Previous Exemptive Relief**).
15. At the time the Previous Exemptive Relief was granted, the Common Shares were listed and quoted on the American Stock Exchange (**AMEX**) (now the New York Stock Exchange American (**NYSE American**)). On May 3, 2016, the Common Shares were delisted from the NYSE American in connection with the Filer's filing on April 29, 2016 of voluntary petitions for reorganization under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas.
16. The Common Shares commenced trading on the NASDAQ Global Select Market (**NASDAQ**) under the symbol "UPL" on March 14, 2017 in connection with the Filer's emergence from bankruptcy. On September 3, 2019, the Common Shares were delisted from the NASDAQ due to the failure to satisfy the NASDAQ's US\$1.00 minimum bid price requirement (the **Minimum Bid Requirement**).
17. The Common Shares commenced trading on, and continue to trade on, the US OTC Market Group Inc.'s OTCQX Best Market (**OTC**) under the symbol "UPLC" on August 8, 2019. The OTC is not recognized as an "exchange", including a "national securities exchange" under US securities laws.

18. Notwithstanding the delisting of the Common Shares from the NASDAQ, the Filer's Common Shares continue to be registered under the section 12 of the *Securities Exchange Act of 1934* (US) (the **1934 Act**). The Filer is governed by the 1934 Act and the rules and regulations of the U.S. Securities and Exchange Commission (the **SEC Rules**). The Filer's offerings of securities continue to be governed by the SEC Rules and the *Securities Act of 1933* (US) (the **1933 Act**) (the 1934 Act, the SEC Rules and the 1933 Act together, the **US Rules**).
19. The Filer's obligations under the US Rules (including its continuous disclosure obligations and in particular its oil and gas activities disclosure obligations) have not changed as a result of the delisting of the Common Shares from the NYSE American or their subsequent listing on and delisting from the NASDAQ.
20. The Filer is in compliance with the US Rules and, prior to the delisting of the Common Shares from the NASDAQ, had been in compliance with the rules and policies of the NASDAQ (the **NASDAQ Rules**), other than the Minimum Bid Requirement. Notwithstanding the non-application of the NASDAQ Rules, as at this date, the Filer continues to comply with the NASDAQ Rules other than the Minimum Bid Requirement.
21. The Previous Exemptive Relief granted relief from the requirements under NI 51-101 on the condition that the Filer is subject to and complies with the rules and regulations of the AMEX. Given that the Common Shares are no longer listed on the AMEX or its successor, the Filer is not in technical compliance with the conditions in the Previous Exemptive Relief.
22. None of the rules and regulations of the AMEX, the NYSE American or the NASDAQ include requirements governing the disclosure of oil and gas activities beyond compliance with the US Rules.
23. The Filer is in compliance with its continuous disclosure reporting requirements, including the requirements applicable to its oil and gas disclosure, under the US Rules.

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 with respect to the Exemption Sought is that:

- (a) the Oil and Gas Relief is granted for so long as:
 - (i) less than 10% of the number of beneficial holders of Common Shares are resident in Canada;
 - (ii) less than 10% of the outstanding Common Shares are held, directly or indirectly, by residents of Canada;

- (iii) residents of Canada do not comprise more than 10% of the aggregate number of beneficial holders of any new class or series of securities issued by the Filer;
 - (iv) residents of Canada do not hold, directly or indirectly, more than 10% of the outstanding number of any new class or series of securities issued by the Filer;
 - (v) the Filer is not a foreign private issuer (as such term is defined under US federal securities law);
 - (vi) the Filer is subject to and complies with the disclosure requirements of the US Rules and the rules and regulations of any exchange upon which the Common Shares are listed in connection with its oil and gas activities (collectively, the **US Oil and Gas Rules**);
 - (vii) the Filer files with the Decision Makers, through SEDAR, disclosure (or documents containing disclosure) about its oil and gas activities prepared in accordance with the US Oil and Gas Rules as soon as practicable after such disclosure (or documents containing such disclosure) is filed pursuant to the US Oil and Gas Rules; and
 - (viii) the Filer issues in Canada and files with the Decision Makers a news release stating that it will provide disclosure in respect of its oil and gas activities in accordance with the US Oil and Gas Rules rather than in accordance with NI 51-101;
- (b) the Continuous Disclosure Relief is granted for so long as:
- (i) the conditions in paragraphs (a)(i) through (a)(v) of this decision continue to be satisfied;
 - (ii) the conditions in paragraphs (c)(iii) and (c)(iv) of this decision continue to be satisfied; and
 - (iii) the Filer complies with NI 71-102 as if it were an SEC foreign issuer thereunder;
- (c) the Corporate Governance Relief is granted for so long as:
- (i) the conditions in paragraphs (a)(i) through (a)(v) of this decision continue to be satisfied;
 - (ii) the condition in paragraph (b)(iii) of this decision continues to be satisfied;
 - (iii) the Filer complies with the disclosure and other requirements of the US Rules and the rules and regulations of any exchange upon which the

Common Shares are listed relating to corporate governance matters (collectively, the **US Corporate Governance Rules**); and

- (iv) the Filer files with the Decision Makers, through SEDAR, any disclosure (or documents containing disclosure), document or instrument pertaining to its corporate governance practices that are required to be disclosed, filed or otherwise made publicly available under the US Corporate Governance Rules, as soon as practicable after such disclosure (or documents containing such disclosure), document or instrument is filed or otherwise made publicly available pursuant to the US Corporate Governance Rules;
- (d) the Insider Reporting Relief is granted in respect of each insider for so long as:
 - (i) the conditions in paragraphs (a)(i) through (a)(v) of this decision continue to be satisfied; and
 - (ii) the particular insider complies with section 4.12 of NI 71-102 as if the Filer were an SEC foreign issuer thereunder; and
- (e) the Early Warning Relief is granted in respect of each acquiror for so long as:
 - (i) the conditions in paragraphs (a)(i) through (a)(v) of this decision continue to be satisfied; and
 - (ii) the particular acquiror complies with section 4.11 of NI 71-102 as if the Filer were an SEC foreign issuer thereunder.

For the Commission:

“original signed by”

Tom Cotter
Vice-Chair

“original signed by”

Kari Horn
Vice-Chair