

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 – issuer is wholly-owned subsidiary of foreign parent, with widely held debt securities outstanding – terms of debt or related agreements do not require issuer to be a reporting issuer – debt is guaranteed, and guarantor’s disclosure is available – issuer’s circumstances consistent with modified procedure

Applicable Legislative Provisions

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

Citation: Re Harvest Operations Corp., 2020 ABASC 102

Date: 20200626

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
Harvest Operations Corp. (the **Filer**)

Order

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **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 in 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, Saskatchewan, Manitoba and Québec; 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*, National Instrument 45-106 *Prospectus Exemptions* 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 a corporation amalgamated under the *Business Corporations Act* (Alberta).
2. The Filer's head office is located in Calgary, Alberta.
3. The Filer is a reporting issuer in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Québec and is not in default of securities legislation in any jurisdiction.
4. The Filer is a wholly-owned subsidiary of Korea National Oil Corporation (**KNOC**), the state-owned national oil and gas company of the Republic of Korea.
5. The outstanding securities of the Filer currently consist of its common shares (**Common Shares**), which are the only voting securities and equity securities of the Filer, all of which are held by KNOC; and three series of debt securities that are fully and unconditionally guaranteed by KNOC (collectively, the **Guaranteed Notes**) with an aggregate principal amount of US\$1,078,270,000, as follows:
 - (a) US\$195,770,000 aggregate principal amount of 2.33% senior notes due 2021, which were issued in 2016;
 - (b) US\$485,000,000 aggregate principal amount of 3.00% senior notes due 2022, which were issued in 2017;
 - (c) US\$397,500,000 aggregate principal amount of 4.20% senior notes due 2023, which were issued in 2018.
6. The **Guaranteed Notes** are unsecured senior obligations of the Filer and are not convertible or exchangeable into any other class of security.
7. The terms of the **Guaranteed Notes** and the fiscal agency agreements pursuant to which they were issued do not require that the Filer maintain its status as a reporting issuer in any jurisdiction or otherwise restrict the Filer's ability to obtain the Order Sought.
8. The **Guaranteed Notes** were issued on a private placement basis to accredited investors in various foreign jurisdictions, including in the United States in reliance on Rule 144A under the 1933 Act (**Rule 144A**). None were distributed to purchasers in Canada.
9. In order to meet one of the conditions of Rule 144A, each of the Filer and KNOC, as guarantor, has covenanted under the **Guaranteed Notes** that, for so long as a **Guaranteed Note** is a "restricted security" within the meaning of Rule 144 under the 1933 Act, it will furnish to the holder of the **Guaranteed Note** and any prospective purchaser designated by

the holder, upon request, the information set out in Rule 144A(d)(4), unless at the time of the request the Filer or Guarantor, as the case may be, is subject to reporting under section 13 or section 15(d) of the 1934 Act (or is exempt from reporting pursuant to Rule 12d3-2(b) under the 1934 Act). In light of KNOC's guarantee of the Guaranteed Notes, such information would be comprised of a brief statement of the nature of KNOC's business and the products it offers, KNOC's most recent balance sheet and statements of profit and loss and retained earnings, and similar financial statements for such part of the two preceding fiscal years.

10. The Guaranteed Notes are listed on the wholesale bond market of Singapore Exchange Securities Trading Limited (**SGX**), which is a market for non-retail investors. Under current SGX rules, wholesale bonds trade in a minimum board lot size of S\$200,000 (or the equivalent in foreign currencies).
11. The Filer is subject to disclosure requirements under SGX rules and complementary provisions of Singapore securities laws, including timely disclosure of information that may have a material effect on the price or value of its debt securities or an investor's decision whether to trade in such debt securities, and is in compliance with all such applicable requirements. The SGX is licensed as an "approved exchange" by the Monetary Authority of Singapore, and compliance with the disclosure requirements of the SGX by an issuer of securities listed on the SGX is mandated under the *Securities and Futures Act* (Singapore).
12. In accordance with its domestic law, KNOC publishes consolidated financial statements that include the accounts of the Filer.
13. The Guaranteed Notes are represented by global certificates issued to The Depository Trust Company (**DTC**), which are registered in the name of its nominee and held for the accounts of intermediaries who are participants in the DTC depository system.
14. In accordance with industry practice and custom, the Filer engaged Broadridge Investor Communication Solutions (**Broadridge**) to provide reports as to the country of residence of the beneficial holders of the Guaranteed Notes, and the principal amounts held by those holders. The reports are based on the CUSIP (Committee on Uniform Securities Identification Procedures) numbers assigned to such notes, and are as of a record date of May 5, 2020. The Filer understands that Broadridge compiles such reports by making inquiries of Canadian and United States intermediaries that are Broadridge clients, and that the vast majority of Canadian and United States intermediaries are Broadridge clients. The Filer further understands that the country of residence information as to the beneficial holders is based on securityholder addresses of record identified in the information provided to Broadridge.
15. The responses provided by the intermediaries to Broadridge cover approximately 56% of the outstanding principal amount of the Guaranteed Notes, and for such portion the responses indicate 143 beneficial holders, holding US\$608,957,000 aggregate principal amount of Guaranteed Notes. Of these beneficial holders, the only Canadian residents were four holders in Ontario, holding US\$6,200,000 aggregate principal amount.

16. No securities of the Filer are traded in Canada on a marketplace (as that term is 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.
17. In the past 12 months, the Filer has not taken any steps that indicate there is a market for its securities in Canada, including conducting a prospectus offering in Canada, establishing or maintaining a listing on an exchange in Canada, or having its securities traded on a marketplace or any other facility in Canada for bringing together buyers and sellers where trading data is publicly reported.
18. The Filer has no current intention to seek public financing by way of an offering of its securities in Canada.
19. The Filer has provided a written undertaking to each of the Decision Makers to deliver to its Canadian resident holders of Guaranteed Notes all disclosure materials that it is required under Singapore securities laws or SGX rules to deliver to holders resident in Singapore.
20. The Filer issued on June 9, 2020 a news release announcing that it applied for an order to cease to be a reporting issuer in all Canadian jurisdictions in which it is a reporting issuer, and that if the order is granted the Filer will no longer be a reporting issuer in any jurisdiction of Canada. The Filer has not received any communications from its securityholders in response to this news release.

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