

## 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’s circumstances consistent with modified procedure.

## Applicable Legislative Provisions

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

**Citation: Re Petro Rio S.A., 2020 ABASC 127**

**Date: 20200804**

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  
Petro Rio S.A. (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 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 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, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador; 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 21-101 *Marketplace Operation*, National Instrument 51-102 *Continuous Disclosure Obligations* 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 under Brazilian law on July 17, 2009.
2. The Filer does not have any operations in Canada.
3. The Filer is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador.
4. The Filer is subject to the securities laws of Brazil.
5. The Filer is also governed by the rules made by the Comissão de Valores Mobiliários (which organization is known in English as the Brazilian Securities and Exchange Commission) (the **CVM Rules**). The CVM Rules contain requirements as to periodic and timely disclosure, including that the Filer must disclose its quarterly financial statements and annual financial statements. The Filer must also file management's discussion and analysis at the same time as such statements. The quarterly financial statements are required to be filed within 45 days of the end of the period, and the annual financial statements must be filed within 90 days of the end of the financial year. In addition, the CVM Rules require all issuers listed on a Brazilian exchange to file a comprehensive annual document that is similar to a Form 10-K under the 1934 Act. This document must be filed within five months of the end of the financial year.
6. The Filer's common shares (the **Common Shares**) are listed and posted for trading on the Novo Mercado segment (the **Mercado**) of the B3 S.A. – Brasil, Bolsa, Balcão (the **B3**) stock exchange located in São Paulo, Brazil, under the trading symbol "PRIO3". The rules of the Mercado include that the Filer's share capital must consist exclusively of common shares. The B3 is a major foreign exchange, ranking third in the world, and second in the Americas, by market value.
7. The Mercado has rules (the **Mercado Rules**) that are concerned with corporate governance and shareholders' rights. The Mercado Rules comprise the most extensive requirements relating to corporate governance and shareholders' rights of the seven listing segments of the B3. They include requirements regarding the following:
  - (a) minimum publicly traded float;
  - (b) disclosure of material information;
  - (c) director independence;

- (d) director terms of service;
  - (e) protection of minority shareholders;
  - (f) disclosure regarding negotiations with controlling shareholders regarding securities issues by the company;
  - (g) creation and disclosure of an assessment process for the board of directors, its committees, and executive offices;
  - (h) internal audit and compliance;
  - (i) creation and disclosure of policies regarding compensation, director nomination, risk management and related party transactions.
8. All public disclosure required to be made by the Filer pursuant to any applicable Brazilian rule or law must be publicly announced by a regulatory news service and must, together with other continuous disclosure documents, be made publicly available to all the Filer's security holders through the Filer's web site.
  9. The Filer is not in default of securities legislation in any jurisdiction, except for the failure to file, in respect of the year ended December 31, 2019, its AIF and its filings required by National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*.
  10. The Filer is not in default of any of its obligations under the securities laws of Brazil, the CVM Rules, the rules of the B3 or the Mercado Rules.
  11. The Common Shares were never listed on a marketplace in Canada. The only securities of the Filer that have been listed on a marketplace in Canada were Global Depositary Shares (each a **Depositary Share**), which were listed on the TSX Venture Exchange (the **TSXV**).
  12. The Depositary Shares were created and listed in connection with a transaction that occurred in April 2011, in which the Filer and UNX Energy Corp. (**UNX**) completed a plan of arrangement pursuant to which the Filer acquired 100% of the common shares of UNX in exchange for Depositary Shares issued by the Filer and listed for trading on the TSXV. Each Depositary Share represented a right to withdraw 0.5 of a Common Share deposited or subject to deposit with a custodian.
  13. The structure that established and maintained the framework for the Depositary Shares was dissolved and the Depositary Shares were, at the request of the Filer, voluntarily delisted from the TSXV effective at the close of trading on January 27, 2017 (the **Delisting Date**).
  14. Holders of Depositary Shares had the option, for a period starting on the Delisting Date and ending four months after the Delisting Date, to request that Deutsche Bank (the intermediary involved in administering the Depositary Share program) deliver the underlying Common Shares to such holders of Depositary Shares, in accordance with the terms and conditions of the deposit agreement that governed the Depositary Shares, and

such Depository Share holders' written instructions. In the absence of written instructions from the Depository Share holders or their agents by the end of such four month period as to how the underlying Common Shares were to be delivered to a valid brokerage account, such Common Shares to which the former Depository Share holder was entitled were sold in the market by Deutsche Bank and the net proceeds remitted to the former Depository Share holder.

15. The Filer's share register is the only authoritative source of information on the Filer's security holders. None of the securities laws of Brazil, the CVM Rules, the rules of the B3 or the Mercado Rules require the corporate registrar nor any transfer agent to maintain information about the beneficial holders of Common Shares and accordingly, only a list of registered holders is maintained. There is no practical way for the Filer to identify the beneficial owners of the Common Shares and as a result, there is no practical way for the Filer to ascertain the residency of such beneficial holders.
16. As at April 30, 2020, the Filer had 144,685,660 Common Shares issued and outstanding.
17. Based on searches of the register of the Common Shares and analysis of data provided by the Filer's registrar, BANCO DO BRASIL S.A., as at April 30, 2020, there were 74,048 registered holders of Common Shares worldwide, of which 5 were recorded as being resident in Canada, holding 258,967 Common Shares.
18. Based on the foregoing, as of April 30, 2020, to the best of the Filer's knowledge and belief, residents of Canada do not
  - (a) beneficially own more than 2% of each class or series of outstanding securities (including debt securities) of the Filer worldwide, or
  - (b) directly or indirectly, comprise more than 2% of the total number of security holders of the Filer worldwide.
19. In the 12 months before applying for the Order Sought, 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.
20. On April 9, 2020 the Filer issued 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 objections from its security holders in response to this news release.

21. The Filer has provided a written undertaking to each of the Decision Makers to concurrently deliver to its Canadian security holders all disclosure the Filer is required to deliver to Brazilian resident security holders under the securities laws of Brazil, the CVM Rules, the rules of the B3 or the Mercado Rules.

**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