

## Headnote

National Policy 11-206 *Process for Cease to be a Reporting Issuer* - issuer deemed to be no longer a reporting issuer under securities legislation.

## Applicable Legislative Provisions

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

**Citation: Re Eagle Energy Inc., 2020 ABASC 198**

**Date: 20201229**

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  
Eagle Energy Inc. (the **Filer**)

Order

## Background

The securities regulatory authority or regulator in each of the Jurisdictions (**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, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (together with the Jurisdictions, the **Reporting Jurisdictions**); 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* and MI 11-102 have the same meaning if used in this order, unless otherwise defined herein.

### **Representations**

This order is based on the following facts represented by the Filer:

1. The Filer is a corporation existing under the *Business Corporations Act* (Alberta) (the **ABCA**) formed pursuant to an amalgamation on January 27, 2016.
2. The Filer's head office is located in Calgary, Alberta.
3. The Filer is a reporting issuer in each of the Reporting Jurisdictions.
4. The authorized capital of the Filer consists of an unlimited number of Class A common shares (the **Class A Shares**) and an unlimited number of Class B redeemable shares (the **Class B Shares**) of which 10,000 Class A Shares and nil Class B Shares are issued and outstanding.
5. The former common shares of the Filer were delisted from trading on the TSX Venture Exchange on December 2, 2019.
6. White Oak Global Advisors, LLC (the **Creditor**) is a limited liability company formed under the laws of Delaware. It is an investment advisor registered with the U.S. Securities and Exchange Commission specializing in providing secured loans to support the growth and financing needs of small and medium enterprises.
7. EEI HoldCo, LLC (**EEI**) is a limited liability company formed under the laws of Delaware. It is indirectly owned by certain funds and accounts managed by the Creditor. EEI was formed by the Creditor for the purposes being the direct sole shareholder of the Filer upon completion of the Reorganization (as defined below).
8. On November 19, 2019, on the application of the Creditor, which was the Filer's main lender and secured creditor, the Honourable Justice R.A. Neufeld of the Alberta Court of Queen's Bench (the **Court**) granted an order (the **Receivership Order**) appointing FTI Consulting Canada Inc. (the **Receiver**) as receiver and manager of the Filer's current and future assets, undertakings and properties. All of the directors of the Filer resigned concurrently.
9. Pursuant to an approval of engagement and sale process order of the Court dated February 19, 2020, the Receiver was authorized and directed to implement a sale process in respect of the Filer and its subsidiaries (the **Sale Process**).

10. On May 29, 2020, the Filer filed a proposal (the **Proposal**) with the Court pursuant to Part III Division I of the *Bankruptcy and Insolvency Act* (Canada) (the **BIA**) which contemplated, among other things, the compromise and settlement of claims by unsecured creditors of the Filer and the reorganization of the share capital of the Filer (the **Reorganization**) involving, *inter alia*, the:
  - (i) filing of articles of reorganization pursuant to section 192 of the ABCA to amend the articles of the Filer to provide for the authorization of two classes of shares in the capital of the Filer: Class A Shares and Class B Shares and the re-designation of each previously issued and outstanding common share into one Class B Share;
  - (ii) redemption and cancellation of all of the issued and outstanding Class B Shares for nil consideration; and
  - (iii) issuance of 10,000 Class A Shares (the **Trade**) to EEI for settlement of the Creditor's secured creditor claim against the Filer to the extent of the value of its credit bid in the Sale Process, namely as to C\$21,000,000.
11. Under the provisions of the BIA, only creditors are entitled to vote on a proposal unless ordered by the Court and holders of equity are not entitled to any payment unless all claims that are not equity claims are first paid in full.
12. On June 10, 2020, a meeting of the unsecured creditors of the Filer (the **Meeting**) was held to consider and vote on the Proposal, and at the Meeting, the unsecured creditors voted 98.4% in favour of the Proposal.
13. The Proposal provided that only a limited portion of the claims of the Filer's unsecured creditors would be satisfied. Accordingly, the holders of the former common shares of the Filer were not entitled to vote in respect of the Proposal or receive any consideration under the Reorganization.
14. On June 26, 2020, the final order in respect of the Proposal was granted by the Court and the Reorganization was completed on June 30, 2020.
15. Following the Reorganization, EEI became the sole holder of all outstanding Class A Shares. No other securities of the Filer are outstanding as a result of the Reorganization.
16. The prior holders of common shares of the Filer ceased to have any economic interest in the Filer upon completion of the Reorganization.
17. The securities of the Filer are subject to a failure-to-file cease trade order that is applicable in certain other Reporting Jurisdictions for its failure to file, subsequent to the Receivership Order, required filings under applicable securities laws (the **FFCTO**). The Filer sought and received an order partially revoking the FFCTO in Alberta in order to permit the Trade in connection with the Reorganization. The Filer has submitted a concurrent application for the revocation of the FFCTO.

18. The Filer is applying for an order that the Filer has ceased to be a reporting issuer in all of the Reporting Jurisdictions.
19. The outstanding securities, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide.
20. No securities of the Filer, including debt securities, are traded in Canada or another country on a marketplace, as 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.
21. The Filer has no current intention to seek public financing by way of an offering of securities or of making or maintaining a market in securities of the Filer.
22. The Filer's constating documents contain limitations on the number of shareholders permitted and restrictions on transfer in order to qualify it as a "private issuer" for the purposes of National Instrument 45-106 – *Prospectus Exemptions*.
23. The Filer has no securities outstanding which are OTC-quoted securities (as defined in Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*), and accordingly is not an OTC issuer under such instrument.
24. The Filer is not in default of any of its obligations under securities legislation in any jurisdiction in Canada as of the date hereof, other than the obligation to file: (a) its annual audited financial statements; (b) its annual management's discussion and analysis; (c) certification of annual filings for the year ended December 31, 2019; (d) its unaudited financial statements for the quarter ended March 31, 2020; (e) its management discussion and analysis for the period ended March 31, 2020; (f) certification of interim filings for the period ended March 31, 2020; and (g) any further continuous disclosure documents and related fees required by applicable securities legislation during the time the Filer was in receivership (collectively, the **Filings**), all of which Filings became due after the appointment of the Receiver.
25. The Filer is not eligible to use the simplified procedure under National Policy 11-206 *Process For Cease to be Reporting Issuer Applications* because it is in default of its obligations to file the Filings.
26. Upon the granting of the Order Sought, the Filer will not be a reporting issuer or the equivalent thereof in any of the Reporting Jurisdictions.

**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”*

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Timothy Robson

Manager, Legal

Corporate Finance

Alberta Securities Commission