

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions - exemption from the prospectus requirement for investment dealers acting as underwriters or selling group members of an issuer to use standard term sheets and marketing materials and conduct road shows (each as defined under National Instrument 41-101 General Prospectus Requirements) after a final receipt for an MJDS prospectus – NI 71-101 does not contain equivalent provisions to Part 9A of National Instrument 44-102 Shelf Distributions – relief granted, provided that any road shows, standard term sheets and marketing materials comply with the approval, content, use and other conditions and requirements of Part 9A of NI 44-102

Applicable Legislative Provisions

Securities Act (Alberta), s. 213

Citation: Re Gran Tierra Energy Inc., 2021 ABASC 139

Date: 20210827

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
Gran Tierra Energy Inc. (the **Filer**)

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for an exemption from the prospectus requirement to allow investment dealers acting as underwriters (as defined in the Legislation) or selling group members of (a) the Filer, or (b) a selling securityholder of the Filer to (i) provide standard term sheets and marketing materials, and (ii) conduct road shows in connection with offerings under the Final MJDS Prospectus (as defined below) after the issuance of a receipt for the Final MJDS Prospectus (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 section 4.7(1) of Multilateral Instrument 11-102 *Passport System (MI 11-102)* is intended to be relied upon in each of British Columbia, Saskatchewan, Manitoba, New Brunswick, Prince Edward Island, Nova Scotia and Newfoundland and Labrador (together with the Jurisdictions, the **Provinces**); 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, National Instrument 41-101 *General Prospectus Requirements (NI 41-101)*, National Instrument 44-102 *Shelf Distributions (NI 44-102)* or National Instrument 71-101 *The Multijurisdictional Disclosure System (NI 71-101)* 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 laws of Delaware.
2. The head office of the Filer is located in Calgary, Alberta.
3. As of the date hereof, the Filer is a reporting issuer in each of the provinces of Canada and is an "SEC foreign issuer" as defined under National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*. The Filer is not in default of securities legislation in any of the provinces of Canada.
4. The Filer filed a registration statement on Form S-3 with the SEC on August 4, 2021 (the **Registration Statement**) containing a prospectus (the **US Base Shelf Prospectus**). The Registration Statement registers the sale in the United States, from time to time, in one or more offerings and pursuant to one or more supplements to the US Base Shelf Prospectus, shares of the Filer's common stock, shares of the Filer's preferred stock, warrants and subscription receipts.
5. The Filer filed a preliminary MJDS prospectus dated August 16, 2021 in the Provinces that includes the US Base Shelf Prospectus and will qualify the distribution in the Provinces, from time to time, pursuant to the final prospectus (the **Final MJDS Prospectus**), in one or more offerings and pursuant to one or more supplements to the Final MJDS Prospectus, of shares of the Filer's common stock, shares of the Filer's preferred stock, warrants and subscription receipts.
6. NI 44-102 sets out the requirements for a distribution under a base shelf prospectus in Canada, including requirements for advertising and marketing activities. In particular, Part 9A of NI 44-102 entitled *Marketing In Connection with Shelf Distributions (Part 9A)* prohibits, after the issuance of a receipt for a final base shelf prospectus, the provision of standard term sheets or marketing materials or the conducting of road shows, unless the

conditions and requirements in Part 9A (the **Part 9A Conditions and Requirements**) are complied with. NI 71-101 does not contain provisions equivalent to those of Part 9A.

7. In connection with marketing an offering in the Provinces under the Final MJDS Prospectus, investment dealers acting as underwriters or selling group members of (a) the Filer or (b) a selling securityholder of the Filer may wish to provide standard term sheets and marketing materials and conduct road shows.
8. Canadian purchasers, if any, of securities offered under the Final MJDS Prospectus will only be able to purchase those securities through an investment dealer registered in the province of residence of the purchaser.

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 is that the Exemption Sought is granted, provided that the Part 9A Conditions and Requirements are complied with for any future offering under the Final MJDS Prospectus in the manner in which they would apply if the Final MJDS Prospectus were a final base shelf prospectus under NI 44-102.

For the Commission:

“original signed by”

Tom Cotter
Vice-Chair

“original signed by”

Kari Horn
Vice-Chair