

Citation: NOVA Chemicals Corporation, Re, 2013 ABASC 80

Date: 20130301

In the Matter of
the Securities Legislation of
Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick,
Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories,
Nunavut and Yukon (the **Jurisdictions**)

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
NOVA Chemicals Corporation (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 the Filer is not a reporting issuer under the Legislation (the **Exemptive Relief Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a coordinated review application):

- (a) the Alberta Securities Commission is the principal regulator for this application;
and
- (b) this decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* 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 continued under the *Business Corporations Act* (New Brunswick).
2. The registered office of the Filer is located in New Brunswick and its head office is located in Calgary, Alberta.
3. The Filer is currently a reporting issuer in each of the Jurisdictions.
4. The authorized capital of the Filer consists of an unlimited number of common shares, first preferred shares and second preferred shares.
5. On July 6, 2009, International Petroleum Investment Company (**IPIC**), a company wholly-owned by the Government of the Emirate of Abu Dhabi, through its wholly-owned subsidiary, acquired all of the issued and outstanding common shares of the Filer (**the Transaction**).
6. As a result of the Transaction, IPIC beneficially owns and controls all of the issued and outstanding common shares of the Filer, being 141,494,222 common shares. There are no first preferred shares or second preferred shares outstanding.
7. Following the Transaction, the common shares of the Filer were de-listed from the Toronto Stock Exchange and the New York Stock Exchange.
8. As of February 13, 2013, the Filer has the following debt securities outstanding:
 - (a) US\$350 million principal amount of 8.375% senior notes maturing 2016 (**2016 Notes**);
 - (b) US\$350 million principal amount of 8.625% senior notes maturing 2019 (**2019 Notes**); and
 - (c) US\$100 million principal amount of 7.85% debentures maturing 2025 (**2025 Debentures**).

The 2016 Notes and the 2019 Notes are collectively referred to as the **Debt Securities**.

9. The Filer has provided notice to the trustee under the indenture for the 2025 Debentures that it will redeem the entire principal amount of the 2025 Debentures on March 15, 2013.
10. The Filer initially issued the notes and debentures described in paragraph 8 in the United States in private placements and in Canada on a private placement basis pursuant to available prospectus exemptions under the securities legislation of each of the

Jurisdictions. The Filer has not publicly offered the Debt Securities in the United States or Canada.

11. The Filer will provide to its holders of Debt Securities in Canada all disclosure material that is required to be provided to holders under the trust indentures governing the Debt Securities. There is no obligation under the trust indentures for the Filer to maintain its status as a reporting issuer or equivalent in any of the Jurisdictions.
12. The Filer retained Broadridge Financial Services Inc. (**Broadridge**) to prepare geographical analysis reports (**Geographic Reports**) providing a numerical breakdown of beneficial holders of the Debt Securities. Broadridge reported that, as of November 2, 2012, the Debt Securities were held in Canada as follows:
 - (a) US\$10,000 principal amount of 2016 Notes were held by 1 holder in Alberta and US\$8,213,000 principal amount of 2016 Notes were held by 7 holders in Ontario; and
 - (b) US\$36,688,000 principal amount of 2019 Notes were held by 17 holders in Ontario.
13. On January 17, 2013 Broadridge determined that, due to overlap among holders identified in the Geographic Reports, there are in fact only 10 holders of Debt Securities in Ontario and 1 holder of Debt Securities in Alberta.
14. As such, the outstanding securities, including debt securities of the Filer, are beneficially owned, directly or indirectly, by fewer than 51 security holders in total in Canada and by fewer than 15 security holders in each Jurisdiction.
15. Broadridge has advised that there is one beneficial holder in Ontario who holds US\$32,208,000 principal amount of the 2019 Notes (the **2019 Significant Holder**) and one beneficial holder in Ontario who holds \$3,615,000 principal amount of the 2016 Notes (the **2016 Significant Holder**).
16. Based upon the inquiries of the Filer described above, the Filer has concluded that residents of Canada:
 - (a) directly or indirectly beneficially own less than 2% (excluding the 2016 Significant Holder) of the outstanding principal amount of 2016 Notes and less than 2% of the outstanding principal amount of 2019 Notes (excluding the 2019 Significant Holder) worldwide, respectively; and
 - (b) directly or indirectly comprise less than 2% of the total number of security holders of the Filer worldwide.
17. The Filer is applying for a decision under the Legislation that the Filer is not a reporting issuer in all of the Jurisdictions.

18. The Filer's securities, including debt securities are not traded in Canada or another 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.
19. The Filer is not in default of any securities legislation in any of the Jurisdictions.
20. The Filer has no plans to seek public financing by way of an offering of securities to the public in Canada.
21. There is currently no market in Canada for the Filer's securities, and no market is expected to develop. In the preceding 12 months, the Filer has not taken any steps that indicate there is a market for its securities in Canada.
22. The issuer will provide advance notice to Canadian resident securityholders in a news release that it has applied to securities regulatory authorities for a decision that it is not a reporting issuer in Canada, and if that decision is made, the issuer will no longer be a reporting issuer in any jurisdiction.
23. The Filer is not eligible to use the procedure to voluntarily surrender its reporting issuer status in British Columbia pursuant to BC Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status* as the outstanding securities of the Filer are beneficially owned, directly or indirectly, by more than 50 security holders worldwide.
24. The Filer is not eligible to use the simplified procedure under CSA Staff Notice 12-307 *Applications for a Decision that an Issuer is not a Reporting Issuer* because it is a reporting issuer in British Columbia and it had greater than 51 security holders worldwide.
25. If the Exemptive Relief Sought is granted, the Filer will no longer be a reporting issuer or the equivalent thereof in any jurisdiction in Canada.

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 Exemptive Relief Sought is granted.



Blaine Young
Associate Director, Corporate Finance