

Citation: Alvopetro Inc., Re, 2013 ABASC 124

Date: 20130328

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

and

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

and

In the Matter of
Alvopetro Inc. (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**) for relief from the requirement in section 6.2 of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), to file an annual information form in Form 51-102F2 *Annual Information Form* (AIF) on or before the 90th day after the end of the reporting issuer's financial year ending December 31, 2012 (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 was formed under the *Business Corporations Act* (Alberta) on February 20, 2007 through a reorganisation with SignalEnergy Inc. and has its head offices in Calgary,

Alberta. The Filer changed its name from Fortress Energy Inc. (**Fortress**) to Alvopetro Inc. on February 28, 2013.

2. The Filer was previously listed on the Toronto Stock Exchange (the **TSX**). Due to substantial reductions to its borrowing base and concerns regarding its ability to continue as a viable operation, on September 1, 2010, Fortress closed a sale of substantially all of its oil and gas assets with Terra Energy Corp., the cash proceeds of which were used to repay its outstanding bank indebtedness in full. Subsequently, the **TSX** notified Fortress that it would be delisted effective March 30, 2011 for failure to meet minimum listing requirements.
3. The Filer was de-listed from the **TSX** but continued to be and is currently a reporting issuer under the applicable Legislation, policies, rules and regulations of the Jurisdictions, filing continuous documents in accordance with “venture issuer” standards.
4. The Filer is not in default of securities legislation in any province or territory in Canada.
5. The Filer is an independent resource company whose principal business activities consist of the exploration for, and development and production of, oil and natural gas resources in Western Canada and Brazil.
6. The financial year end of the Filer is December 31.
7. The Filer has recently discovered that it was assigned an OTC ticker symbol by FINRA in the United States. To the best of the Filer’s knowledge, upon due inquiry, no director, officer, associate or affiliate of the Filer took steps to have the OTC symbol assigned and the Filer believes that at some point in time an investment dealer in the United States had taken steps to do so without informing the Filer.
8. The Filer’s common shares have been lightly traded on the grey market in the United States under the symbol FEIFF.
9. There have been no trades of the Filer’s shares since June 20, 2012.
10. The Filer is not reporting in the United States and has no class of securities registered under United States securities laws.
11. Due to the OTC ticker symbol assignment, the Filer meets the definition of “OTC reporting issuer” under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets* (**MI 51-105**).
12. The provisions set out in MI 51-105 require that OTC reporting issuers comply with disclosure requirements for venture issuers under NI 51-102, National Instrument 52-109 *Certification of Disclosure in Issuers’ Annual and Interim Filings*, National Instrument 52-110 *Audit Committees*, and National Instrument 58-101 *Disclosure of Corporate Governance Practices*. Section 19 of the Companion Policy to MI 51-105 states that,


other than British Columbia, an OTC reporting issuer whose financial year ends on December 31, 2012 would be required to file its first annual audited financial statements and related MD&A 120 days after its financial year ended December 31, 2012, which is April 30, 2013.

13. The only exception to the venture issuer reporting requirements is set out in section 5(c) of MI 51-105 wherein OTC reporting issuers are required to file an AIF whether or not they are a venture issuer. The filing deadline for annual information form is the 90th day after the end of the reporting issuer's most recently completed financial year as set out in section 6.2 of NI 51-102.
14. Section 1.1 of Item 1 of Part 2 of Form 51-102F2 *Annual Information Form (Form 51-102F2)* requires that the date of the AIF must be no earlier than the date of the auditor's report on the financial statements for a reporting issuer's most recently completed financial year. As OTC reporting issuers are required to file an annual information form by the 90th day following their financial year end, this would mean that the annual financial statements and related MD&A would also have to be filed by this date in order to comply with Form 51-102F2.

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 provided that the Filer files an annual information form on or before 120 days following the Filer's financial year end for the period ended December 31, 2012.



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