

## Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – exemption from the requirements of Paragraph 2.2(d) of National Instrument 44-101 *Short Form Prospectus Distribution* requiring an issuer to have current annual financial statements and a current AIF in order to be eligible to file a short form prospectus

## Applicable Legislative Provisions

National Instrument 44-101 *Short Form Prospectus Distributions*, para. 2.2(d), s. 8.1

**Citation: Re Logan Energy Corp., 2023 ABASC 153**

**Date: 20231124**

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  
Logan Energy Corp. (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**) exempting the Filer from Paragraph 2.2(d) of National Instrument 44-101 *Short Form Prospectus Distributions* (**NI 44-101**), which sets out the qualification criteria for short form prospectus eligibility in respect of any prospectus filed by the Filer until the earlier of: (a) April 30, 2024; and (b) the date on which the Filer files its annual information form (**AIF**) and its annual financial statements for the year ended December 31, 2023 pursuant to National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) (collectively, 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 subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System (MI 11-102)* is intended to be relied upon in British Columbia, Saskatchewan, Manitoba, New Brunswick, Prince Edward Island, Nova Scotia and Newfoundland and Labrador; 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 and NI 44-101 have the same meanings if used in this decision, unless otherwise defined.

### **Representations**

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

#### *The Filer*

1. The Filer is a corporation incorporated on March 10, 2023 under the *Business Corporations Act* (Alberta), with its head office located in Calgary, Alberta.
2. On June 20, 2023, the Filer entered into a conveyance agreement (the **Conveyance Agreement**) with Spartan Delta Corp. (**Spartan**) providing for the spin-out of certain oil and gas assets (the **Spin-Out Assets**) from Spartan to the Filer in exchange for the issuance by the Filer to Spartan of 173,201,341 common shares of the Filer (**Logan Shares**) and 173,201,341 Logan Share purchase warrants (the **Logan Transaction Warrants**) (collectively, the **Spin-Out Transaction**). On June 20, 2023, Spartan distributed the Logan Shares and the Logan Transaction Warrants issued pursuant to the Spin-Out Transaction to the holders of the common shares (the **Spartan Shares**) of Spartan (the **Distribution**). Pursuant to the Distribution, each holder of Spartan Shares received \$9.50 in cash, one Logan Share and one Logan Transaction Warrant per Spartan Share. The Logan Transaction Warrants have since expired.
3. The Filer became a reporting issuer as a result of the Distribution.
4. The Filer is a reporting issuer in the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, Prince Edward Island, New Brunswick and Newfoundland and Labrador (**Reporting Jurisdictions**).
5. The Filer is not in default of securities legislation in any jurisdiction.
6. The Logan Shares are listed and posted for trading on the TSX Venture Exchange (**TSXV**) under the symbol "LGN".

7. The Filer's first year end is December 31, 2023; the Filer is not required to file annual financial statements or an AIF pursuant to NI 51-102 until April 30, 2024.

*Filer's Continuous Disclosure*

8. The policies of the TSXV require an applicant for listing that is not completing an initial public offering by way of long form prospectus pursuant to NI 41-101 *General Prospectus Requirements (NI 41-101)* to prepare a Form 2B Listing Application (**Form 2B**) and to file the Form 2B on SEDAR+.
9. The Filer's Form 2B discloses certain information regarding the entity and its business, and in particular requires disclosure in accordance with Form 41-101F1 *Information Required in a Prospectus (Form 41-101F1)*.
10. In connection with the direct listing of the Logan Shares on the TSXV, pursuant to Policy 2.3 – Listing Procedures of the TSXV Company Manual, the Filer filed a Form 2B dated July 12, 2023 with the TSXV, the Alberta Securities Commission and the local securities regulatory authorities or regulators in each of the Reporting Jurisdictions.
11. The Form 2B was filed on SEDAR on July 13, 2023.
12. The Form 2B was required to contain the financial statements required pursuant to NI 41-101, as set forth in Form 41-101F1. The Filer was permitted to comply with financial disclosure requirements applicable to IPO venture issuers (as such term is defined in NI 41-101), with the Form 2B treated as the equivalent of a long form prospectus for that purpose.
13. Subsection 32.1(1)(b) of Form 41-101F1 requires an issuer to include three years of financial statements in respect of assets comprising its primary business. Although the Spin-Out Assets form the primary business of the Filer, as an IPO venture issuer, it relied on the exception in Section 32.4 of Form 41-101F1 to include two years of financial statements in respect of such assets in the Form 2B.
14. The Filer also relied on the exemption in subsection 32.9 of Form 41-101F1, which provides that audited operating statements of the business may be provided in lieu of audited financial statements on satisfaction of certain conditions, which conditions were satisfied by the Filer.
15. Relying on subsection 32.9 of Form 41-101F1, the Filer included the following financial statements in the Form 2B in order to satisfy the required financial statement disclosure set forth in Form 2B, which the Filer believes to be comparable disclosure to the requirement to provide "current annual financial statements" pursuant to Section 2.2 of NI 44-101:
  - (a) audited statement of financial position of the Filer as at April 14, 2023 and the statements of cash flows and changes in equity of the Filer for the period from incorporation on March 10, 2023 to April 14, 2023;

- (b) audited operating statements relating to the Spin-Out Assets for the years ended December 31, 2022 and December 31, 2021; and
- (c) unaudited operating statements relating to the Spin-Out Assets for the three month periods ended March 31, 2023 and March 31, 2022

(collectively, the **Alternative Financial Statement Disclosure**).

- 16. The Form 2B provides full, true and plain disclosure of all material facts relating to the Filer and the Spin-Out Assets, which themselves have been the subject of continuous disclosure on an ongoing basis for more than twelve months in accordance with Spartan's responsibilities as a reporting issuer in the Reporting Jurisdictions. The Form 2B includes all of the financial statements required to be included in the Form 2B (including, by extension, those required pursuant to Section 32 of NI 41-101), and the information that would have otherwise been required to be included in a current AIF.
- 17. The Filer is not eligible to file a short form prospectus under Section 2.2 of NI 44-101 as it has not filed "current annual financial statements", as that term is defined in NI 44-101 or a current AIF in the form prescribed by Form 51-102F2 *Annual Information Form*.
- 18. The Filer is ineligible for the exemption for new reporting issuers under Subsection 2.7(1) of NI 44-101 because it has not filed a long form prospectus.
- 19. The Filer is ineligible for the exemption for successor issuers under Subsection 2.7(2) of NI 44-101 because the Spin-Out Assets were only a portion of Spartan's business.
- 20. The disclosure available to the public on the Filer's SEDAR+ profile consists of, in all material respects, the disclosure that would have been included in a long form prospectus prepared in accordance with Form 41-101F1.

### **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 Filer includes or incorporates the Form 2B by reference in any preliminary and final short form prospectus filed prior to the expiry of this decision.

This decision expires on the earlier of:

- (a) the date on which the Filer files its annual financial statements and AIF for the financial year ended December 31, 2023; and

(b) April 30, 2024.

*“original signed by”*

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Timothy Robson  
Manager, Legal, Corporate Finance  
Alberta Securities Commission