

Citation: Re Xcite Energy Limited, 2016 ABASC 69

Date: 20160329

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

and

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

and

In the Matter of
Xcite Energy Limited (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 be deemed to have ceased to be a reporting issuer (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.

“marketplace” has the same meaning as in National Instrument 21-101 *Marketplace Operation*.

Representations

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

1. The Filer was incorporated 5 January 2007 under the laws of the British Virgin Islands. The Filer's registered office is located in Road Town, Tortola.
2. The Filer, together with its subsidiary Xcite Energy Resources plc, is a heavy oil appraisal and development company.
3. The Filer has no operations, personnel, assets or premises in Canada. Currently the Filer's sole nexus to Canada is that one of the Filer's directors is resident in Canada (the **Canadian Director**).
4. The Filer is a reporting issuer in each of the Jurisdictions and is not in default of any of its obligations under the Legislation.
5. The Filer first became a reporting issuer in the Jurisdictions by filing a prospectus dated 7 November 2007 in connection with an offering in Canada of its ordinary shares (**Ordinary Shares**).
6. The Filer is a "designated foreign issuer" as defined in National Instrument 71-102 – *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers (NI 71-102)* and, in its annual information circular dated 7 April 2015, made the disclosure required pursuant to section 5.2 of NI 71-102 in order to rely on Part 5 of NI 71-102.
7. As of 22 December 2015, the Filer had the following securities issued and outstanding:
 - (a) 309,930,421 Ordinary Shares, which trade on the Alternative Investment Market of the London Stock Exchange plc of the United Kingdom (the **AIM**); and
 - (b) 30,162,000 share options issued pursuant to the Filer's share option plan (**Share Options**) and 1,000,000 share warrants (**Share Warrants**), each exercisable by the holder into one Ordinary Share.
8. None of the Share Options were offered publicly in Canada. The Share Warrants, and the Share Options issued to the sole Canadian Director, were issued in Canada pursuant to a prospectus exemption.
9. On 16 September 2015 the Filer announced that it had applied for the voluntarily delisting of its Ordinary Shares from the TSX Venture Exchange (**TSX-V**). This delisting was accepted and became effective at close of TSX-V trading on 30 September 2015 (the **Delisting Date**).


10. Based on the Filer's diligent inquiries, as at 22 December 2015, the Filer represents that it has:
 - (a) 293 residents of Canada directly or indirectly beneficially owning 2,826,074 Ordinary Shares, representing 1.2% of the issued and outstanding Ordinary Shares and 0.9% of the total number of holders of Ordinary Shares worldwide;
 - (b) 1 resident of Canada directly or indirectly beneficially owning 790,000 Share Options, representing 2.62% of the issued and outstanding Share Options and 4.35% of the total number of holders of Share Options worldwide; and
 - (c) 6 residents of Canada directly or indirectly beneficially owning 562,500 Share Warrants, representing 56.3% of the issued and outstanding Share Warrants and 86% of the total number of holders of Share Warrants worldwide.
11. Accordingly, based on the foregoing, as of 22 December 2015, if all the Share Options and Share Warrants were exercised, residents of Canada would not:
 - (a) directly or indirectly beneficially own more than 2% of each class or series of outstanding securities (including debt securities) of the Filer worldwide; and
 - (b) directly or indirectly comprise more than 2% of the total number of securityholders of the Filer worldwide.
12. The Filer is subject to all applicable requirements of (i) the corporate laws of the British Virgin Islands; (ii) the securities laws of the United Kingdom; and (iii) the rules and reporting requirements of AIM. The Filer is not in default of any of the obligations under these requirements or any other securities or corporate legislation to which it is subject.
13. In the last twelve months, the Filer has not conducted any offering of its securities in Canada and, since the Delisting Date, has not taken any steps that indicate there is a market for its securities in Canada. The Filer does not intend to conduct any offerings of its securities in Canada or to trade its securities on a marketplace in Canada.
14. In the eight months prior to the Delisting Date, the trading volume of the Ordinary Shares on the TSX-V accounted for less than 1% of the aggregate trading volume of the Ordinary Shares on the TSX-V and the AIM.
15. The Filer issued a news release dated 23 December 2015 advising that it applied to the Decision Makers for a decision that it is not a reporting issuer in the Jurisdictions and, if that decision is made, the Filer will no longer be a reporting issuer in any jurisdiction of Canada. The Filer has not received any response from its securityholders in response to this news release.

16. The Filer undertakes to each of the Decision Makers to concurrently deliver to its Canadian securityholders all disclosure the Filer is required, under the securities laws of the United Kingdom and the rules and reporting requirements of the AIM, to deliver to UK resident securityholders. These materials are also available on the Filer's website at www.xcite-energy.com.
17. The Filer will not be a reporting issuer in any jurisdiction of Canada immediately following the granting of the Exemptive Relief sought.

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.



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