

MEDIA STATEMENT

Feb 18, 2018: Overview and Implications of Ruling of the Alberta Securities Commission (ASC) Tribunal as Relating to Foundation Resources Oil and Gas Trust (the Trust)

The Alberta Securities Commission (ASC) issued a Notice of Hearing (NOH) on March 20, 2015 concerning a private energy trust known as Foundation Resources Oil and Gas (the Trust), naming Roy J. Beyer and Ron J Aitkens for alleged regulatory infraction(s).

This NOH was released 39 months after the ASC issued a Cease Trade Order (CTO) upon the Trust for an alleged breach serious enough to justify a CTO upon the fourth (4th) Offering Memorandum (OM) of the Trust.

The same Notice of Hearing (NOH) also addressed separate allegations involving other companies in connection with entirely unrelated 'land investment' projects. The specific allegations particularized by the NOH against Mr. Beyer pertain solely to the Trust.

The ASC staff alleged 'incomplete disclosure', in all four Offering Memoranda (OMs) produced by **the Trust**, and additionally the staff Named only two of the four Trustees though all four Trustees held equal fiduciary duty with respect to the accuracy of the OMs.

In general, the ASC staff alleged "Failure to Disclose Related Party Profit" and "Failure to Disclose Material Agreement". Specifically, the staff alleged 8 counts (2 in each OM) of a breach of s. 92 (4.1) of the Securities Act and by extension alleged, four counts of "Providing Misleading Offering Memoranda to the Commission", and four counts of "Illegal Distribution of Securities". 22 Allegations in all.

The ASC Tribunal made a ruling that the two Trustees were ¹"in breach of s.92(4.1) of the Securities Act", and only as relating to the first and second OMs and dismissed all other allegations as relating to **the Trust**, against Beyer and Aitkens.

In its ruling, the Tribunal rejected the defense of "due diligence", finding that despite hiring competent and qualified financial and legal professionals to produce compliant Offering Memoranda (OMs) and providing all relevant information to those professionals, Alberta directors and officers could not rely on a "due diligence" defense.

To clarify as to competency of professionals retained by **the Trust**:

1. Trustees of **the Trust** retained a Sr. Partner of Price Waterhouse Cooper (PWC) to create the structure and instruct the legal team regarding the corporate structure of **the Trust** to ensure its compliance with Canadian tax law.

¹ The Securities Act

SECTION 92

(4.1) No person or company shall make a statement that the person or company knows or reasonably ought to know;

(a) in any material respect and at the time and in the light of the circumstances in which it is made,

(i) is misleading or untrue, or

(ii) does not state a fact that is required to be stated or that is necessary to make the statement not misleading,

and

(b) would reasonably be expected to have a significant effect on the market price or value of a security, a derivative or an underlying interest of a derivative.

2. Trustees of **the Trust** retained a legal team from Gowlings WLG, Calgary which included former Sr. Counsel with the ASC, who had also been retained by Alberta Ministry of Finance (2002) in drafting the Alberta Securities Act (2002).

Beyer noted, *“it is impossible that we could have retained more competent professionals in producing compliant OMs... even the ASC staff acknowledged the competency of the legal team hired by **the Trust** in producing the OMs”, and Beyer added, “there is no question that the Tribunal was presented ample evidence that all relevant information was provided to our legal and accounting specialists for the purpose of producing complaint OMs”.*

“In fact,”, Beyer stated, *“both the accounting and legal team(s) were directly involved in drafting all relevant Agreements around which the ASC disclosure allegations revolve”.* Such documents included both the Consulting Agreement with Neo Exploration and the Warrant, an agreement for purchase of a certain number of Neo Shares at prearranged pricing (as is typical of Warrants).

In the end, the Tribunal rejected the notion of a ‘due diligence defense’ even though such defense is available in other Canadian jurisdiction(s).

It is most noteworthy that the ASC’s ruling found no regulatory infraction in relation to the Trust’s fourth Offering Memorandum (OM). This is significant in that allegations concerning regulatory breaches in the fourth OM were what initially triggered the ASC’s catastrophic Cease Trade Order (CTO) against the Trust.

“What is easily missed in this Tribunal decision,” concluded Beyer, “is that the Cease Trade Order (CTO) issued against the Trust on December 21, 2011, was without merit and should never have occurred. It is fortunate that we took proactive steps after the CTO to salvage the Trust by successfully restructuring it with investor approval—otherwise, it would have been a total loss for investors.”

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