

ALBERTA SECURITIES COMMISSION

VARIATION ORDER

Citation: Re Sunshine Oilsands Ltd., 2021 ABASC 37

Date: 20210329

Sunshine Oilsands Ltd.

Background

1. Sunshine Oilsands Ltd. (the **Filer**) has made an application to the Executive Director of the Alberta Securities Commission (**ASC**) for an order under section 214 of the *Securities Act* (Alberta) (the **Act**) varying a cease trade order dated 9 October 2020 *Re Sunshine Oilsands Ltd.* 2020 ABASC 158 (the **CTO**).

Interpretation

2. Terms defined in National Instrument 14-101 *Definitions* have the same meaning if used in this order, unless otherwise defined.

Representations

3. This decision is based on the following facts represented by the Filer.
 - (a) The Filer was incorporated under the laws of Alberta on 22 February 2007.
 - (b) The Filer's head office is located in Alberta.
 - (c) The Filer is a reporting issuer under the securities legislation of Alberta and Ontario. The Filer is not a reporting issuer in any other jurisdiction of Canada.
 - (d) The Filer's Class "A" common voting shares (the **Common Shares**) are listed on the Stock Exchange of Hong Kong under the symbol "2012".
 - (e) The Filer has an authorized share capital consisting of
 - (i) an unlimited number Common Shares, of which 129,554,630 are issued and outstanding,
 - (ii) an unlimited number of Class "B" common voting shares, of which none are issued or outstanding,
 - (iii) an unlimited number of Class "C", Class "D", Class "E", and Class "F" non-voting common shares, of which none are issued or outstanding, and
 - (iv) an unlimited number of Class "G" and Class "H" non-voting preferred shares, of which none are issued or outstanding.

- (f) On 1 April 2020, the Filer entered into a subscription agreement with Prime Union Enterprises Ltd. (the **Subscriber**) for convertible bonds (the **Subscription Agreement**). The Subscriber is wholly owned by Mr. Kwok Ping Sun, the Chairman of the board of directors of the Filer.
- (g) The Subscriber is not a reporting issuer in any jurisdiction of Canada.
- (h) Pursuant to the Subscription Agreement, and subject to the conditions precedent to the Subscription Agreement (including approval by the Filer's independent shareholders), the Subscriber subscribed for HKD 72,000,000 of fixed rate convertible bonds (the **Debt Instrument**).
- (i) Under the terms of the Debt Instrument, the Subscriber was entitled, any time on or after 1 October 2020, to convert the Debt Instrument, in whole or in part, into shares of the Filer at the conversion price of HKD 0.632 per Common Share (the **Conversion Right**).
- (j) The Conversion Right is subject to the following conditions subsequent:
 - (i) the Filer approving the conversion;
 - (ii) the Filer maintaining a public float of at least 25%;
 - (iii) if, upon the conversion, the Subscriber and parties acting in concert with the Subscriber would have an interest exceeding 29.90% of the issued share capital of the Filer, the Subscriber obtaining a whitewash waiver from the Hong Kong Securities and Futures Commission (the **SFC**)(collectively, the **Conditions Subsequent**).
- (k) The terms of the Debt Instrument stipulate that the date that the Subscriber serves a conversion notice pursuant to the Debt Instrument is the effective date of the conversion, provided that the Conditions Subsequent are satisfied.
- (l) On 1 October 2020, the Subscriber served a conversion notice pursuant to the Debt Instrument. The conversion notice specified that the Subscriber sought to convert the full principal amount of the Debt Instrument to shares of the Filer (the **Debt Conversion**).
- (m) On 9 October 2020, the Executive Director of the ASC issued the CTO because the Filer's financial statements for the year ended 31 December 2019, and the comparative financial statements for the year ended 31 December 2018, did not comply with certain requirements of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (**NI 52-107**).
- (n) Other than the CTO, the Filer is not subject to any other cease trade orders.

- (o) On 19 February 2021, the Filer appointed the firm MSLC CPA LLP as its auditor. MSLC CPA LLP will conduct an audit of financials for the year ended 31 December 2020, with comparative financials for the year ended 31 December 2019. MSLC CPA LLP is duly qualified as required by NI 52-107 and the Filer believes that upon completion of the audit, the Filer will be able to file compliant financial statements, and thus bring itself into compliance with the Alberta securities laws outlined in paragraph 4 of the CTO.
- (p) On 16 October 2020, the Filer gave notice of a special general meeting, originally scheduled for 3 December 2020 (the **SGM**), for shareholders to approve the Debt Conversion and to approve, as required by the SFC, the whitewash waiver. The SGM was ultimately held on 5 March 2021.
- (q) At the SGM, the conversion and the whitewash waiver were approved by a majority of over 99% of the shareholders entitled to vote. The Subscriber, its associates and those involved or interested in the whitewash waiver and/or the Debt Conversion abstained from voting at the SGM.
- (r) The Subscriber has given its undertaking that it will not trade the shares for at least 12 months following the Debt Conversion.
- (s) The independent financial advisor appointed by the Filer to review the Debt Conversion, Donvex Capital Limited, opined on 1 March 2021 that proceeding with the Debt Conversion was fair and reasonable. Donvex Capital Limited's opinion was based, in part, on the fact that if the Debt Conversion did not proceed, the Filer may not have sufficient funds to repay the Subscriber (with accrued interest) when the Debt Instrument matures on 31 March 2022.
- (t) Part of the Filer's non-compliance with NI 52-107 which gave rise to the CTO arose from the fact that the Filer's auditor issued a disclaimer opinion on the going concern basis of financial statement preparation.
- (u) Without a variation of the CTO to permit the Debt Conversion to proceed, it may be impossible for the Filer's auditors to issue an unmodified opinion as required by NI 52-107. The Filer expects that if the CTO is varied to permit the Debt Conversion, the Filer will be able to bring its continuous disclosure up to date and to apply for a full revocation of the CTO and to pay all outstanding related fees, if any.
- (v) Within a reasonable time following the completion of the Debt Conversion, the Filer intends to apply for a full revocation of the CTO.
- (w) The Filer will make available a copy of the written acknowledgment referred to in paragraph 4(c) below, to the Executive Director on request.

Decision

4. The undersigned, considering that it would not be prejudicial to the public interest to do so, orders under section 214(1.1) of the Act that the CTO is varied to permit the Debt Conversion, provided that prior to the issuance of shares to complete the Debt Conversion, the Subscriber will receive
- (a) a copy of the CTO,
 - (b) a copy of this variation order, and
 - (c) written notice from the Filer, to be acknowledged by the Subscriber in writing, that all of the Filer's securities, including the securities issued in connection with the Debt Conversion, will remain subject to the CTO and that the issuance of this variation order does not guarantee the issuance of a full revocation order in the future.

29 March 2021

"original signed by" _____
David Linder
Executive Director
Alberta Securities Commission