

ALBERTA SECURITIES COMMISSION

Citation: Re Deep Well Oil & Gas, Inc., 2021 ABASC 73

Docket: ENF-012539

Date: 20210513

SETTLEMENT AGREEMENT AND UNDERTAKING

Deep Well Oil & Gas, Inc.

Regulatory Message

A Cease Trade Order (CTO) may be issued by the Alberta Securities Commission (the **Commission**) under section 33.1 of the *Securities Act*, R.S.A. 2000, c. S-4, as amended (the *Act*), where filing requirements under Alberta securities laws have not been met. CTOs are an important tool used by the Commission in such circumstances to prevent harm to the investing public that might otherwise arise when securities are traded in the face of a deficient public information record.

Multilateral Instrument 51-105 – *Issuers Quoted in the U.S. Over-the-Counter Markets* (**MI 51-105**) applies in every jurisdiction of Canada except Ontario. MI 51-105 designates or determines as a reporting issuer (**OTC reporting issuer**) in a jurisdiction of Canada, including Alberta, an issuer that has a class of securities quoted on any of the over-the-counter markets in the U.S. and has a significant connection to that jurisdiction. OTC reporting issuers are required to file an annual information form and must also comply with Canadian public company disclosure, audit committee, certification and corporate governance obligations as defined by National Instrument 51-102 – *Continuous Disclosure Obligations* (**NI 51-102**).

The Commission will take enforcement action where it determines a breach of MI 51-105 has occurred. Policy 15-601, *Credit for Exemplary Cooperation in Enforcement Matters* (the **Policy**), explains the benefits of cooperating with Staff of the Commission (**Staff**) and outlines the factors considered when determining whether cooperation earns credit in enforcement matters.

To be eligible for credit, the cooperation must go beyond what is already required under Alberta securities laws. Exemplary cooperation during an investigation, including prompt and complete responses to production orders, summonses, or other lawful requests and demands made by Staff, is strongly encouraged by the Commission and is among the factors that will earn credit.

Agreed Facts

Introduction

1. Staff conducted an investigation into Deep Well Oil & Gas, Inc. (**Deep Well**) to determine if Alberta securities laws had been breached.
2. The investigation confirmed, and Deep Well admits, that it breached the section of the *Act* referred to in this Settlement Agreement and Undertaking (**Agreement**), and that it acted contrary to the public interest.
3. Solely for securities regulatory purposes in Alberta and elsewhere, and as the basis for the settlement and undertakings referred to in paragraph 21 and for no other use or purpose, Deep Well agrees to the facts and consequences set out in this Agreement.
4. Terms used in this Agreement have the same meaning as provided in the Alberta securities laws, a defined term in the *Act*.

Parties

5. Deep Well was extra-provincially registered in Alberta on August 5, 2004, and operates an oil sands exploration and development business. Its head office is in Edmonton, Alberta. Deep Well became a reporting issuer in Alberta on July 31, 2012, and the Commission is its principal regulator. Deep Well currently trades on the Over-the-Counter Pink Sheets in the United States under the symbol DWOG.

Circumstances

6. On June 20, 2013, Deep Well issued options with a five-year expiry date (June 20, 2018) and exercise price of \$0.05 USD/share to two executives, one senior employee and six directors of Deep Well (the **Options**).
7. The Options vested as follows: one third immediately, one third on June 20, 2014, and one third on June 20, 2015. Option holders could elect to exercise their Options using a “cashless” method, in which case Deep Well would issue common shares in accordance with the terms of exercise of the Options, but withhold a certain number of shares as consideration for the exercise price that would have otherwise been payable by the relevant Option holder.
8. Contrary to the OTC reporting issuer requirements, Deep Well did not file its annual audited financial statements, annual management’s discussion and analysis, certification of annual filings and annual information form for the year ended September 30, 2015, as per part 4 of NI 51-102 and sections 5(a), (b) and (c) of MI 51-105.
9. On February 4, 2016, the Commission issued a CTO against Deep Well, ordering that trading and/or purchasing cease in respect of any security of Deep Well until the order was revoked or varied. The CTO was issued under section 33.1 of the *Act* due to Deep Well’s

failure to comply with continuous disclosure reporting requirements for the year ending September 30, 2015, in accordance with MI 51-105.

10. The CTO was served on Deep Well in accordance with the requirements of the *Act*.
11. On June 1, 2018, Deep Well applied to the Commission for a revocation of the CTO. The application was denied. To date, the CTO has not been revoked or varied.
12. From June 8-10, 2018, while Deep Well was subject to the CTO, 3.45 million options were exercised by the Option holders and entities related to them, of which 3.15 million were exercised using the “cashless” payment method described above and 300,000 were paid for with cash. Following the exercise of the 3.45 million options, 1,199,998 shares were issued by Deep Well in the names of the Option holders. The share certificates were withheld from the Option holders and have remained in the custody of Deep Well to the current date.
13. Deep Well knew at the time that it issued shares to the Option holders in June 2018 that the CTO was a decision of the Commission made under Alberta securities laws. Deep Well acknowledges that the share issuances, representing the sale or disposition of securities for valuable consideration, represented “trades” within the meaning of the *Act*. Deep Well thus knew or ought to have known that the share issuances breached the CTO.

Admitted Breach of Alberta securities laws (Admitted Breach)

14. Based on the Agreed Facts, Deep Well admits it breached section 93.1 of the *Act* by issuing shares to the Option holders in breach of the CTO, thereby failing to comply with a decision of the Commission made under Alberta securities laws.

Circumstances Relevant to Settlement

15. Deep Well provided exemplary cooperation to Staff in its investigation and with respect to the completion of this Agreement.
16. Shares issued by Deep Well pursuant to the Options have not been sold or otherwise transferred by any of the Option holders.
17. Deep Well states that it did not realize the issuance of shares pursuant to the Options constituted “trades” within the meaning of the *Act*.
18. Deep Well’s breach did not result in any known investor losses.
19. Deep Well has not been previously sanctioned by the Commission.
20. This Agreement has saved the Commission the time and expense associated with a contested hearing under the *Act*.

Settlement and Undertakings

21. Based on the Agreed Facts and Admitted Breach, Deep Well agrees and undertakes to the Executive Director of the Commission:
 - 21.1 To pay to the Commission a monetary settlement of \$15,000; and
 - 21.2 To cancel all common shares issued by Deep Well from June 8-10, 2018, pursuant to exercise of the Options.

Administration

22. Deep Well acknowledges that it received independent legal advice and has voluntarily made the admissions and undertakings in this Agreement.
23. Deep Well waives any right existing under the *Act*, or otherwise, to a hearing, review, judicial review or appeal of this matter.
24. Deep Well acknowledges and agrees that the Commission may enforce this Agreement in the Court of Queen's Bench or in any other court of competent jurisdiction.
25. Deep Well understands and acknowledges that this Agreement may form the basis for securities-related orders in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions may allow for provisions of a settlement agreement made in this matter to be given parallel effect in those other jurisdictions automatically, without further notice to it. Deep Well understands and acknowledges that it should contact the securities regulator of any other jurisdiction in which it may intend to engage in any securities-related activities.
26. Execution and fulfillment of the terms of this Agreement by Deep Well resolves all issues involving Deep Well, its officers and directors relating to the conduct described above, and Staff will take no further steps against it arising from these facts.

27. This Agreement may be executed in counterpart.

Signed by the duly authorized signatory of) DEEP WELL OIL & GAS, INC.
 Deep Well Oil & Gas, Inc. at Edmonton,)
 Alberta this 5 day of May, 2021, in the)
 presence of:)

 WITNESS NAME)

 WITNESS NAME)

“Original signed by”)

SIGNATURE)

Per: *“Original signed by”* _____

Curtis Sparrow

) ALBERTA SECURITIES COMMISSION

)

)

) *“Original signed by”* _____

Calgary, Alberta, 13 May, 2021

) David C. Linder, Q.C.

) Executive Director