

Native American Energy Granted Full Eligibility for DTC Services After Four-Year Appeal

By Dan Lonkevich

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Native American Energy Group (NAGP), an oil and gas exploration company with assets in Alaska and Montana, has been granted full eligibility for clearing and settlement services through the **Depository Trust Co.**, in the latest in a series of victories by microcap companies against the DTC.

The effort took a four-year battle for Native American Energy that cost the company \$175,000 in legal fees, left it \$2 million in debt and caused it to lose more than 30 funding opportunities, chief financial and operations officer Raj Nanvaan said.

“It’s an extremely big win for us,” he said in a phone interview from the company’s New York headquarters. “It feels good. It’s been a long road. We’ve gone through hell and back. This was undeserved and we suffered.”

The DTC’s refusal to provide clearing services for many penny stocks has emerged as one of the biggest obstacles to capital raising by microcap and small cap companies. Small companies find it difficult if not impossible to raise money when prospective investors are worried that they won’t be able to get their unregistered shares cleared for trading.

The DTC stopped providing clearing services for many stocks in apparent reaction to a 2009 notice from the Financial Industry Regulatory Authority that reminded broker-dealers of their obligations to conduct due diligence to trace the origin of physical stock certificates back to their original issuers. FINRA issued the notice after conducting an investigation that found that broker-dealers were missing red flags that should have alerted them to possible fraud.

“We filed a request for a fairness hearing and were told if you address certain issues the block would be lifted,” said Gary Emmanuel, a senior associate with the law firm **Sichenzia Ross Friedman Ference**, which represented Native American Energy. The DTC has been required to hold fairness hearings since March when the Securities and Exchange Commission interceded on behalf of **International Power Group**

(IPWG), a Celebration, Fla.-based company that said it planned to offer technology for recycling solid and hazardous waste. International Power had appealed to the SEC after fighting its own battle with the DTC. In March, the SEC ruled that the DTC owed International Power a fairness hearing on the DTC's suspension of book-entry clearing and settlement services.

"There's an acknowledgement that they have to address these issues," Emmanuel said. "The whole process is encouraging. The DTC is finally getting it."

Susan Desantis, a DTC official declined to comment.

An email Desantis sent to Nanvaan said, "Raj- Operations confirmed the chill is lifted. I believe a letter is also going to your attorney. Take Care, Susan."

Native American's dispute with the DTC comes after a complicated corporate history that started with the formation of Halstead Energy Corp. on Jan. 18, 2005. Seven days later, Halstead changed its name to Native American Energy and received the ticker symbol NVMG. At the same time, however, another company also named Halstead Energy Corp., which had declared bankruptcy in 1999 and is now defunct, created a problem for Native American.

The CUSIP number and ticker symbol of the defunct Halstead were usurped using a tactic that has become known as "corporate hijacking," according to a letter that Sichenzia Ross partner Harvey Kesner sent to the DTC last month on behalf of Native American,

In February 2005, when Native American undertook a 1-for-200 reverse stock split, the DTC held 1,037,714 shares of the defunct Halstead and inadvertently submitted them to Native American's transfer agent for 5,195 shares of stock as part of the reverse split.

As a result, these "hijacked shares" were commingled with Native American's public float. Through various additional splits designed to remove the taint of the highjacking, Native American reduced the number of highjacked shares to just 10, or 0.00003% of the company's 36 million shares outstanding.

Meanwhile, the SEC suspended trading in Native American for 10 days in 2008, along with 25 other companies.

Last year, the SEC confirmed to Native American that no enforcement action would be taken.

Nevertheless, the SEC's action caused the DTC to block the company's shares for clearing.

In 2009, Native American merged with Flight Management International and received a new ticker symbol NAGP and CUSIP number in an attempt to resolve the taint of the hijacked shares.

In March 2011, Native American's board adopted a resolution acknowledging that the company's capital stock included the hijacked shares and that they should be treated as freely transferrable.

Since the global lock, Native American has pursued the reinstatement of full clearance and settlement privileges for the stock. Until now, the DTC has refused.

"The lock came at the cusp of the downturn in the economy in 2008 and caused Native American Energy to lose a very large financing that had been in the works," Nanvaan said.

Nanvaan said Native American Energy tried to do everything it could to resolve the matter with both the SEC and the DTC. They couldn't get anyone at the DTC to even answer their calls or return their letters or emails, he said.

"We've been through 10 law firms," Nanvaan said.

In the course of the battle, Nanvaan and other Native American Energy executives sold personal assets to fund the company's operations and "keep the lights on," he said.

The company's long effort took a turn in March after the SEC intervened in the International Power case.

Soon afterward, **Bullfrog Gold Corp. (BFGC)** hired Sichenzia Ross's Kesner to handle its own appeal of the DTC's decision to not provide electronic clearing and settlement services for Bullfrog stock.

On May 3, a day after Nanvaan saw Bullfrog Gold's press release about hiring Kesner to handle its appeal, Native American Energy also hired him.

"We're finally here," Nanvaan said. "We need to make an announcement and tell our shareholders about it. It's a new day for Native American Energy."