

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – issuer granted exemptions from the prospectus requirement, dealer registration requirement and underwriter requirement in connection with trades of commercial paper/short term debt-sufficient to obtain one credit rating at or above a prescribed standard from an approved credit rating agency, subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.A., 2000, c.S-4, sections 75, 110 and 144

Citation: Cenovus Energy Inc., Re, 2010 ABASC 72

Date: 20100219

In the Matter of
the Securities Legislation of
Alberta and Ontario
(the **Jurisdictions**)

and

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

and

In the Matter of
Cenovus Energy Inc.
(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 trades of negotiable promissory notes or commercial paper of the Filer, maturing not more than one year from the date of issue (**Commercial Paper**) be exempt from the dealer registration requirement, the underwriter registration requirement and the prospectus requirement of the Legislation (respectively, the **Dealer Registration Exemption Sought**, the **Underwriter Registration Exemption Sought**, the **Prospectus Exemption Sought** and, together, the **Exemptions Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (a) the Alberta Securities Commission is the principal regulator for this application;

- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System (MI 11-102)* is intended to be relied upon in each of British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Yukon, Northwest Territories and Nunavut; and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined. In this decision:

“Asset-Backed Commercial Paper” means Commercial Paper that is backed, secured or serviced by or from a discrete pool of mortgages, receivables or other financial assets or interests designed to ensure the servicing or timely distribution of proceeds to holders of that Commercial Paper;

"financial intermediary" has the meaning ascribed to that term in Ontario Securities Commission Rule 14-501 *Definitions*;

"financial intermediary short-term debt registration exemption" means the exemption from the registration requirement, for a trade by a financial intermediary or a Schedule III bank, set out in clause 4.1(1)(a) of OSC Rule 45-501, or in a successor provision of OSC Rule 45-501, insofar as that clause or provision provides an exemption from the dealer registration requirement and the underwriter registration requirement for a trade of a type described in the short-term debt dealer registration exemption;

"market intermediary" has the meaning ascribed to that term in Ontario Securities Commission Rule 14-501 *Definitions*;

"NI 45-106" means National Instrument 45-106 *Prospectus and Registration Exemptions*;

"OSC Rule 45-501" means Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions*;

"Schedule III bank" means an authorized foreign bank named in Schedule III of the *Bank Act* (Canada);

"short-term debt dealer registration exemption" means the exemption from the dealer registration requirement set out in subsection 3.35 of NI 45-106, or in a successor provision in NI 45-106; and

"short-term debt underwriter registration exemption" means the deemed exemption from the underwriter registration requirement contained in subsection 1.5(2) of NI 45-106, or

in a successor provision in NI 45-106, insofar as the deemed exemption relates to the short-term debt dealer registration exemption.

Representations

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

1. The Filer is a corporation governed by the *Canada Business Corporations Act* with its head office located in Calgary, Alberta.
2. The Filer is a reporting issuer in each of the jurisdictions of Canada where such concept exists and is not on the list of reporting issuers in default in any jurisdiction in Canada.
3. Subsections 1.5(2) and sections 2.35 and 3.35 of NI 45-106 provide, respectively, that exemptions from the underwriter registration, dealer registration and prospectus requirements of the Legislation for short-term debt (collectively, the **Commercial Paper Exemption**) are available only where such short-term debt "has an approved credit rating from an approved credit rating organization". NI 45-106 incorporates by reference the definitions for "approved credit rating" and "approved credit rating organization" that are used in National Instrument 81-102 *Mutual Funds* (**NI 81-102**).
4. The definition of "approved credit rating" in NI 81-102, requires, among other things, that (a) the rating assigned to such debt must be "at or above" certain prescribed short-term ratings, and (b) such debt must not have been assigned a rating by any "approved credit rating organization" that is not an "approved credit rating".
5. The Commercial Paper of the Filer has an "R-1(low)" rating from DBRS Limited and an "A-1(Low)" rating from Standard & Poor's Corporation, both of which meet the prescribed threshold in NI 81-102.
6. The Commercial Paper of the Filer does not meet the "approved credit rating" definition in NI 81-102 because it has a "P-2" rating from Moody's Investors Service, Inc. which is a lower rating than required by the Commercial Paper Exemption.

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 Exemptions Sought are granted provided that:

1. The Commercial Paper:
 - (a) matures not more than one year from the date of issue;
 - (b) is not convertible or exchangeable into or accompanied by a right to purchase another security other than Commercial Paper;

- (c) is not Asset-Backed Commercial Paper; and
- (d) has a rating issued by one of the following rating organizations, or any of their successors, at or above one of the following rating categories or a rating category that replaces a category listed below:

Rating Organization	Rating
DBRS Limited	R-1 (low)
Fitch Ratings Ltd.	F2
Moody's Investors Service, Inc.	P-2
Standard & Poor's Corporation	A-2

2. In Ontario, the Dealer Registration Exemption Sought and the Underwriter Registration Exemption Sought are not available in respect of a trade in Commercial Paper by a market intermediary (except for a trade in Commercial Paper with a registered dealer that is an affiliate of the market intermediary or a trade in Commercial Paper by a lawyer or accountant if the trade is incidental to the principal business of that lawyer or accountant) unless:
 - (a) the trade is made by a market intermediary that is a financial intermediary or Schedule III bank; and
 - (b) the trade is not made by a financial institution referred to in subsection 35.1(1) of the *Securities Act* (Ontario) in the circumstances to which that subsection applies.
3. In Newfoundland and Labrador, the Dealer Registration Exemption Sought and the Underwriter Registration Exemption Sought are not available in respect of a trade in Commercial Paper by a market intermediary (except for a trade in Commercial Paper with a registered dealer that is an affiliate of the market intermediary or a trade in Commercial Paper by a lawyer or accountant if the trade is incidental to the principal business of that lawyer or accountant).
4. In each jurisdiction of Canada, the Prospectus Exemption Sought will terminate on the earlier of:
 - (a) 90 days after the coming into force of any rule, other regulation or blanket order or ruling under the securities legislation of that jurisdiction of Canada that amends the conditions of the prospectus exemption contained in section 2.35 of NI 45-106 or provides an alternate exemption; and
 - (b) June 30, 2012.
5. Except as provided in paragraph 6 below, in each jurisdiction of Canada, the Dealer Registration Exemption Sought and the Underwriter Registration Exemption Sought will terminate on the earliest of:

- (a) in the case of the Dealer Registration Exemption Sought, the date when the short-term debt dealer registration exemption does not apply in that jurisdiction of Canada;
 - (b) in the case of the Underwriter Registration Exemption Sought, the date when the short-term debt underwriter registration exemption does not apply in that jurisdiction of Canada; and
 - (c) June 30, 2012.
6. In Ontario, for a financial intermediary or Schedule III bank, the Dealer Registration Exemption Sought and the Underwriter Registration Exemption Sought will terminate on the earlier of:
- (a) the date when the financial intermediary short-term debt registration exemption does not apply in Ontario; and
 - (b) June 30, 2012.

“original signed by”

William S. Rice, QC
Alberta Securities Commission

“original signed by”

Stephen R. Murison
Alberta Securities Commission