

## Headnote

NP 11-203– issuer requests relief from the requirements of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* -- issuer has less than 10% of its securityholders resident in Canada -- less than 10% of the issuer's issued and outstanding securities are held by residents of Canadian -- issuer exempt from requirements of NI 51-101 provided that the issuer complies with the oil and gas disclosure requirements of the SEC and NYSE.

## Applicable Legislative Provisions

National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*

**Citation: Ecopetrol S.A., Re, 2010 ABASC 371**

**Date: 20100810**

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  
Ecopetrol S.A. (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 upon the Filer listing its American depository shares, represented by American depository receipts (**ADRs**), for trading on the Toronto Stock Exchange (the **TSX**), the Filer shall be exempted from the requirements of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (**NI 51-101**) (the **Exemption 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;  
and
- (b) 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.

**Representations**

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

1. The Filer exists under the laws of Colombia.
2. The head office of the Filer is located in Bogota, Colombia and the Filer does not have any assets or operations in Canada. None of the executive officers or directors of the Filer are located in Canada. Prior to, or concurrently with, the listing of the ADRs on the TSX, the Filer will become extra-provincially registered in the province of Alberta.
3. 89.9% of the Filer's issued and outstanding common shares (the **Common Shares**) are held by the Republic of Colombia (the **Nation**). Prior to the IPO (as defined below), the Filer was wholly-owned by the Nation.
4. In 2006, the Congress of Colombia authorized the Filer to publicly sell up to 20% of the Common Shares, subject to the condition that the Nation control at least 80% of the Common Shares. On November 13, 2007, the Filer placed approximately 10.1% of the Common Shares through an initial public offering undertaken solely to investors in Colombia (the **IPO**). The Common Shares are listed on the Bolsa de Valores de Colombia.
5. As at March 1, 2010, there were 40,472,512,588 Common Shares outstanding, of which 36,384,788,817 were held by the Nation with the remaining 4,087,723,771 being publicly-held (the **Public Float**).
6. On September 18, 2008, the Filer registered for listing on the New York Stock Exchange (the **NYSE**) an aggregate of 20 million ADRs, each representing the right to receive 20 Common Shares. The aggregate number of Common Shares represented by the ADRs listed on the NYSE represents approximately 0.2% of the total issued and outstanding Common Shares. The listing of the ADRs on the NYSE was not a new issuance of Common Shares and did not generate additional funds for the Filer.
7. Currently, the Filer does not have any of its securities listed on any exchange in Canada and the Filer is not a reporting issuer in any jurisdiction in Canada. The Filer has never issued any securities to the public in Canada either by way of private placement or public offering.
8. It is the Filer's present intention to list the ADRs on the TSX.
9. The ADRs that are expected to be listed on the TSX are the same instruments which are listed on the NYSE. The listing of the ADRs on the TSX will not result in a new issuance of Common Shares and will not generate additional funds for the Filer.

10. Concurrently with the listing of the ADRs on the TSX, the Filer will become subject to the ongoing continuous disclosure requirements under the applicable securities laws of each of the provinces of Alberta and Ontario and, specifically, the disclosure requirements of NI 51-101.
11. The Filer is in compliance with all requirements applicable to it imposed by the SEC, the 1933 Act, the 1934 Act, the United States *Sarbanes-Oxley Act of 2002* and the rules of the NYSE (collectively, the **US Rules**).
12. The Filer prepares disclosure with respect to its oil and natural gas activities in accordance with the US Rules (the **Oil and Gas Disclosure**).
13. The Filer will qualify as an "SEC foreign issuer" under National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers (NI 71-102)* and will rely on and comply with the exemptions from Canadian continuous disclosure requirements afforded to SEC foreign issuers under Part 4 of NI 71-102.
14. Less than 1.2% of the number of registered and beneficial holders of ADRs are residents of Canada and less than 0.6% of the outstanding ADRs are held by residents of Canada.
15. Less than 0.01% of the number of registered and beneficial holders of Common Shares (including Common Shares represented by ADRs) are residents of Canada and less than 0.002% of the outstanding Common Shares (including Common Shares represented by ADRs) are held by residents of Canada. Less than 0.02% of the Public Float is held by residents of Canada.
16. The Common Shares represented by the ADRs that the Applicant intends to list on the TSX (including ADRs reserved for issuance) represent, in aggregate, less than 0.055% of the outstanding Common Shares and less than 0.55% of the Public Float.
17. The Filer is not in default of any of the requirements of the securities legislation of Alberta or Ontario.

### **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 Exemption Sought is granted provided that:

- (a) the Filer remains subject to and complies with the disclosure requirements of the US Rules in connection with its oil and gas activities;

- (b) the Filer issues in Canada, and files on SEDAR, a news release stating that it will provide Oil and Gas Disclosure prepared in accordance with the US Rules rather than in accordance with NI 51-101;
- (c) the Filer files the Oil and Gas Disclosure with the securities regulatory authority or regulator in each of the Canadian jurisdictions in which the Filer is a reporting issuer as soon as practicable after the Oil and Gas Disclosure is filed pursuant to the US Rules;
- (d) less than 10% of the number of registered and beneficial holders of Common Shares (including Common Shares represented by ADRs) are residents of Canada;
- (e) less than 10% of the outstanding Common Shares (including Common Shares represented by ADRs) are held by residents of Canada;
- (f) less than 10% of the number of registered and beneficial holders of any new class or series of securities issued by the Filer are residents of Canada; and
- (g) less than 10% of any new class or series of securities issued by the Filer is held by residents of Canada.

**For the Commission:**

*“original signed by”*

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William Rice, QC  
Chair

*“original signed by”*

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Stephen Murison  
Vice-Chair