

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* - Filer granted exemption from the prospectus requirement in connection with trades of commercial paper/short term debt instruments that may not meet the “approved credit rating” requirement for the purpose of the short-term debt exemption in section 2.35 of National Instrument 45-106 *Prospectus and Registration Exemptions* - Commercial paper/short-term debt instruments only required to obtain one prescribed credit rating from an approved credit rating organization - Relief granted subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.A., 2000, c.S-4, sections 110, 144 and 214

Citation: Cenovus Energy Inc., Re, 2012 ABASC 44

Date: 20120202

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:

- (a) trades of negotiable promissory notes or commercial paper, maturing not more than one year from the date of issue, of the Filer (**Commercial Paper**) be exempt from the prospectus requirements of the Legislation (the **Exemption Sought**); and
- (b) the previous decision of the Alberta Securities Commission dated 19 February 2010 and cited as *Cenovus Energy Inc., Re, 2010 ABASC 72* (the **Prior Decision**) be revoked upon the granting of 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;
- (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, Prince Edward Island, Nova Scotia, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut; and
- (c) this 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* or MI 11-102 have the same meanings in this decision, unless otherwise defined herein.

In this decision:

"Asset-backed Short-term Debt" means short-term debt 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 short-term debt;

"NI 31-103" means National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Relationships*;

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

"NI 81-102" means National Instrument 81-102 *Mutual Funds*.

Representations

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

1. The Filer is a corporation under the *Canada Business Corporations Act* with its executive and registered office in Calgary, Alberta.
2. The Filer is a reporting issuer in the Jurisdictions and the Passport Jurisdictions. The Filer is not in default of its reporting issuer obligations under the Legislation or the securities legislation of the Jurisdictions and Passport Jurisdictions.
3. Subsection 2.35(b) of NI 45-106 provides that the exemption from the prospectus requirement of the Legislation for short-term debt (the **Commercial Paper Exemption**) is 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" in NI 81-102.

4. The definition of "approved credit rating" in NI 81-102 requires, among other things, that (a) the rating assigned to particular 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 has an "R-1(low)" rating from DBRS Limited and an "A-1(Low)" rating from Standard & Poor's Rating Services, both of which meet the prescribed threshold in NI 81-102.
6. The Commercial Paper does not meet the "approved credit rating" definition in NI 81-102 because it has a "P-2" rating from Moody's Investor 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 to make the decision.

The decision of the Decision Makers is that:

1. the Exemption Sought is granted provided that:
 - (a) the Commercial Paper:
 - i. matures not more than one year from the date of issue;
 - ii. is not convertible or exchangeable into or accompanied by a right to purchase another security other than Commercial Paper;
 - iii. is not Asset-backed Short-term Debt; and
 - iv. 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	P-2
Standard & Poor's	A-2

- (b) each trade of Commercial Paper to a resident in a jurisdiction in Canada by the Filer in reliance on this exemption is made: (i) through an agent who is a registered dealer, registered in a category that permits the trade; (ii) through a bank listed in Schedule I, II or III to the *Bank Act* (Canada) trading in reliance on an exemption from registration available in the circumstances in the jurisdiction

or jurisdictions in which the trade occurs; or (iii) through a dealer permitted to rely on the "international dealer exemption" under section 8.18 of NI 31-103; and

- (c) for each jurisdiction of Canada, the Exemption Sought will terminate on the earlier of:
 - i. 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 under section 2.35 of NI 45-106 or provides an alternate exemption; and
 - ii. June 30, 2017; and
- 2. the Prior Decision is revoked with effect on the date hereof.

For the Commission:

"original signed by"

Glenda Campbell, QC
Vice-Chair

"original signed by"

Stephen Murison
Vice-Chair