

## Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* - Exemption from the requirement to include in a business acquisition report, certain financial statements required pursuant to item 3 of Form 51-102F4 *Business Acquisition Report* and section 8.4 of National Instrument 51-102 *Continuous Disclosure Obligations* relating to the least significant related business acquisition, on the condition that the Filer include in the business acquisition report, certain alternative financial statements regarding the least significant related business.

## Applicable Legislative Provisions

NI 51-102, sections 8.4, 13.1

**Citation: Re Canadian Natural Resources Limited , 2017 ABASC 117**

**Date: 20170707**

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  
Canadian Natural Resources Limited (the **Filer**)

## Decision

## Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Makers**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) exempting the Filer from the requirement to include financial statements relating to the Marathon Acquisition (as defined herein) pursuant to section 8.4 of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) in the business acquisition report (**BAR**) filed in connection with the Acquisitions (as defined herein) on the condition that the Filer include in the BAR, the Alternative Financial Statements (as defined herein) (the **Requested Relief**).

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 subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in the provinces of British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador; 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*, MI 11-102 or NI 51-102 have the same meaning if used in this decision, unless otherwise defined herein.

### **Representations**

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

1. The Filer is a corporation incorporated under the *Business Corporations Act* (Alberta).
2. The Filer's head office is located in Calgary, Alberta.
3. The Filer is a reporting issuer in each province of Canada and is not in default of the securities legislation of any jurisdiction of Canada.
4. The Filer's common shares are listed and posted for trading on the Toronto Stock Exchange and the New York Stock Exchange under the symbol "CNQ".
5. On March 8, 2017, the Filer entered into an asset purchase agreement with Shell Canada Limited (**Shell**) and certain of its affiliates whereby the Filer agreed to acquire a 60% interest in the Athabasca Oil Sands Project (the **AOSP**) and certain other oil sands leases (the **Shell Acquisition**). Concurrently, the Filer and an affiliate of Shell entered into a share purchase agreement with an affiliate of Marathon Oil Corporation (**Marathon**) whereby the Filer and an affiliate of Shell jointly agreed to purchase Marathon's 20% interest in the AOSP and certain other non-producing oil sands leases through the acquisition by each of CNRL and an affiliate of Shell of 50% of the outstanding shares of Marathon Oil Canada Corporation (**MOCC**) (the **Marathon Acquisition** and together with the Shell Acquisition, the **Acquisitions**).
6. The Acquisitions closed on May 31, 2017. The total purchase price, subject to final adjustments, for the Shell Acquisition was approximately \$10.8 billion and the Filer's portion of the purchase price for the Marathon Acquisition was approximately US\$1.3 billion (approximately \$1.7 billion). The total purchase price, subject to final adjustments, for the Acquisitions was approximately \$12.5 billion. As a result of the Acquisitions, the AOSP is currently owned: (a) by CNRL, which directly and indirectly holds a 70% interest; (b) by Shell, which indirectly holds a 10% interest; and (c) by Chevron Canada Corporation, which directly holds a 20% interest.

7. Individually, the Shell Acquisition is not a significant acquisition under
  - (a) the investment test as described in paragraph 8.3(2)(b) of NI 51-102 (the **Investment Test**), as the Filer determined that the consolidated investments in the Shell Acquisition equaled approximately 18.4% of the consolidated assets of the Filer based on the most recent audited financial statements of the Filer, or
  - (b) the profit or loss test as described in paragraph 8.3(2)(c) of NI 51-102 (the **Profit or Loss Test**), substituting specified profit or loss with operating income in respect of the Shell Acquisition and substituting specified profit or loss for the most recently completed financial year in respect of the Filer with average operating income for the three most recently completed financial years, as described in subsections 8.10(2), 8.3(8) and 8.3(10) of NI 51-102, as the Filer determined that the operating income for the most recently completed financial year attributable to the oil and gas properties acquired pursuant to the Shell Acquisition equaled approximately 14.4% of the Filer's average operating income for the three most recently completed financial years.
8. Individually, the Marathon Acquisition is not a significant acquisition under
  - (a) the asset test as described in paragraph 8.3(2)(a) of NI 51-102 (the Asset Test), as the Filer determined that the Filer's 50% proportionate share of the assets of MOCC, based on the audited financial statements of MOCC for the year ended December 31, 2016, subject to adjustments as described in subsection 8.3(13) of NI 51-102, equaled approximately 10.7% of the consolidated assets of the Filer based on the most recent audited financial statements of the Filer,
  - (b) the Investment Test, as the Filer determined that the consolidated investments of the Filer in the Marathon Acquisition equaled approximately 2.9% of the consolidated assets of the Filer based on the most recent audited financial statements of the Filer, or
  - (c) the Profit or Loss Test, substituting specified profit or loss for the most recently completed financial year in respect of the Filer with average specified profit or loss for the three most recently completed financial years, as described in subsections 8.3(8) and 8.3(10) of NI 51-102, as the Filer determined that the Filer's proportionate share of the specified profit or loss for the most recently completed financial year of MOCC, subject to adjustments as described in subsection 8.3(13) of NI 51-102, equaled approximately 3.4% of the Filer's average specified profit or loss for the three most recently completed financial years.
9. The Acquisitions are considered an acquisition of related businesses under section 8.1 of NI 51-102, and as a result are a significant acquisition of the Filer for the purposes of NI 51-102. The Filer will therefore be required to file a BAR within 75 days of the completion of the Acquisitions.

10. As the Shell Acquisition is the acquisition of an interest in oil and gas property, the BAR filed in connection with the Acquisitions will contain the disclosure in respect of the Shell Acquisition contemplated by paragraphs 8.10(3)(e)-(g) of NI 51-102, which provides an exemption from certain financial statements required for a BAR.
11. Although the Marathon Acquisition is also the acquisition of an interest in an oil and gas property, the Filer cannot rely on the exemption in section 8.10 of NI 51-102 because the conditions in paragraphs 8.10(1)(b) and 8.10(3)(a)-(b) are not met.
12. Pursuant to section 8.4 of NI 51-102 and Item 3 of Form 51-102F4 *Business Acquisition Report*, absent the Requested Relief, the BAR filed in connection with the Acquisitions must include the following financial statements in respect of the Marathon Acquisition:
  - (a) annual financial statements of MOCC, comprising the statements of financial position as at December 31, 2016 and 2015, the statements of income and comprehensive income, changes in equity and cash flows for the years then ended, together with notes to such financial statements and an audit report in respect of the year ended December 31, 2016;
  - (b) an unaudited interim financial report for MOCC for the three month periods ended March 31, 2017 and 2016;
  - (c) a pro forma statement of financial position of the Filer as at the date of the Filer's most recent statement of financial position filed at March 31, 2017, that gives effect to the Marathon Acquisition as if it had taken place as at the date of that pro forma statement of financial position;
  - (d) a pro forma income statement of the Filer that gives effect to the Marathon Acquisition as if it had taken place at the beginning of the financial year, for each of the following financial periods:
    - (i) the Filer's financial year ended December 31, 2016; and
    - (ii) the Filer's three month interim period ended March 31, 2017; and
  - (e) pro forma earnings per share based on the pro forma financial statements referred to in paragraph (d) above.
13. The Marathon Acquisition is immaterial relative to the Shell Acquisition. The consideration payable by the Filer to Marathon represents approximately 13.6% of the total consideration payable by the Filer in connection with the Acquisitions whereas the Shell Acquisition represents approximately 86.4% of the total consideration payable in connection with the Acquisitions.

14. Individually, the Marathon Acquisition does not constitute a significant acquisition under the Asset Test, Investment Test and Profit or Loss Test and is not significant under the other metrics provided by the Filer.
15. The Filer proposes to include the following alternative financial statements regarding the Marathon Acquisition (the **Alternative Financial Statements**) in the BAR filed in connection with the Acquisitions:
  - (a) operating statements for the years ended December 31, 2016 and 2015 in respect of the oil and gas properties owned by MOCC, together with an audit report in respect of the year ended December 31, 2016; and
  - (b) unaudited operating statements for the three months ended March 31, 2017 and 2016 in respect of the oil and gas properties owned by MOCC.
17. The Alternative Financial Statements will be prepared in accordance with the financial reporting framework specified in subsection 3.11(5) of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (**NI 52-107**).

#### **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 Requested Relief is granted, provided that the Filer includes the Alternative Financial Statements prepared in accordance with subsection 3.11(5) of NI 52-107 in the BAR filed in connection with the Acquisitions.

“original signed by” \_\_\_\_\_

Cheryl McGillivray

Manager

Corporate Finance