

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – issuer deemed to be no longer a reporting issuer under securities legislation

Applicable Legislative Provisions
Securities Act, RSA, 2000, cS-4, section 153

Citation: Re Ecopetrol S.A., 2018 ABASC 144

Date: 20180829

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

and

In the Matter of
the Process for Cease to be a Reporting Issuer Applications

and

In the Matter of
Ecopetrol S.A. (the **Filer**)

Order

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for an order under the securities legislation of the Jurisdictions (the **Legislation**) that the Filer has ceased to be a reporting issuer in all jurisdictions of Canada in which it is a reporting issuer (the **Order Sought**).

Under the Process for Cease to be a Reporting Issuer Applications (for a dual application):

- (a) the Alberta Securities Commission is the principal regulator for this application;
- (b) this order is the order 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 Multilateral Instrument 11-102 *Passport System* have the same meaning if used in this Order, unless otherwise defined.

Representations

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

1. The Filer is a corporation governed by the laws of Colombia, with its head office in Bogota, Colombia. The Alberta Securities Commission was selected as principal regulator because the Filer is extra-provincially registered in Alberta.
2. The Filer is an oil company with operations in Peru, Brazil and the U.S. Gulf Coast. It does not have assets or operations in any jurisdiction of Canada and none of its officers or directors are Canadian residents.
3. The Filer is a reporting issuer in the Jurisdictions. The Filer became a reporting issuer upon the listing of its American depository receipts (**ADRs**) on the Toronto Stock Exchange (**TSX**) on August 11, 2010.

Common Shares

4. The authorized share capital of the Filer consists of an unlimited number of common shares, par value COP\$609 per share (**Common Shares**). As of September 30, 2017, 41,316,694,690 Common Shares were outstanding, 88.49% of which are beneficially owned or controlled by the Republic of Colombia. The remaining 11.51% (the **Public Float**) are listed for trading only on the Colombian Securities Exchange (**BVC**). The Common Shares comprising the Public Float are held in book-entry form through Depósito Centralizado de Valores de Colombia (**DECEVAL S.A.**).
5. Based on information provided by DECEVAL S.A., as of September 30, 2017, there are 350,413 holders of Common Shares, 29 of whom appear to live in Canada (representing 0.008% of holders of Common Shares worldwide) and hold 15,584,928 Common Shares (representing 0.03% of the Public Float). Of those Canadian holders of Common Shares, four institutional investors hold 98.3% of such Common Shares. DECEVAL S.A.'s shareholder position listings do not identify the residency of the underlying beneficial owners of the Common Shares.

ADRs

6. Each ADR represents 20 Common Shares. As of September 30, 2017, there were 35,827,088 ADRs outstanding, representing 1.74% of the total outstanding Common Shares and 15.14% of the Public Float. The ADRs are listed and posted for trading on the New York Stock Exchange (**NYSE**) under the symbol "EC". The ADRs were not offered to Canadian residents. The ADRs were only cross-listed on the TSX and were delisted from the TSX on March 2, 2016 due to their limited trading activity on such exchange.
7. Ownership of the ADRs is held in book-entry form through JPMorgan Chase Bank, National Association (**JPMorgan**), acting as the depository bank, which is the sole registered holder of the ADRs. Based on information from JPMorgan, as of September 30, 2017, there were 35 participants holding ADRs worldwide, one of whom is located in

Canada (representing 2.86% of holders of ADRs worldwide) and holds 742 ADRs (representing 0.002% of the outstanding ADRs). JPMorgan's participant position listings do not identify the residency of the underlying beneficial owners of the ADRs.

8. Based on the information above, on an aggregate basis, there are 350,448 holders of Common Shares and ADRs worldwide, 30 of whom are located in Canada, who hold 15,501,768 Common Shares and ADRs, representing 0.037% of total number of Common Shares and ADRs.

U.S. Notes

9. As of September 30, 2017, the Filer had the following debt securities outstanding in the U.S.:
 - (a) U.S.\$1.5 billion principal amount of 7.625% notes due July 2019 (the **2019 Notes**);
 - (b) U.S.\$350 million principal amount of 4.250% notes due September 2018 (the **2018 Notes**);
 - (c) U.S.\$1.8 billion principal amount of 5.875% notes due September 2023 (the **2023 Notes**);
 - (d) U.S.\$850 million principal amount of 7.375% notes due September 2043 (the **2043 Notes**);
 - (e) U.S.\$2.0 billion principal amount of 5.875% notes due May 2045 (the **2045 Notes**);
 - (f) U.S.\$1.2 billion principal amount of 4.125% notes due January 2025 (the **2025 Notes**); and
 - (g) U.S.\$1.5 billion principal amount of 5.375% notes due June 2026 (the **2026 Notes**)(collectively, the **U.S. Notes**).
10. The 2018 U.S. Notes, 2023 U.S. Notes, 2043 U.S. Notes, 2045 U.S. Notes, 2025 U.S. Notes and 2026 U.S. Notes were issued in a registered public offering in the U.S. under the 1933 Act. The 2019 U.S. Notes were sold in the United States in a private placement under Rule 144A and Regulation S of the 1933 Act and subsequently registered. The 2045 U.S. Notes and the 2025 U.S. Notes were also offered in Canada in Alberta, British Columbia, Manitoba, Ontario and Québec pursuant to Canadian offering memoranda dated, respectively, May 20, 2014 and September 9, 2014. No U.S. Notes were distributed in any jurisdiction of Canada pursuant to either of these offering memoranda.

11. Ownership of the U.S. Notes is held in book-entry form through Cede & Co., as nominee for The Depository Trust Company (**DTC**), which is the sole registered holder of the U.S. Notes. Based on information provided by DTC, as of September 26, 2017, participants with a Canadian reporting address hold as follows:
 - (a) 0.0063% of the principal amount of the 2019 Notes, representing 3.57% of the total participant holders of 2019 Notes;
 - (b) 0.25% of the principal amount of the 2018 Notes, representing 1.92% of the total participant holders of 2018 Notes;
 - (c) 0.13% of the principal amount of the 2023 Notes, representing 5.19% of the total participant holders of 2023 Notes;
 - (d) 0.33% of the principal amount of the 2043 Notes, representing 3.57% of the total participant holders of 2043 Notes;
 - (e) 0.055% of the principal amount of the 2045 Notes, representing 4.23% of the total participant holders of 2045 Notes;
 - (f) 0.31% of the principal amount of the 2025 Notes, representing 2.94% of the total participant holders of 2025 Notes; and
 - (g) 0.12% of the principal amount of the 2026 Notes, representing 2.82% of the total participant holders of 2026 Notes.
12. The DTC participant position listings do not identify the residency of the underlying beneficial owners of the U.S. Notes.
13. Distribution of the U.S. Notes occurred prior to the date on which the Filer became a reporting issuer in the Jurisdictions.

Colombian Notes

14. As of September 30, 2017, the Filer had the following debt securities outstanding in Colombia:
 - (a) COP \$138.7 billion principal amount of floating rate notes due December 2017;
 - (b) COP\$479.9 billion principal amount of floating rate notes due December 2020;
 - (c) COP\$284.3 billion principal amount of floating rate notes due December 2040;
 - (d) COP\$120.95 billion principal amount of floating rate notes due August 2018;
 - (e) COP\$168.6 billion principal amount of floating rate notes due August 2023;

- (f) COP\$347.5 billion principal amount of floating rate notes due August 2028; and
 - (g) COP\$262.95 billion principal amount of floating rate notes due August 2043
- (collectively, the **Floating Rate Notes**).

15. The Colombian Floating Rate Notes were distributed only in Colombia by way of Dutch auctions led by the BVC. Ownership of the Floating Rate Notes is held in book-entry form through DECEVAL S.A., which is the sole registered holder of the Floating Rate Notes. Based on information provided by DECEVAL S.A., none of the holders of any of the Floating Rate Notes live in Canada. DECEVAL S.A.'s shareholder position listings do not identify the residency of the underlying beneficial owners of the Floating Rate Notes.
16. DECEVAL S.A. is the only official source of information the Filer can use to obtain information regarding the ownership of its Common Shares and Colombian Notes.

General

17. Based on the information above, there are 351,468 security holders of the Filer worldwide, 46 of whom are located in Canada, representing 0.013% of the total security holders of the Filer.
18. Based on the information above, residents of Canada do not:
 - (a) directly or indirectly beneficially own more than 2% of each class or series of outstanding securities (including debt securities) of the Filer worldwide; and
 - (b) directly or indirectly comprise more than 2% of the total number of securityholders of the Filer worldwide.
19. The Filer is subject to and is in compliance with all requirements applicable to it imposed by the SEC, the 1933 Act, the 1934 Act, the *Sarbanes-Oxley Act of 2002* (United States) and the rules of the NYSE (collectively, the **U.S. Rules**).
20. The Filer qualifies as an "SEC foreign issuer" under National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers (NI 71-102)* and as such, relies on and complies with the exemptions from Canadian continuous disclosure requirements afforded to SEC foreign issuers under Part 4 of NI 71-102.
21. The Filer has no current intention to seek public financing by way of an offering of its securities in Canada.
22. In the 12 months before applying for this order, the Filer has not taken any steps that indicate there is a market for its securities in Canada, including conducting a prospectus offering in Canada, establishing or maintaining a listing on an exchange in Canada or having its securities traded on a marketplace or any other facility in Canada for bringing together buyers and sellers where trading data is publicly reported.

23. The Filer provided advance notice to Canadian resident securityholders in a news release that it has applied for an order to cease to be a reporting issuer in the Jurisdictions and, if the Order Sought is granted, the Filer will no longer be a reporting issuer in any jurisdiction in Canada.
24. The Filer will concurrently deliver to its Canadian securityholders all disclosure it would be required to deliver to U.S. resident securityholders under the U.S. Rules.
25. The Filer is not in default of securities legislation in any jurisdiction of Canada, except for the requirement in subsection 4(a) of National Instrument 52-108 *Auditor Oversight (NI 52-108)* that its auditor's report is prepared by a public accounting firm that, as of the date of the auditor's report, is a "participating audit firm", as defined therein. The financial statements of the Filer for: (i) the fiscal year ended December 31, 2016; and (ii) the fiscal year ended December 31, 2017 were accompanied by an auditor's report prepared by Ernst & Young Audit S.A.S., which is not a participating audit firm as defined in NI 52-108, as it has not entered into a participation agreement (as defined in NI 52-108) with the Canadian Public Accountability Board.

Decision

Each of the Decision Makers is satisfied that the order meets the test set out in the Legislation for the Decision Maker to make the order.

The decision of the Decision Makers under the Legislation is that the Order Sought is granted.

"original signed by"

Timothy Robson
Manager, Legal, Corporate Finance
Alberta Securities Commission