

## Headnote

Process for Exemptive Relief Applications in Multiple Jurisdictions – TransCanada Pipelines Limited relieved from the obligation under NI 51-102 to file annual financial statements, interim financial reports, MD&A, AIFs, material change reports, BARs and executive compensation disclosure, on the condition that its parent TransCanada Corporation comply with all of its continuous disclosure obligations, and other conditions – filer also given related relief from short form eligibility requirements and short form prospectus content requirements in NI 44-101 and NI 44-102 – credit support issuer TransCanada Trust given similar relief

## Applicable Legislative Provisions

National Instrument 51-102 *Continuous Disclosure Obligations* Parts 4, 5, 6, 7 and 8, section 11.6

National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*

National Instrument 44-101 *Short Form Prospectus Requirements* paragraph 2.3(1)(d), subsection 2.4(1), paragraph 2.4(1)(b), subparagraph 4.2(a)(ix)

National Instrument 44-102 *Shelf Distributions* subparagraphs 2.3(3)(b)(i) and 2.3(3)(b)(i)(ii), subsection 2.4(1), subparagraphs 2.4(3)(b)(ii) and 2.4(3)(b)(iii), section 8.4

Form 44-101F1 *Short Form Prospectus* sections 6.1, 11.1(1), 11.2, 12.1, 13.2(b) and 13.2(f)

**Citation: Re TransCanada Corporation, 2019 ABASC 1**

**Date: 20190103**

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

and

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

and

In the Matter of  
TransCanada Corporation (**TransCanada**),  
TransCanada PipeLines Limited (**TCPL**)  
and TransCanada Trust (the **Trust** and collectively with TransCanada and TCPL, the **Filers**)

## Decision

## Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a **Decision Maker**) has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that TCPL or the Trust, as applicable, be exempted from all of the following:

- (a) for TCPL (collectively, the **TCPL Exemptions**):

- (i) the requirements under National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) to file any of the following (**CD Documents**):
  - (A) annual financial statements required by Part 4 of NI 51-102;
  - (B) interim financial report required by Part 4 of NI 51-102;
  - (C) MD&A required by Part 5 of NI 51-102;
  - (D) AIF required by Part 6 of NI 51-102;
  - (E) news release required by Part 7 of NI 51-102;
  - (F) Form 51-102F3 *Material Change Report* required by Part 7 of NI 51-102;
  - (G) business acquisition report required by Part 8 of NI 51-102;
  - (H) executive compensation disclosure required by section 11.6 of NI 51-102;
- (ii) National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (**NI 52-109**);
- (iii) the short form prospectus qualification provision paragraph 2.3(1)(d) of National Instrument 44-101 *Short Form Prospectus Requirements* (**NI 44-101**);
- (iv) with respect to National Instrument 44-102 *Shelf Distributions* (**NI 44-102**):
  - (A) both of the following base shelf prospectus receipt effectiveness provisions:
    - (1) subparagraph 2.3(3)(b)(i);
    - (2) subparagraph 2.3(3)(b)(ii);
  - (B) the requirement in section 8.4 to prepare and file updated earnings coverage ratios;
- (v) the requirement in section 6.1 of Form 44-101F1 *Short Form Prospectus* (**Form 44-101F1**) to disclose earnings coverage ratios;
- (vi) the requirement under subsection 11.1(1) of Form 44-101F1 to incorporate documents by reference in a short form prospectus;
- (vii) the statement required by section 11.2 of Form 44-101F1 regarding future filed documents;

- (b) for the Trust (collectively, the **Trust Exemptions**):
  - (i) with respect to NI 51-102, all of the following:
    - (A) the obligation in paragraph 13.4(2)(d) that the Trust file either a notice (**Credit Support Notice**) indicating that the Trust, as a credit support issuer, is relying on the continuous disclosure documents filed by TCPL as parent credit supporter, or file copies of all documents the parent credit supporter is required to file under securities legislation;
    - (B) the obligation in paragraph 13.4(2)(f) that the credit support issuer issue a news release and file a material change report for material changes of the credit support issuer that are not also material changes for the parent credit supporter;
    - (C) the obligation in paragraph 13.4(2)(g) that the Trust file either a statement that the financial results of the credit support issuer are included in the consolidated financial results of the parent credit supporter, or consolidating summary financial information for TCPL presented with certain separate columns;
  - (ii) NI 52-109;
  - (iii) with respect to NI 44-101:
    - (A) both of the following short form prospectus qualification provisions:
      - (1) that part of subsection 2.4(1) that requires that the securities offered under a short form prospectus be non-convertible;
      - (2) paragraph 2.4(1)(b);
    - (B) the requirement in subparagraph 4.2(a)(ix) to provide an undertaking to file the periodic and timely disclosure of a credit supporter for so long as the securities being distributed are issued and outstanding;
  - (iv) with respect to NI 44-102:
    - (A) all of the following base shelf prospectus qualification or receipt effectiveness provisions:
      - (1) that part of subsection 2.4(1) that requires that the securities offered under a preliminary base shelf prospectus be non-convertible;

- (2) subparagraph 2.4(3)(b)(ii);
- (3) subparagraph 2.4(3)(b)(iii);
- (B) the requirement in section 8.4 to prepare and file updated earnings coverage ratios;
- (v) with respect to Form 44-101F1, all of the following:
  - (A) the statement required by section 11.2 regarding future filed documents;
  - (B) the requirement in section 12.1 to incorporate by reference credit supporter disclosure in a short form prospectus;
  - (C) the requirement in paragraph 13.2(b) that the parent credit supporter satisfy paragraph 2.4(1)(b) of NI 44-101;
  - (D) the requirement in paragraph 13.2(f) that the Trust file either a statement that the financial results of the credit support issuer are included in the consolidated financial results of the parent credit supporter, or consolidating summary financial information for TCPL presented with certain separate columns.

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

### **Interpretation**

In this decision, unless otherwise defined herein, terms defined in National Instrument 14-101 *Definitions*, NI 44-101, NI 44-102, NI 51-102 and MI 11-102 have the meaning ascribed to them therein.

## **Representations**

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

### *TransCanada and TCPL*

1. TransCanada is a corporation incorporated under the *Canada Business Corporations Act* (the **CBCA**) with its head office located at Calgary, Alberta.
2. TCPL carries on business as the operating subsidiary of the TransCanada group of principal entities with its head office located at Calgary, Alberta.
3. The board of directors of TransCanada and TCPL are identical, and are comprised of the same board committees with the same membership. The executive officers are identical at both entities.
4. TransCanada's common shares are listed on the Toronto Stock Exchange (**TSX**) and the New York Stock Exchange under the symbol "TRP". In addition, TransCanada has outstanding 11 series of cumulative redeemable first preferred shares which are listed on the TSX.
5. TCPL's authorized share capital consists of an unlimited number of common shares (**Common Shares**), first preferred shares, and second preferred shares. TCPL's issued and outstanding shares consist only of its Common Shares.
6. All of TCPL's issued and outstanding Common Shares are owned directly by TransCanada and are not listed on a public market.
7. Each of TCPL and TransCanada is a reporting issuer in each province and territory of Canada (the **Reporting Jurisdictions**) and is not in default of securities legislation in any jurisdiction. Neither TransCanada nor TCPL is a venture issuer.
8. Each of TCPL and TransCanada is subject to reporting obligations under the 1934 Act, and files its continuous disclosure documents with the SEC. Each of TCPL and TransCanada is eligible to offer securities in the United States under the multi-jurisdictional disclosure system available to Canadian issuers.
9. TransCanada is qualified under section 2.2 of NI 44-101 to use the short form prospectus system.
10. TCPL is qualified under section 2.3 of NI 44-101 to use the short form prospectus system.
11. TransCanada's only assets or liabilities of more than a nominal value, having regard to the total value of TransCanada, are its holding of all of the outstanding voting and equity securities of TCPL and amounts outstanding under inter-affiliate lending agreements with TCPL. As a result, the continuous disclosure of TransCanada and TCPL is substantively the same. In the view of the Filers, TransCanada's continuous disclosure may be relied on in place of TCPL's continuous disclosure.

*The Trust and the Trust Notes*

12. The Trust is a trust established under the laws of Ontario pursuant to a declaration of trust dated September 16, 2014 by Valiant Trust Company, with its head office located at Calgary, Alberta.
13. The Trust's voting trust units (the **Voting Trust Units**) are the only equity securities issued by the Trust. All of the Voting Trust Units are held, directly or indirectly, by TCPL.
14. The Trust currently meets the eligibility requirements set out in subsection 13.4(2) of NI 51-102 and section 13.2 of Form 44-101F1 and therefore qualifies as a credit support issuer that is exempt from most continuous disclosure obligations under NI 51-102 and certain disclosure requirements for a short form prospectus under Form 44-101F1.
15. The Trust is a reporting issuer in each province and territory of Canada and is not in default of securities legislation in any jurisdiction.
16. Quarterly, the Trust files a notice of reliance with respect to the continuous disclosure documents filed by TCPL pursuant to the exemption from the requirements of NI 51-102 provided in section 13.4 of NI 51-102, and the consolidating summary financial information for TCPL required by section 13.4 of NI 51-102.
17. The purpose of the Trust is to effect offerings of notes of the Trust (**Trust Notes**) in order to provide TCPL with funds for general corporate purposes by means of creating and selling Trust Notes and acquiring and holding assets, which consist primarily of one or more junior subordinated unsecured notes issued by TCPL to the Trust (together with the other assets of the Trust, the **Trust Assets**). The Trust Assets generate funds for distribution to holders of Trust Notes and Voting Trust Units. The Trust does not carry on any operating activity other than in connection with Offerings and in connection with acquiring and holding the Trust Assets.
18. The following information pertains to the Trust Notes:
  - (a) pursuant to an assignment and set-off agreement among the Trust, TransCanada, TCPL and an indenture trustee (the **Assignment and Set-Off Agreement**), among other things, the Trust Notes have, or will have upon issuance, both of the following attributes:
    - (i) they will be automatically exchanged, without the consent of the holder, for the right to be issued a new series of cumulative first preferred shares of TCPL upon the occurrence of certain events relating to the insolvency of TransCanada or TCPL (an **Automatic Exchange**);
    - (ii) it is possible that under certain circumstances holders of the Notes will receive a new series of preferred shares of TCPL instead of interest (any such instance being a **Deferral Event**);

- (b) regarding a Deferral Event, it is in the interest of each of TransCanada and TCPL to ensure that, to the extent within their respective control, the Trust pays interest to holders of the Trust Notes in cash, because the Assignment and Set-off Agreement provides, among other things, that should a Deferral Event occur and be continuing, TransCanada and TCPL will not declare dividends on their respective outstanding preferred shares or, if no such preferred shares are outstanding, their respective common shares;
  - (c) it is possible that the Trust Notes could be considered to be convertible, because of the possibility of either a Deferral Event or an Automatic Exchange.
19. The Trust's financial results are not included in TransCanada's (consolidated) financial statements under U.S. GAAP.

### **Decision**

The decision of the Decision Makers under the Legislation is both of the following:

1. The TCPL Exemptions are granted, provided all of the following (the **TCPL Conditions**):
  - (a) TransCanada is the beneficial owner of all of the issued and outstanding voting and equity securities of TCPL;
  - (b) TransCanada has no assets or liabilities of more than a nominal value, having regard to the total value of TransCanada, other than its holding of all of the outstanding voting and equity securities of TCPL and amounts outstanding under inter-affiliate lending agreements with TCPL;
  - (c) TransCanada is a reporting issuer in the Reporting Jurisdictions, and has filed all disclosure documents that it is required to file under applicable securities legislation including its CD Documents on or before the time those documents would have been required to be filed under such legislation by TCPL;
  - (d) TransCanada is not a venture issuer;
  - (e) TransCanada's executive compensation disclosure is the same as what TCPL would have been required to file pursuant to section 11.6 of NI 51-102 if not for the TCPL Exemptions being granted;
  - (f) TCPL issues a news release and files a material change report (a **TCPL Material Change Report**) in accordance with Part 7 of NI 51-102 for all material changes in its affairs that are not also material changes in the affairs of TransCanada;
  - (g) TCPL files a notice, in electronic format, indicating that it is relying on the continuous disclosure documents filed by TransCanada and setting out where those documents can be found for viewing;

- (h) TransCanada is qualified under section 2.2 of NI 44-101 to use the short form prospectus system;
  - (i) in relation to section 8.4 of NI 44-102, if TCPL is distributing securities by way of an MTN program or other continuous distribution using the shelf procedures, TCPL does both of the following:
    - (i) calculates updated earnings coverage ratios for the ratios contained in its base shelf prospectus each time TransCanada prepares an interim financial report or audited annual financial statements, using the 12 month period that ended on the last day of TransCanada's most recently completed financial period;
    - (ii) files the updated earnings coverage ratios, concurrently with the filing of TransCanada's financial statements, in either of the following:
      - (A) an exhibit to TransCanada's financial statements;
      - (B) a shelf prospectus supplement to the base shelf prospectus;
  - (j) for any short form prospectus, TCPL complies with section 6.1 of Form 44-101F1, except that "the issuer" is to be read as "TransCanada", and any references to the issuer's annual financial statements or interim financial report are to be read as those of TransCanada;
  - (k) for any short form prospectus, TCPL complies with section 11.1(1) of Form 44-101F1, except that references to the disclosure documents are to be read as those of TransCanada;
  - (l) TCPL incorporates into any short form prospectus by reference any TCPL Material Change Report filed since the end of the financial year in respect of which TransCanada's current AIF is filed;
  - (m) TCPL makes the statement required by section 11.2 of Form 44-101F1 in any short form prospectus, with "or TransCanada" or a reference that is substantively the same added after the words "by the issuer".
2. The Trust Exemptions are granted, provided all of the following:
- (a) the Trust does not rely on the Trust Exemptions unless TCPL is relying on the TCPL Exemptions and the TCPL Conditions are satisfied;
  - (b) TCPL is the direct or indirect owner of all of the outstanding Voting Trust Units;
  - (c) the Trust has minimal assets, operations, revenues or cash flows other than those related to acquiring, holding and administering Trust Assets or issuing, administering or repaying Trust Notes;

- (d) the features of the Assignment and Set-Off Agreement described in paragraph 18 of this decision apply, whether pursuant to the Assignment and Set-Off Agreement or pursuant to another similar agreement;
- (e) the Trust files in electronic format the notice contemplated by clause 13.4(2)(d)(ii)(A) of NI 51-102, except that “the parent credit supporter” for purposes of such notice is to be read as “TransCanada” (a **Modified Credit Support Notice**);
- (f) the Trust complies with paragraph 13.4(2)(f) of NI 51-102, except that “the parent credit supporter” is to be read as “TransCanada or TCPL”;
- (g) the Trust files in electronic format any TCPL Material Change Report, as soon as practicable after it is filed by TCPL;
- (h) in relation to paragraph 13.4(2)(g) of NI 51-102, the Trust files in the Modified Credit Support Notice consolidating summary financial information for TransCanada presented with a separate column for each of the following:
  - (i) TransCanada;
  - (ii) TCPL;
  - (iii) the Trust;
  - (iv) any other subsidiaries of TCPL on a combined basis;
  - (v) consolidating adjustments at the TransCanada level;
  - (vi) the total consolidated amounts at the TransCanada level;
- (i) the Trust, TCPL and any Trust Notes distributed in reliance on this decision meet the requirements of section 2.4 of NI 44-101, except for the requirement that the Trust Notes be non-convertible and except that TransCanada rather than TCPL satisfies subparagraph 2.4(b)(i);
- (j) TCPL, as holder of the Voting Trust Units, does not propose changes to the terms and conditions of any outstanding Trust Notes offered and sold pursuant to a short form prospectus of the Trust filed in reliance on this decision that would result in securities other than TCPL first preferred shares being issued in exchange for Trust Notes or as payment to a holder of Trust Notes;
- (k) in relation to subparagraph 4.2(a)(ix) of NI 44-101, the Trust files with any short form prospectus an undertaking (the **Undertaking**) that for so long as the securities being distributed under the prospectus are issued and outstanding, one of the following will be true:

- (i) if the Filers are relying on this decision, a Modified Credit Support Notice will be filed and subsisting;
- (ii) if the Filers are not relying on this decision, the Trust will file one of the following:
  - (A) the periodic and timely disclosure of TCPL similar to the disclosure provided under section 12.1 of Form 44-101F1;
  - (B) a notice as contemplated in clause 13.4(2)(d)(ii)(A) of NI 51-102;
- (l) in relation to section 8.4 of NI 44-102, if the Trust is distributing securities by way of an MTN program or other continuous distribution using the shelf procedures, the Trust does all of the following:
  - (i) calculates updated earnings coverage ratios for the ratios contained in its base shelf prospectus each time TransCanada prepares an interim financial report or audited annual financial statements, using the 12 month period that ended on the last day of TransCanada's most recently completed financial period;
  - (ii) files the updated earnings coverage ratios, concurrently with the filing of TransCanada's financial statements, in either of the following:
    - (A) an exhibit to TransCanada's financial statements;
    - (B) a shelf prospectus supplement corresponding to the base shelf prospectus;
- (m) the Trust makes the statement required by section 11.2 of Form 44-101F1 in any short form prospectus, with “, TCPL or TransCanada” or references that are substantively the same added after the words “by the issuer”;
- (n) the Trust complies with paragraph 12.1 1. of Form 44-101F1, except that references to the credit supporter are to be read as TransCanada;
- (o) in relation to paragraph 13.2(b) of Form 44-101F1, TransCanada satisfies subparagraph 2.4(b)(i) of NI 44-101, except that the references to the credit supporter are to be read as “TransCanada”;
- (p) the Trust incorporates into any short form prospectus any TCPL Material Change Report filed since the end of the financial year in respect of which TransCanada's current AIF is filed;
- (q) in relation to paragraph 13.2(f) of Form 44-101F1, for the periods covered by TransCanada's consolidated interim financial report and consolidated annual financial statements included in the short form prospectus, the Trust includes in the

short form prospectus consolidating summary financial information for TransCanada, presented with a separate column for each of the following:

- (i) TransCanada;
- (ii) TCPL;
- (iii) the Trust;
- (iv) any other subsidiaries of TCPL on a combined basis;
- (v) consolidating adjustments at the TransCanada level;
- (vi) the total consolidated amounts at the TransCanada level.

*“original signed by”*

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Tom Graham, CA  
Director, Corporate Finance  
Alberta Securities Commission