

Headnote

MI 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 62-104 *Take-Over Bids and Issuer Bids* – relief from the formal issuer bid requirements in NI 62-104 – issuer conducting a normal course issuer bid through the facilities of the TSX and NYSE – relief granted, provided that purchases are subject to a maximum aggregate limit mirroring the TSX NCIB rules.

Applicable Legislative Provisions

National Instrument 62-104 *Take-Over Bids and Issuer Bids*, Part 2 and s. 6.1

Citation: Re Ovintiv Inc., 2022 ABASC 21

Date: 20220309

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
Ovintiv Inc. (the **Filer**)

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that the requirements contained in the Legislation relating to issuer bids (the **Issuer Bid Requirements**) shall not apply to purchases of the Filer's common shares (the **Common Shares**) made by the Filer through the facilities of the New York Stock Exchange (the **NYSE**) and other United States-based trading systems (such trading systems, together with NYSE, the **U.S. Markets**) pursuant to the Current Bid (as defined below) and any subsequent normal course issuer bid by the Filer (such bids, the **Filer NCIBs**, and such exemption, 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 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, the Northwest Territories, Yukon 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 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 incorporated under the laws of the State of Delaware, with its head office in Denver, Colorado. The Alberta Securities Commission was selected as principal regulator because the primary corporate offices of the Filer and its Canadian subsidiaries are located in the Province of Alberta.
2. The Filer and its subsidiaries carry on the business formerly conducted by Encana Corporation (**Encana**). The Filer migrated out of Canada and became a Delaware corporation, domiciled in the United States, following a series of reorganization transactions (the **Reorganization**) that resulted in the Filer acquiring all of the issued and outstanding common shares of Encana to become the ultimate parent company of Encana and its subsidiaries.
3. The Filer is a reporting issuer in all provinces and territories of Canada and is not in default of securities legislation in any jurisdiction of Canada.
4. The Filer is a U.S. issuer, and as such, is eligible to use the multijurisdictional disclosure system established by National Instrument 71-101 *The Multijurisdictional Disclosure System* (**NI 71-101**). The Filer is also an SEC foreign issuer under National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (**NI 71-102**) and relies on and complies with the exemptions from Canadian continuous disclosure requirements afforded to SEC foreign issuers under Part 4 of NI 71-102.
5. The Common Shares are registered under the 1934 Act. The Filer is subject to and is in compliance with all requirements applicable to it imposed by the United States Securities and Exchange Commission, the 1933 Act, the 1934 Act, the United States *Sarbanes-Oxley Act of 2002* and the rules of the NYSE.
6. The Filer's authorized capital stock consists of 750,000,000 Common Shares with par value \$0.01 per share, and 25,000,000 shares of preferred stock, with par value \$0.01 per share (**Preferred Shares**). As of January 31, 2022, there were 257,875,962 Common Shares and no Preferred Shares outstanding.
7. The Common Shares are listed on the NYSE and the Toronto Stock Exchange (the **TSX**) under the symbol "OVV".

8. On September 28, 2021, the Filer announced that the TSX had authorized it to make normal course issuer bid purchases of its shares through the facilities of the TSX and U.S. Markets (the **2021 Bid**) pursuant to and subject to the requirements of the by-laws, regulations and policies of the TSX relating to normal course issuer bids (the **TSX NCIB Rules**).
9. On September 28, 2021, the Filer announced that the TSX had accepted the Filer's notice of intention to implement a normal course issuer bid (the **Current Notice**) for the 12-month period ending September 30, 2022, to purchase up to 26,048,261 Common Shares, representing 10% of the Filer's public float of Common Shares (the **Current Bid**). The Current Notice specifies that purchases under the Current Bid will be made through the facilities of both the TSX and the U.S. Markets.
10. Issuer bid purchases made in the normal course through the facilities of the TSX are, and will be, conducted in reliance upon the exemption from the Issuer Bid Requirements set out in subsection 4.8(2) of National Instrument 62-104 *Take-Over Bids and Issuer Bids* (**NI 62-104**, and such exemption, the **Designated Exchange Exemption**). The Designated Exchange Exemption provides that an issuer bid made in the normal course through the facilities of a designated exchange is exempt from the Issuer Bid Requirements if the bid is made in accordance with the bylaws, rules, regulations and policies of that exchange. The TSX is a designated exchange for the purposes of the Designated Exchange Exemption.
11. The TSX NCIB Rules are set out in sections 628 to 629.3 of Part VI of the TSX Company Manual. They permit a listed issuer to acquire, over a 12-month period commencing on the date specified in a Notice of Intention to Make a Normal Course Issuer Bid (a **Notice**), up to the greater of (a) 10% of the public float on the date of acceptance of the Notice, or (b) 5% of such class of securities issued and outstanding on the date of acceptance of the Notice by the TSX.
12. Other than purchases made pursuant to Proposed Bids (as defined below) in reliance on this decision, purchases under issuer bids made in the normal course through U.S. Markets and alternative trading systems in Canada are, and will be, conducted in reliance upon the exemption from the Issuer Bid Requirements set out in subsection 4.8(3) of NI 62-104 (**Other Published Markets Exemption**). The Other Published Markets Exemption provides that an issuer bid made in the normal course on a published market, other than a designated exchange, is exempt from the Issuer Bid Requirements if, among other things, the bid is for not more than 5% of the outstanding securities of a class of securities of the issuer, and the aggregate number of securities acquired in reliance on the Other Published Markets Exemption by the issuer and any person acting jointly or in concert with the issuer within any 12-month period does not exceed 5% of the securities of that class outstanding at the beginning of the 12-month period.
13. Purchases made pursuant to the Current Bid over the U.S. Markets are not exempt under the Designated Exchange Exemption, as the U.S. Markets are not recognized as "designated exchanges" for the purpose of the Designated Exchange Exemption.

14. As a result, purchases made pursuant to the Current Bid on the U.S Markets cannot exceed 5% of the issued and outstanding Common Shares of the Filer.
15. As at January 31, 2022, the Filer has purchased an aggregate of 3,852,148 Common Shares under the Current Bid. Of those 3,852,148 Common Shares, 3,127,907 Common Shares were purchased on the NYSE, 723,341 Common Shares were purchased on the TSX, and 900 Common Shares were purchased on published markets in Canada other than the TSX. Accordingly, the Filer has purchased approximately 1.48% of its issued and outstanding Common Shares at the commencement of the Current Bid, or approximately 81.2% of the Common Shares purchased under the Current Bid, in reliance on the Other Published Markets Exemption.
16. The Filer's trading volumes on the U.S. Markets are significantly greater than its trading volumes on the TSX and other Canadian trading systems (such trading systems, together with the TSX, the **Canadian Markets**). For the twelve months ended January 31, 2022, an aggregate of 909,394,545 Common Shares were traded over the Canadian Markets and the U.S. Markets, with trading volumes having occurred as follows:
 - (a) 104,941,459 Common Shares (or approximately 11.5% of total aggregate trading) over the facilities of the TSX;
 - (b) 65,877,326 Common Shares (or approximately 7.2% of total aggregate trading) over the Canadian Markets other than the TSX; and
 - (c) 738,575,740 Common Shares (or approximately 81.2% of total aggregate trading) over U.S. Markets.
17. As a much higher volume of Common Shares currently trades over the U.S. Markets relative to the TSX, the Filer wishes to have the ability to make repurchases in connection with the Current Bid and any normal course issuer bids that may be implemented by the Filer over the U.S. Markets (collectively, the **Proposed Bids**) in excess of the maximum allowable in reliance on the Other Published Markets Exemption.
18. The Proposed Bids will be effected in accordance with the safe harbour provided by Rule 10b-18 under the 1934 Act and any applicable by-laws, rules, regulations or policies of the U.S. published market through which the purchases are carried out (collectively the **Applicable U.S. Rules**).
19. The Applicable U.S. Rules require that all purchases made by the Filer through the U.S. Markets:
 - (a) be made through only one broker or dealer in any one day;
 - (b) generally, not be made at the opening of the market on the NYSE or within ten minutes of close on the NYSE;
 - (c) not be made at prices higher than the highest published independent bid or last reported independent transaction price on the NYSE (whichever is higher); and

- (d) be in an amount that does not exceed, in any one day, an aggregate amount equal to 25% of the average daily trading volume over the U.S. Markets, calculated in accordance with Rule 10b-18 (provided one block purchase per week may be effected in compliance with Rule 10b-18(b)(4)).
- 20. Purchases of Common Shares by the Filer of up to 10% of the public float on U.S. Markets are permitted under the Applicable U.S. Rules.
- 21. There is no aggregate limit on the number of Common Shares that may be purchased by the Filer through the facilities of the U.S. Markets which are purchased in compliance with Applicable U.S. Rules.
- 22. The Filer believes that the Proposed Bids are in the best interests of the Filer.
- 23. The purchase of Common Shares under the Proposed Bids will not adversely affect the Filer or the rights of any of the Filer's security holders and they will not materially affect control of the Filer.
- 24. No other exemptions exist under the Legislation that would permit the Filer to continue to make purchases pursuant to the Proposed Bids through the U.S. Markets on an exempt basis once the Filer has purchased, within a 12-month period, 5% of the outstanding Common Shares in reliance on the Other Published Markets Exemption.

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 a U.S. issuer and an SEC foreign issuer;
- (b) the Proposed Bids are permitted under the Applicable U.S. Rules, and are established and conducted in accordance and compliance with the Applicable U.S. Rules;
- (c) the Filer discloses, in each Notice accepted by the TSX in respect of a Filer NCIB under which a Proposed Bid may be made, that purchases under such Filer NCIB will also be effected through the U.S. Markets;
- (d) the Exemption Sought applies only to the acquisition of Common Shares by the Filer pursuant to a Proposed Bid commenced within 36 months of the date of this decision;
- (e) purchases of Common Shares under a Proposed Bid in reliance on this decision shall only be made in compliance with Part 6 (Order Protection) of National Instrument 23-101 *Trading Rules*;

- (f) the Filer sets out the Exemption Sought and conditions applicable thereto in its first quarterly report following the Exemption Sought being granted and thereafter, prior to purchasing Common Shares under a Proposed Bid in reliance on this decision (other than purchases made in respect of the Current Bid), in a press release issued and filed by the Filer;
- (g) the Filer does not acquire Common Shares in reliance on the Other Published Markets Exemption if the aggregate number of Common Shares purchased by the Filer, and any person or company acting jointly or in concert with the Filer, in reliance on this decision and the Other Published Markets Exemption within any period of 12 months exceeds 5% of the outstanding Common Shares on the first day of such 12-month period; and
- (h) the aggregate number of Common Shares purchased pursuant to a Proposed Bid in reliance on this decision, the Designated Exchange Exemption and the Other Published Market Exemption does not exceed, over the 12-month period specified in the Notice in respect of the relevant Proposed Bid, 10% of the public float as specified in such Notice.

“original signed by”

Timothy Robson

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Alberta Securities Commission