

ALBERTA SECURITIES COMMISSION

ORDER

Citation: Re Suncor Energy Inc., 2022 ABASC 120

Date: 20220919

Suncor Energy Inc.

Background

1. Suncor Energy Inc. (**Suncor**) has applied to the Alberta Securities Commission (the **Commission**) for an order under section 17 of Alberta Securities Commission Rule 72-501 *Distributions to Purchasers Outside Alberta* (**ASC Rule 72-501**) exempting Suncor from the requirement in subsection 16(1) of ASC Rule 72-501 to file a report of exempt distribution pursuant to each distribution by Suncor in the United States (**US**) of certain short-term promissory notes (the **US Notes**) under its commercial paper program in the US (the **US Commercial Paper Program**).

Interpretation

2. Terms defined or interpreted in ASC Rule 72-501, the *Securities Act* (Alberta) or in National Instrument 14-101 Definitions have the same meaning if used in this order, unless otherwise defined herein.

Representations

3. This order is based on the following representations by Suncor:
 - (a) Suncor is a corporation existing under the *Canada Business Corporations Act* and its registered and head office is located in Calgary, Alberta.
 - (b) Suncor is a reporting issuer in all of the provinces and territories of Canada and is not in default of securities legislation in any jurisdiction of Canada. Suncor is also subject to the periodic reporting requirements of the 1934 Act and utilizes the Multijurisdictional Disclosure System between the US and Canada to satisfy its filing requirements thereunder.
 - (c) Suncor's common shares are listed on the Toronto Stock Exchange and the New York Stock Exchange.
 - (d) Suncor implemented the US Commercial Paper Program in 2011, which involves the issuance of US Notes, maturing not more than 365 days from the respective dates of issuance thereof, and the sale from time to time of US Notes to investors in the US who participate in the US commercial paper market in compliance with applicable US federal securities law.
 - (e) The US Notes issued under the US Commercial Paper Program are not qualified for distribution in Canada and are not sold to persons resident in Canada.

- (f) As Suncor is and will be distributing US Notes under the US Commercial Paper Program from Alberta, the prospectus requirement will, absent an exemption, apply to the distribution.
- (g) Suncor previously relied on the commercial paper exemption in section 2.35 of National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**) for issuances of the US Notes.
- (h) The US Notes currently have designated ratings of "A-2 (Global Scale)" from S&P Global Ratings Canada and "P-2" from Moody's Investor Services Inc. The US Notes are not rated by Fitch Ratings, Inc. or DBRS Limited.
- (i) Suncor is unable to rely on the exemption from the prospectus requirement under section 2.35 of NI 45-106 for the distribution of the US Notes because the US Notes do not satisfy the prescribed rating requirements in subsection 2.35(1)(b) of NI 45-106.
- (j) Suncor meets the requirements of the prospectus exemption in section 4 of ASC Rule 72-501, as both (a) the US Commercial Paper Program is and will be conducted on a private placement basis and is therefore not required to be registered under the 1933 Act; and (b) Suncor is and will be a reporting issuer in all provinces and territories of Canada immediately preceding any distribution of US Notes under the US Commercial Paper Program.
- (k) Subsection 16(1) of ASC Rule 72-501 requires that an issuer that relies on the exemption in section 4 of ASC Rule 72-501 must file a Form 45-106F1 Report of Exempt Distribution, as modified by subsection 16(3) of ASC Rule 72-501, no later than 10 days after the distribution (the **Reporting Requirement**).
- (l) Commercial paper programs that are exempt from the prospectus requirement under section 2.35 of NI 45-106 are not subject to a Reporting Requirement.
- (m) In the absence of the requested relief, Suncor will be required to comply with the Reporting Requirement subsequent to each distribution of US Notes under the US Commercial Paper Program. Given the frequency of issuances of US Notes under the US Commercial Paper Program, it is not practicable for Suncor to comply with the Reporting Requirement.

Decision

4. The undersigned, being satisfied that it would not be prejudicial to the public interest to do so, orders under section 17 of ASC Rule 72-501 that distributions by Suncor of US Notes pursuant to the US Commercial Paper Program are exempt from the Reporting Requirement.

“original signed by”

Denise Weeres

Director, Corporate Finance

Alberta Securities Commission