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Headnote

Securities Act, s. 3.2(1), s. 169 (4) – Designation as a reporting issuer – Confidentiality

Exemption Order

EnCana Corporation

Sections 3.2(1) and 169(4) of the Securities Act, R.S.B.C. 1996, c.418

Background

¶ 1 EnCana Corporation (the Filer or EnCana) has applied for the following:

1. a decision that as of the date of commencement of trading on a when-issued basis of the shares of IOCo (as defined herein) in the When-Issued Markets (as defined herein), IOCo is a reporting issuer in British Columbia (the RI Status); and
2. a decision (the Confidentiality Relief) that the application, this decision document and all other correspondence on behalf of the Filer with the Decision Maker in connection with the subject matter herein be held in confidence by the Decision Maker until the earliest of the following:
 - (a) the date on which a news release is issued by the Filer announcing that trading of IOCo Shares (as defined herein) in the When-Issued Markets will commence;
 - (b) the date on which the Filer advises the Decision Maker that there is no longer any need to hold the Confidential Materials in confidence; and
 - (c) 90 days after the date of this decision.

Representations

¶ 2 The Filer represents that:

EnCana Corporation

1. The Filer is a corporation amalgamated under the Canada Business Corporations Act (the CBCA).
2. The Filer's head office is located in Calgary, Alberta.
3. The Filer is a reporting issuer (or the equivalent) in British Columbia, Alberta, Saskatchewan Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia,

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Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Nunavut and Yukon and Ontario, is an electronic filer under National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (SEDAR) and is not in default of any requirements of the securities legislation in the jurisdictions.

4. The Filer's issued and outstanding common shares (the EnCana Shares) are listed for trading on the Toronto Stock Exchange (the TSX) and the New York Stock Exchange (the NYSE).

The Arrangement

5. On May 11, 2008, EnCana issued a news release that described its intention to split into two focused energy companies – one a natural gas company and the other an oil company. The working names of the two entities are GasCo and IOCo. GasCo will be a continuation of EnCana and will carry on business using the EnCana name.
6. Due to an unusually high level of uncertainty and volatility in the global debt and equity markets, EnCana announced on October 15, 2008 a revision to the original corporate reorganization schedule and delayed seeking shareholder and court approval for the transaction until clear signs of stability returned to the financial markets. On September 10, 2009 the board of directors of EnCana unanimously approved plans to proceed with the transaction.
7. The transaction will be implemented through a plan of arrangement (the Arrangement) under section 192 of the CBCA.
8. As a result of the Arrangement, the holders of EnCana shares (the Shareholders) will receive, in exchange for each EnCana Share currently held, one new common share in EnCana (a New EnCana Share) and one common share of IOCo (an IOCo Share). IOCo will undergo an amalgamation pursuant to a later step in the Arrangement as described herein.
9. The Filer will be required to obtain approval of the Arrangement from the Shareholders. In order to obtain such approval, the Filer must prepare and send an information circular in accordance with Form 51-102F5 (the Information Circular) to all Shareholders and hold a meeting of Shareholders (the Meeting). The Arrangement is expected to be completed as soon as practicable following the Meeting (the Effective Date). The Meeting is expected to be held on November 25, 2009. It is expected that the Information Circular will be mailed to Shareholders in late October, 2009. The Arrangement is anticipated to be completed on or about November 30, 2009.

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IOCo (Pre-Amalgamation)

10. IOCo was incorporated under the CBCA on September 24, 2008 as 7050372 Canada Inc. (IOCo).
11. The head office of IOCo is in Calgary, Alberta.
12. Prior to the Effective Date, IOCo will not have any material assets and will not have conducted any active business activities, other than in respect of the Arrangement.
13. Prior to the Effective Date, there will be no securities of IOCo outstanding and the securities of IOCo will not be listed on any exchange.
14. IOCo will not conduct any trades or engage in a distribution of securities prior to the Effective Date other than those contemplated under the Arrangement.
15. Prior to the Effective Date, and before the settlement of any trades in the When-Issued Markets (as defined herein), the disclosure in the Information Circular in respect of IOCo and the IOCo Assets (as defined herein), and the historical disclosure record of the Filer (which incorporates disclosure in respect of the IOCo Assets), will together provide a sufficient public record of information in respect of IOCo and the IOCo Assets.

IOCo Amalgamation

16. Cenovus Energy Inc. (Subco) is a wholly-owned, special purpose finance subsidiary of EnCana, continued under the CBCA.
17. Prior to the Effective Date, Subco will acquire from the Filer the businesses that will be carried on by IOCo, being principally the Integrated Oil Division and the Canadian Plains Division (the IOCo Assets).
18. Pursuant to the Arrangement, IOCo will amalgamate with Subco and the resulting amalgamated entity will be named Cenovus Energy Inc. (Cenovus).
19. Prior to the Effective Date, in the absence of an order granting Reporting Issuer status, IOCo (pre-amalgamation) will not be a reporting issuer (or equivalent).

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20. After the Effective Date, it is anticipated that the post-amalgamation entity Cenovus will be a reporting issuer (or the equivalent) in each of the provinces and territories on Canada.

When Issued Markets

21. It is expected that, commencing on a date determined by the TSX and the NYSE and subsequent to the mailing of the Information Circular to the Shareholders, the TSX and the NYSE will establish markets (the When-Issued Markets) to permit “if, as and when issued” trading of the IOCo Shares and New EnCana Shares to be issued to Shareholders on the Effective Date. Trading of IOCo Shares or New EnCana Shares in the When –Issued Markets will not commence until after the Information Circular has been filed on SEDAR.
22. The When-Issued Markets in essence will permit market participants to purchase and sell the IOCo Shares and New EnCana Shares prior to the completion of the Arrangement and the actual issuance of the IOCo Shares and New EnCana Shares under the Arrangement. Because IOCo Shares and New EnCana Shares will not yet have been issued, trading in the When-Issued Markets will involve trades in rights to acquire IOCo Shares and New EnCana Shares, respectively, such rights effectively constituting securities traded and distributed by participants who trade in the When-Issued Markets.
23. No trade will settle in the When-Issued Markets until the Arrangement has been completed. The completion and settlement of any trade of IOCo Shares or New EnCana Shares in the When-Issued Markets will be conditional upon the completion of the Arrangement on the basis described in the Information Circular and the issuance of the IOCo Shares or New EnCana Shares, respectively under the Arrangement.
24. Trades in respect of IOCo Shares and New EnCana Shares on the When-Issued Markets would be subject to the prospectus and registration requirements.
25. In the event that the Arrangement does not become effective, trading in respect of the IOCo Shares and the New EnCana Shares in the When-Issued Markets will cease at the direction of the TSX and the NYSE.
26. Any insider of the Filer who makes any trade of IOCo Shares or New EnCana Shares in the When-Issued Markets will file a report of such trade in the same manner as they would be required to do under the Legislation with respect to a trade of EnCana Shares.

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27. Any insider of IOCo, or anyone who will be an insider of IOCo upon completion of the Arrangement, who makes any trade in respect of an IOCo Share or a New EnCana Share in the When-Issued Markets will file a report of such trade in the same manner as they would be required to do under the Legislation as if the subject of such trade were a security of IOCo, unless such person files a report of the trade as an insider of EnCana.

Early Warning

28. The requirements under Part 5 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* (MI 62-104) that an acquiror issue a news release, file a report and refrain from purchasing additional securities for a specified period of time when it acquires beneficial ownership of, or the power to exercise control or direction over, an aggregate of 10% or more of the outstanding securities of a class of voting or equity securities of a reporting issuer, or securities convertible into such securities, and at certain times thereafter (the Early Warning Requirements) apply to the acquisition of shares of a reporting issuer.
29. The When-Issued Markets involve trades in rights to receive IOCo Shares and New EnCana Shares and therefore, under Section 1.8 of MI 62-104, purchasers in the When-Issued Markets are deemed to acquire the underlying securities, being the IOCo Shares or New EnCana Shares, as the case may be.
30. In order for the Early Warning Requirements to apply meaningfully to trading in the When-Issued Markets, it is necessary that an acquiror of IOCo Shares in the When-Issued Markets comply with the Early Warning Requirements as if the number of outstanding IOCo Shares for the purposes of calculating the applicable ownership thresholds under the Early Warning Requirements is determined by reference to the number of IOCo Shares that will be outstanding upon completion of the Arrangement, in accordance with the Arrangement.

Reporting Issuer Status

31. On the basis of the disclosure to be contained in the Information Circular in respect of IOCo and the IOCo Assets and the historical disclosure record of EnCana which incorporates disclosure in respect of the IOCo Assets, a sufficient public record of information will exist in respect of IOCo and the IOCo Assets.

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32. Although it is expected that Cenovus will become a reporting issuer on the Effective Date by virtue of the definition of “reporting issuer” in the Legislation, IOCo will not, pursuant to such definition, be a reporting issuer in any capacity prior thereto in the absence of a designation of reporting issuer status by the Decision Maker.
33. To ensure that MI 62-104 applies to IOCo and trades of the IOCo Shares in the When-Issued Markets, in a manner that provides the public with meaningful advance notice of such trades, it is necessary that IOCo be a reporting issuer.
34. In the event that the Arrangement does not become effective for any reason, EnCana will promptly file an application with the Decision Maker for an order or decision deeming IOCo to have ceased to be a reporting issuer or the equivalent under the Legislation.
35. In the event that EnCana determines not to proceed with the Arrangement, it will promptly issue a news release to that effect.

Order

¶ 3 Considering that it is not prejudicial to the public interest, the Commission orders that:

- (a) as of the date of commencement of trading on a when-issued basis of the IOCo Shares in the When-Issued Markets, IOCo is a reporting issuer in British Columbia provided that any trade in the When-Issued Markets that would cause an acquiror to acquire IOCo Shares in excess of 10% of the outstanding IOCo Shares will be a distribution unless the acquiror complies with MI 62-104 as if, for the purposes of section 5.2 of MI 62-104, the number of outstanding securities of IOCo is determined by reference to the number of IOCo Shares that will be outstanding upon completion of the Arrangement, in accordance with the terms of the Arrangement; and
- (b) the Confidentiality Relief is granted.

¶ 4 October 28, 2009

Martin Eady, CA,
Director, Corporate Finance
British Columbia Securities Commission