

Citation: 2024 BCSECCOM 377

### Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Takeover Bids and Issuer Bids - Exemption from the issuer bid requirements of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* - An issuer requires an exemption from all issuer bid requirements to acquire its own shares in connection with a negotiated agreement - The issuer will acquire securities as part of a commercial agreement; the acquisition is not an independent transaction in which the issuer is repurchasing its own securities from one securityholder in preference to other shareholders; the agreement was negotiated at arm's length between the issuer and the transferring securityholder; the value of the consideration being paid to the transferring securityholder will not exceed the market value of the securities being acquired by the issuer at the time of such acquisition

### Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, s. 114(2)  
Multilateral Instrument 62-104, Part 2

August 27, 2024

## Exemption Order

### Eco (Atlantic) Oil & Gas Ltd.

#### Section 114(2) of the *Securities Act*, R.S.B.C. 1996, c. 418 Section 6.1 of National Instrument 62-104 *Takeover Bids and Issuer Bids*

### Background

- ¶ 1 Eco (Atlantic) Oil & Gas Ltd. (the Filer) has applied to the British Columbia Securities Commission (the Commission) under section 114(2) of the *Securities Act* (British Columbia) (the Act) for an exemption from the issuer bid requirements of Part 2 of National Instrument 62-104 *Takeover Bids and Issuer Bids* (NI 62-104).

### Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* have the same meaning if used in this order, unless otherwise defined.

### Representations

- ¶ 3 The decision is based on the following facts represented by the Filer:
1. the Filer was incorporated under the *Business Corporations Act* (Ontario) and continued into British Columbia;
  2. the Filer's head office is located in Toronto, Ontario and its registered office is located in British Columbia;

3. the Filer is a reporting issuer in British Columbia, Alberta and Ontario and is not in default of securities legislation in any jurisdictions;
4. the authorized share capital of the Filer consists of an unlimited number of common shares (Common Shares); as of June 25, 2024, there were 370,173,680 issued and outstanding Common Shares and 53,406,531 outstanding warrants (Warrants); 20,000,000 Warrants are exercisable at \$1.00 per Common Share (Series A Warrants) through to May 11, 2025 and 33,406,531 Warrants are exercisable at \$0.56 per Common Share through to June 30, 2025 (Series B Warrants); all Warrants are currently “out of the money” and have no value;
5. the Common Shares are listed for trading on the TSX Venture Exchange (TSXV) under the symbol “EOG” and on the AIM Market of the London Stock Exchange under the symbol “ECO”; the Warrants are not listed on any stock exchange;
6. the Filer’s business focuses on the generation of shareholder value through high growth energy projects, primarily through identifying, acquiring, and exploring oil and gas assets;
7. Azinam Limited (the Filer Subco) is a wholly owned subsidiary of the Filer;
8. Africa Oil Corp. (Africa Oil) was incorporated under the *Business Corporations Act* (British Columbia); Africa Oil is a reporting issuer in British Columbia, Alberta and Ontario and its shares are listed on the Toronto Stock Exchange and Nasdaq Stockholm under the trading symbol “AOI”;
9. Africa Oil is an international oil and gas production and exploration company;
10. Africa Oil currently is the beneficial owner of 54,941,744 Common Shares (the Subject Shares), which, as of June 25, 2024, represents approximately 14.84% (Subject Share Percentage) of the issued and outstanding Common Shares, and is also a holder of 4,864,865 Series B Warrants (the Africa Warrants); the Subject Shares are shown on the books and records of the Corporation as being held in the name of Africa Oil at a location in the province of British Columbia; the Africa Warrants are shown on the books and records of the Filer as being held in the name of Africa Oil, and Africa Oil represented that beneficial ownership of the Africa Warrants is in the province of British Columbia;
11. Africa Oil SA Corp. (Africa Oil Subco) is a wholly owned subsidiary of Africa Oil;
12. the Filer, through the Filer Subco, holds an offshore petroleum license in South Africa being petroleum exploration number 3B/4B (the Block);
13. the Filer Subco presently holds a 20.00% Participating Interest in the Block; “Participating Interest” means an undivided share of ownership rights, obligations, title and interest in the Block;
14. Africa Oil SubCo holds a 26.25% Participating Interest in the Block;
15. on March 5, 2024, the Filer, Africa Oil and additional joint venture Block partners announced a farmout (the Farmout) to TotalEnergies EP South Africa B.V and QatarEnergy

International E&P LLC (the Block Partners); upon completion of the Farmout, which is expected to take place on August 27, 2024, the Filer Subco will hold a 6.25% Participating Interest in the Block (Subco Interest); the aggregate consideration for the Farmout is expected to be in the value of \$201,000,000 shared between all three joint venture partners pro rata to their transferred and retained interests, which equates to a value of \$5,440,000 per 1.0% of Participating Interest so transferred (Third Party Value);

16. on July 29, 2024, the Filer and Africa Oil have entered into an Assignment and Share Cancellation Agreement (the Agreement) under which the Filer Subco will exchange a direct 1.0% retained Participating Interest in the Block (Block Interest) to Africa Oil Subco in exchange for the return of the Subject Shares and the Africa Warrants to the Filer Subco (the Proposed Transaction);
17. the Block Interest is equal to 16% of the Subco Interest; the value of the Subject Shares as of July 29, 2024, being the deemed value of the Proposed Transaction, is equal to \$11,537,766; the net value of the consideration paid by the Filer for the Subject Shares is the value of the Block Interest, being \$5,440,000, based on the Third Party Value, which is the result of a previous unrelated arm's length transaction following a competitive process as described above;
18. the Filer will cancel the Subject Shares and the Africa Warrants after they are transferred to the Filer by the Filer SubCo;
19. the Proposed Transaction is conditional upon, among other things, receipt of acceptance by the TSXV and the Commission's exemption order and the consent of the Government of South Africa's Petroleum Agency and the Block Partners;
20. the Filer does not have any representatives on the board of directors of Africa Oil nor does it have the right to appoint any such representative;
21. Africa Oil has a member of its management (the Africa Rep) on the board of directors of the Filer (the Board); the Africa Rep is 1 of 9 directors, and was not present during deliberations regarding the Proposed Transaction by the Board;
22. Other than the ownership of the Subject Shares by Africa Oil, Africa Oil and the Filer are at arm's length to each other; the Proposed Transaction was agreed to by Africa Oil and the Filer following arm's length negotiations between them;
23. the Agreement received the approval of the independent directors of the Filer who reached the determination that the Block Interest being assigned to Africa Oil is equal to or less than the economic value represented by the Subject Shares in the Filer, because the Third Party Value paid, being \$5,440,000, is much less than the deemed value of the Proposed Transaction, which is equal to \$11,537,766; the fair market value of the Subject Shares is that which is established by the public market trading of the Common Shares;
24. the Board resolved that:

- (a) the transfer of the Block Interest and the cancellation of the Subject Shares is in the best interests of the Filer and its shareholders;
  - (b) the consideration deemed to be exchanged for the Subject Shares will not be greater than the market price, determined in accordance with section 1.11 of NI 62-104, of the Filer's shares on the TSXV on the date of the execution and delivery of the Agreement, and is a significant discount to the market price; and
  - (c) the cancellation of the Subject Shares will not adversely affect the financial position of the Filer and will increase the value of the equity ownership of its other shareholders;
25. the purpose of the Proposed Transaction is not to give preferential treatment to Africa Oil or provide a method for the Filer to purchase the Subject Shares but rather to facilitate the sale of the Block Interest and realize the value of such interest for the benefit of the Filer and its shareholders;
26. shareholders of the Filer not offered the opportunity to sell their shares to the Filer under the Proposed Transaction are otherwise entitled to sell their shares into the market for cash proceeds;
27. the material elements of the Proposed Transaction would take place outside Canada, however, the acquisition of Subject Shares is an "issuer bid" by the Filer under NI 62-104 because the Proposed Transaction will result in an indirect offer by the Filer to acquire or redeem its securities, and it is impossible for the Filer to rely on any exemptions from the issuer bid requirements under NI 62-104; and
28. no shareholder, including Africa Oil, will receive cash consideration for the Filer's acquisition of the Subject Shares and it is impossible for the Filer to acquire its shares from its remaining shareholders on the same terms.

**Order**

- ¶ 4 Considering that to do so would not be prejudicial to the public interest, the Commission orders under section 114(2) of the Act that the Proposed Transaction is exempt from Part 2 of NI 62-104.

John Hinze  
Director, Corporate Finance  
British Columbia Securities Commission