



# Key developments in Canadian public markets law for the oil & gas industry - third quarter 2014

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The last few months have seen a number of regulatory developments in Canadian capital markets that may specifically affect companies in the oil and gas industry. Below, we've compiled a list of key legal developments since July 1, 2014 that may be of particular interest, along with corresponding links to our securities blog.

## Capital Markets

- TSXV approves the completion of three oil and gas team-led recapitalizations of shells by written consent of a majority of shareholders (five in total since December 2013).
- TSX **circuit-breaker rules are expanded** to all actively traded stocks (more than 500 trades a day and average \$1.2M in value per day).

## Continuous Disclosure

- Canadian regulators **adopt rules** for the disclosure of gender diversity and other board composition issues by non-venture issuers. These requirements apply in the 2015 disclosure cycle.
- Canadian regulators **announce** the outcome of the joint continuous disclosure review of more than two hundred issuers — key issues included revenue recognition in financial statements and non-GAAP measures in MD&A.
- TSX publishes **Electronic Communications Disclosure Guidelines** and provides **guidance** on using social media — confirms the importance of factual statements that avoid selection disclosure.
- **Amendments** to the rules governing auditor oversight provide for disclosure of CPAB remedial orders, certain changes to rules involving foreign audit firms and other procedural matters.
- The ASC decision in Haggerty confirms that an “impression, speculation or abstract possibility” does not constitute material information.

## Activism & Litigation

- Canadian regulators **confirm** that they will not require reporting of ownership of 5% of shares — the reporting threshold will stay at 10%.
- Activist **attempts** in Partners REIT to secure proxy votes in contested board election by making tender offer for 10% of shares and demanding proxies on all tendered shares.

- SCC confirms that the settlement of regulatory proceedings does not bar class action suits for the same conduct.
- Delaware Court of Chancery **offers support** to board discretion to adopt a rights plan in the face of activism in Third Point.

## M&A

- Canadian regulators **propose** adopting rules that allow targets the option to require bidders to leave bids open for 120 days and imposing minimum 50% tender before take-up — rulemaking to follow.
- BCSC's reasons in Hud Bay **confirm** that the right of a shareholder to tender bid remains paramount in M&A regulation — supporting the decision to leave a rights plan in place for 155 days.
- TSX **approves rules** that allow buyers to increase headroom under security compensation plans for employees of the target without shareholder approval.
- Delaware Court of Chancery **offers cautions** on the management of conflicts in M&A transactions involving directors and financial advisors in Rural Metro.

## Regulatory

- OSC can now **examine** all records of a market participant as part of an enforcement action (not just records which must be retained under law).
- Canada, Ontario, BC, Saskatchewan, New Brunswick and PEI **continue** to advance a co-ordinated Canadian securities regulatory authority, which could be operating next year.

## Notable Transactions

- Kufpec's purchase of 30% of Chevron's Duvernay assets for US\$1.5 billion
- Encana's purchase of Athlon Energy for US\$5.9 billion
- Pembina's purchase of the Vantage pipeline and midstream assets from Riverstone for US\$650 million
- Enbridge Income Fund's purchase of assets from Enbridge for \$1.8 billion
- Apollo's formation of Jupiter Resources and completion of the purchase of Encana's Bighorn assets for US\$1.9 billion
- Ember Resources' purchase of assets from Encana for \$605 million

## Key Stikeman Elliott Publications

- **Oil and Gas Trends in Q1 and Q2 2014** (July 3, Securities Blog)
- **Review of 2014 H1 Oil & Gas Public M&A Deal Terms** (August 27, Energy Blog)
- **Review of Automatic Trading Plan Considerations** (August 6, Securities Blog)
- Discussion of Partners REIT issues (**August 28** and **September 19**, Securities Blog )
- **Review** of the Delaware decision in Rural Metro (August 22, Securities Blog)

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