

Americas Credit Derivatives Determinations Committee Statement – March 9, 2020

Encana Corporation Successor Determination

DC Issue Number 2020013001

The Americas DC considered the General Interest Question relating to Encana Corporation (**Encana**) (DC Issue Number 2020013001) under (a) the 2014 ISDA Credit Derivatives Definitions (the **2014 Definitions**) and (b) the 2003 ISDA Credit Derivatives Definitions, as supplemented by the 2009 ISDA Credit Derivatives Determinations Committees, Auction Settlement and Restructuring Supplement (the **Updated 2003 Definitions**, and together with the 2014 Definitions, the **Definitions**), each as published by the International Swaps and Derivatives Association, Inc. (**ISDA**), and Resolved on February 14, 2020 that Ovintiv Inc. and Ovintiv Canada ULC (f/k/a Encana Corporation) each became a Successor to Encana under both the 2014 Definitions and the Updated 2003 Definitions.¹

The Americas DC is providing the following statement in connection with its Successor determination.

1. SUMMARY OF EVENTS

- (a) Effective January 24, 2020, Encana completed reorganization transactions pursuant to which Ovintiv Inc. became the parent company of Encana.² In connection with the reorganization transactions, Encana changed its name to Ovintiv Canada ULC.³
- (b) The Encana Notes
 - (i) The Americas DC identified the following notes issued by Encana that were outstanding as of January 25, 2020 (the **Encana Notes**)⁴:
 - (A) USD 600mm 3.90% notes due November 15, 2021;
 - (B) USD 300mm 8.125% notes due September 15, 2030;
 - (C) USD 350mm 7.20% notes due November 1, 2031;
 - (D) USD 500mm 7.375% notes due November 1, 2031;
 - (E) USD 750mm 6.50% notes due August 15, 2034;
 - (F) USD 462.26mm 6.625% notes due August 15, 2037;
 - (G) USD 504.82mm 6.50% notes due February 1, 2038; and
 - (H) USD 243.97 5.15% notes due November 15, 2041.

¹ Each capitalized term used but not defined in this Statement shall have the meaning given to it in (a) the DC Rules or (b) the Definitions, as applicable.

² Ovintiv Inc., Form 8-K 12B dated January 24, 2020 (<https://www.sec.gov/Archives/edgar/data/1792580/000119312520014164/d860981d8k12b.htm>).

³ Ovintiv Inc., Form 8-K dated January 27, 2020 (<https://www.sec.gov/Archives/edgar/data/1792580/000119312520016081/d876862d8k.htm>).

⁴ Note: USD outstanding principal balances included below were determined via Bloomberg screenshot as of February 6, 2020.

- (ii) In connection with Encana's reorganization, pursuant to certain supplemental indentures dated January 24, 2020, Ovintiv Inc. assumed obligations of Encana and succeeded to and was substituted for Encana as issuer under the indentures relating to the Encana Notes.⁵
 - (iii) Ovintiv Canada ULC (f/k/a Encana) entered into a supplemental indenture on January 27, 2020 pursuant to which Ovintiv Canada ULC agreed to guarantee Ovintiv Inc.'s obligations as issuer under the Encana Notes (the **January 27 Ovintiv Canada ULC Guarantee**).⁶
- (c) The Newfield Notes
- (i) The Americas DC also identified certain notes of Newfield Exploration Company (**Newfield**), a wholly owned subsidiary of Encana, that were guaranteed by Encana as of January 24, 2020:
 - (A) USD 750mm 5.75% senior notes due January 30, 2022;
 - (B) USD 1bn 5.625% senior notes due July 1, 2024; and
 - (C) USD700mm 5.375% senior notes due January 1, 2026.
 - (ii) On January 27, 2020, Ovintiv Inc., Newfield and Ovintiv Canada ULC (f/k/a Encana) entered into a sixth supplemental indenture pursuant to which (a) Ovintiv Inc. became a new guarantor on the Newfield Notes; and (b) Ovintiv Canada ULC (f/k/a Encana) remained an existing guarantor on the Newfield Notes pursuant to a guarantee initially dated as of March 1, 2019 (the **Existing Newfield Guarantee**).⁷

2. APPROACH UNDER THE DEFINITIONS

Under both the 2014 Definitions and the Updated 2003 Definitions, the determination of a Successor focuses on the proportion of "Relevant Obligations" that an entity "succeeds" to on a given date.

The Americas DC determined, based on the available Eligible Information, that there was no evidence of a plan contemplating a series of successions to some or all of the Relevant Obligations of Encana, and therefore no "Steps Plan" was relevant to the analysis.⁸ Instead, the Americas DC identified January 24, 2020 as (a) the relevant "legally effective date" of the potential Succession Event for purposes of the Updated 2003 Definitions⁹ and (b) the relevant potential Succession Date for purposes of the 2014 Definitions¹⁰.

3. ANALYSIS UNDER THE 2014 DEFINITIONS

- (a) Under the 2014 Definitions, an entity "succeeds" to a Reference Entity and its Relevant Obligations when it "(i) assumes or becomes liable for such Relevant Obligations whether by operation of law or pursuant to any agreement [...] or (ii) issues Bonds or incurs Loans (the "Exchange Bonds or Loans") that are exchanged for Relevant Obligations, and in either case the Reference Entity is not thereafter a direct obligor or a provider of a Relevant Guarantee with respect to such Relevant Obligations or such

⁵ Ovintiv Inc., Form 8-K dated January 24, 2020 (<https://www.sec.gov/Archives/edgar/data/1792580/000119312520016076/d869065d8k.htm>).

⁶ Ovintiv Inc., Form 8-K dated January 27, 2020 (<https://www.sec.gov/Archives/edgar/data/1792580/000119312520016081/d876862d8k.htm>).

⁷ Ovintiv Inc., Form 8-K dated January 27, 2020 (<https://www.sec.gov/Archives/edgar/data/1792580/000119312520016081/d876862d8k.htm>).

⁸ Section 2.2(i) of the 2014 Definitions; note that the Updated 2003 Definitions does not contain an analogous concept.

⁹ See Section 2.2(b) of the Updated 2003 Definitions.

¹⁰ See Section 2.2(i) of the 2014 Definitions (describing the "Succession Date" as the "legally effective date of an event in which one or more entities succeed to some or all of the Relevant Obligations of the Reference Entity").

Exchange Bonds or Loans, as applicable".¹¹ "Relevant Obligations" are defined to mean "the Obligations of the Reference Entity which fall within the Obligation Category "Bond or Loan" and which are outstanding immediately prior to the Succession Date".¹² The term "Obligation" may include "obligations of the Reference Entity (either directly or as provider of a Relevant Guarantee)".¹³

- (b) The Americas DC determined that the Encana Notes constituted Relevant Obligations of Encana as of January 24, 2020. The Americas DC further determined that the Existing Newfield Guarantee constituted a Qualifying Affiliate Guarantee (and therefore a Relevant Guarantee) for purposes of the 2014 Definitions as of January 24, 2020, and therefore the Newfield Notes constituted a Relevant Obligation of Encana as of such date. As a result, the Americas DC included both the Encana Notes and the Newfield Notes in the denominator of the Successor calculations under Section 2.2(a) of the 2014 Definitions.
- (c) The Americas DC determined that as of January 24, 2020, Ovintiv Canada ULC (f/k/a Encana) remained as the provider of a Relevant Guarantee under the Newfield Notes, and therefore Ovintiv Inc. did not "succeed" to the Newfield Notes on such date under the 2014 Definitions.¹⁴ The Americas DC also noted that Ovintiv Inc. did not guarantee the Newfield Notes until January 27, 2020. By contrast, the Americas DC determined that Ovintiv Inc. succeeded to the Encana Notes as of January 24, 2020.¹⁵ As a result, the Americas DC included only the Encana Notes in the numerator of the Successor calculations under Section 2.2(a) of the 2014 Definitions.
- (d) On the basis of the above, the Americas DC determined that Ovintiv Inc. succeeded to more than 25% of the Relevant Obligations of Encana, more than 25% of the Relevant Obligations of Encana remained with Ovintiv Canada ULC (f/k/a Encana), and therefore Section 2.2(a)(iv) of the 2014 Definitions applied. As a result, each of Ovintiv Inc. and Ovintiv Canada ULC (f/k/a Encana) were determined to be Successors, and the provisions of Section 2.2(n) of the 2014 Definitions¹⁶ applied to outstanding Credit Derivative Transactions that specified Encana as the Reference Entity.

¹¹ Section 2.2(d) of the 2014 Definitions.

¹² Section 2.2(f) of the 2014 Definitions.

¹³ Section 3.1(a) of the 2014 Definitions. Note further that under the Credit Derivatives Physical Settlement Matrix for North American Corporate / Standard North American Corporate Transaction Types, a Relevant Guarantee must be a Qualifying Affiliate Guarantee (see Section 3.22 of the 2014 Definitions). A Qualifying Affiliate Guarantee means a Qualifying Guarantee provided by the Reference Entity in respect of an Underlying Obligation of a Downstream Affiliate of the Reference Entity (see Section 3.27 of the 2014 Definitions).

¹⁴ See the definition of "succeed" at Section 2.2(d) of the 2014 Definitions:

For purposes of Section 2.2, "succeed" means, with respect to the Reference Entity and its Relevant Obligations, that an entity other than the Reference Entity (i) assumes or becomes liable for such Relevant Obligations whether by operation of law or pursuant to any agreement (including, with respect to a Reference Entity that is a Sovereign, any protocol, treaty, convention, accord, concord, entente, pact or other agreement), or (ii) issues Bonds or incurs Loans (the "Exchange Bonds or Loans") that are exchanged for Relevant Obligations, and ***in either case the Reference Entity is not thereafter a direct obligor or a provider of a Relevant Guarantee with respect to such Relevant Obligations*** or such Exchange Bonds or Loans, as applicable [emphasis added].

¹⁵ In connection with this determination, the Americas DC noted that the January 27 Ovintiv Canada ULC Guarantee (pursuant to which Ovintiv Canada ULC (f/k/a Encana) guaranteed the Encana Notes) was an upstream guarantee and hence did not constitute a Qualifying Affiliate Guarantee (and therefore was not a Relevant Guarantee). Therefore, although the definition of "succeed" in Section 2.2(d) of the 2014 Definitions provides that an entity only "succeeds" to the obligations of the Reference Entity if the Reference Entity is not "thereafter a provider of a Relevant Guarantee" with respect to such obligations, the presence of the January 27 Ovintiv Canada ULC Guarantee (if it were relevant on January 24, 2020, which the Americas DC determined it was not) should not be viewed as precluding Ovintiv Inc. from succeeding to the Encana Notes.

¹⁶ These provisions require, among other things, division of the existing Credit Derivative Transaction into multiple new Credit Derivative Transactions (in this case, one for Ovintiv Canada ULC (f/k/a Encana) and one for Ovintiv Inc.), with the Floating Rate Payer Calculation Amount (i.e., the notional) of the existing Credit Derivative Transaction distributed equally among such new Credit Derivative Transactions.

4. ANALYSIS UNDER THE UPDATED 2003 DEFINITIONS

- (a) Under the 2003 Definitions, an entity "succeeds" to a Reference Entity and its Relevant Obligations when it "(i) assumes or becomes liable for such Relevant Obligations (or, as applicable, obligations) whether by operation of law or pursuant to any agreement or (ii) issues Bonds that are exchanged for Relevant Obligations (or, as applicable, obligations), and in either case such Reference Entity is no longer an obligor (primarily or secondarily) or guarantor with respect to such Relevant Obligations (or, as applicable, obligations)".¹⁷ The America DC noted that while the 2014 Definitions will not treat an entity as succeeding to obligations if the Reference Entity remains obligated as provider of a Relevant Guarantee, the Updated 2003 Definitions will not treat an entity as succeeding to obligations if the Reference Entity remains obligated as a "guarantor" (irrespective of whether the guarantee is a Relevant Guarantee).
- (b) Notwithstanding the difference in the definition of "succeed" under the 2014 Definitions and Updated 2003 Definitions, as noted above, the Americas DC determined that the relevant date of analysis for the Succession Event under the Updated 2003 Definitions was January 24, 2020.¹⁸ As a result, the calculation under the Updated 2003 Definitions was the same as under the 2014 Definitions, each of Ovintiv Inc. and Ovintiv Canada ULC (f/k/a Encana) were determined to be Successors under Section 2.2(a)(iv) of the Updated 2003 Definitions, and the provisions of Section 2.2(e)¹⁹ of the Updated 2003 Definitions applied.

¹⁷ Section 2.2(c) of the Updated 2003 Definitions.

¹⁸ As noted above, the Americas DC did not identify Eligible Information that indicated a Steps Plan for purposes of the 2014 Definitions, and in any event, the Updated 2003 Definitions do not include a concept analogous to the "Steps Plan" under the 2014 Definitions.

¹⁹ These are substantively the same as Section 2.2(n) of the 2014 Definitions; see FN 16 and accompanying text.