

EXXON MOBIL CORP
Form S-4/A
May 20, 2010
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As filed with the Securities and Exchange Commission on May 20, 2010

Registration No. 333-164620

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

AMENDMENT NO. 3
TO
FORM S-4
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Exxon Mobil Corporation

(Exact Name of Registrant as Specified in Its Charter)

New Jersey
(State or Other Jurisdiction of
Incorporation or Organization)

2911
(Primary Standard Industrial
Classification Code Number)
5959 Las Colinas Boulevard

13-5409005
(I.R.S. Employer
Identification Number)

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Irving, Texas 75039-2298

(972) 444-1000

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

Patrick T. Mulva

Exxon Mobil Corporation

5959 Las Colinas Boulevard

Irving, Texas 75039-2298

(972) 444-1000

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent For Service)

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Approximate date of commencement of proposed sale of the securities to the public: As soon as practicable after the effective date of this registration statement and the effective time of the merger of ExxonMobil Investment Corporation (**Merger Sub**), a wholly owned subsidiary of Exxon Mobil Corporation (**ExxonMobil**), with and into XTO Energy Inc. (**XTO Energy**), as described in the Agreement and Plan of Merger dated as of December 13, 2009 among XTO Energy, ExxonMobil and Merger Sub.

If the securities being registered on this form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box. "

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act of 1933, as amended (the **Securities Act**), check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

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Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Securities Exchange Act of 1934 (the **Exchange Act**).

Large accelerated filer Accelerated filer
 Non-accelerated filer (Do not check if a smaller reporting company) Smaller reporting company

If applicable, place an X in the box to designate the appropriate rule provision relied upon in conducting this transaction:

Exchange Act Rule 13e-4(i) (Cross-Border Issuer Tender Offer)

Exchange Act Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)

CALCULATION OF REGISTRATION FEE

Title Of Each Class Of Securities To Be Registered	Amount To Be Registered(1)	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price(2)	Amount Of Registration Fee(3)
Common Stock, without par value	430,094,421	N/A	\$27,739,817,697	\$1,977,849(4)

- (1) Represents the maximum number of shares of common stock of ExxonMobil estimated to be issuable upon completion of the merger described in this proxy statement/prospectus, equal to the product of (i) the maximum number of shares of XTO Energy common stock that may be canceled and exchanged in the merger (based on 583,275,792 shares of XTO Energy common stock outstanding on January 22, 2010, 18,281,806 shares of XTO Energy common stock issuable pursuant to the exercise of XTO Energy options outstanding on January 22, 2010, 1,927,800 shares of XTO Energy common stock issuable pursuant to the exercise of XTO Energy warrants outstanding on January 22, 2010, 2,427,083 shares of XTO Energy common stock to be issued immediately prior to completion of the merger pursuant to certain grant agreements with the named executive officers of XTO Energy and 24,996 shares issued to XTO Energy's non-employee directors in February 2010 constituting such directors' annual equity grant), multiplied by (ii) the exchange ratio of 0.7098 of a share of ExxonMobil common stock for each share of XTO Energy common stock.
- (2) Estimated solely for the purpose of calculating the registration fee required by Section 6(b) of the Securities Act and calculated pursuant to Rules 457(f)(1) and 457(c) under the Securities Act. The proposed maximum aggregate offering price of the registrant's common stock was calculated based upon the market value of shares of XTO Energy common stock (the securities to be canceled in the merger) in accordance with Rule 457(c) and is equal to the product of (i) \$45.78, the average of the high and low prices per share of XTO Energy common stock on the New York Stock Exchange on January 26, 2010, multiplied by (ii) 605,937,477, the maximum number of shares of XTO Energy common stock that may be canceled and exchanged in the merger as of January 22, 2010.
- (3) Calculated pursuant to Section 6(b) of the Securities Act and SEC Fee Advisory #4 for Fiscal Year 2010 at a rate equal to \$71.30 per \$1,000,000 of the proposed maximum aggregate offering price.
- (4) Previously paid in connection with the initial filing of this Registration Statement on February 1, 2010 and the filing of Amendment No. 1 to this Registration Statement on March 24, 2010.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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Information contained herein is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This proxy statement/prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful.

PRELIMINARY SUBJECT TO COMPLETION DATED MAY 20, 2010

MERGER PROPOSAL YOUR VOTE IS VERY IMPORTANT

May 20, 2010

Dear XTO Energy Inc. Stockholder:

On December 13, 2009, XTO Energy Inc. and Exxon Mobil Corporation entered into a merger agreement that provides for XTO Energy to become a wholly owned subsidiary of ExxonMobil. The XTO Energy board of directors has determined that the merger and the merger agreement are advisable and in the best interests of XTO Energy and its stockholders and has approved the merger agreement and the merger.

If the merger is completed, each outstanding share of XTO Energy common stock will be converted into the right to receive 0.7098 shares of ExxonMobil common stock. Immediately following completion of the merger, it is expected that XTO Energy stockholders will own approximately 8% of the outstanding shares of ExxonMobil common stock, based on the number of shares of XTO Energy and ExxonMobil common stock outstanding, on a fully diluted basis, as of May 14, 2010. The common stock of each of ExxonMobil and XTO Energy is traded on the New York Stock Exchange under the symbols XOM and XTO, respectively.

We are holding a special meeting of stockholders on Friday, June 25, 2010 at 10:00 a.m., local time, in the Top of the Town Ballroom on the Twelfth Floor of The Fort Worth Club, 306 W. 7th Street, Fort Worth, Texas, to obtain your vote to adopt the merger agreement. Your vote is very important. The merger cannot be completed unless the holders of a majority of the outstanding shares of XTO Energy common stock vote for the adoption of the merger agreement at the special meeting.

The XTO Energy board of directors recommends that XTO Energy stockholders vote FOR the adoption of the merger agreement.

On behalf of the XTO Energy board of directors, I invite you to attend the special meeting. Whether or not you expect to attend the XTO Energy special meeting in person, we urge you to submit your proxy as promptly as possible through one of the delivery methods described in the accompanying proxy statement/prospectus.

In addition, we urge you to read carefully the accompanying proxy statement/prospectus (and the documents incorporated by reference into the accompanying proxy statement/prospectus) which includes important information about the merger agreement, the proposed merger, XTO Energy, ExxonMobil and the special meeting. **Please pay particular attention to the section titled Risk Factors beginning on page 27 of the accompanying proxy statement/prospectus.**

On behalf of the XTO Energy board of directors, thank you for your continued support.

Sincerely,

Bob R. Simpson

Chairman of the Board and Founder

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the securities to be issued under the accompanying proxy statement/prospectus or determined that the accompanying proxy statement/prospectus is accurate or complete. Any representation to the contrary is a criminal offense.

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The accompanying proxy statement/prospectus is dated May 20, 2010 and is first being mailed to the stockholders of XTO Energy on or about May 24, 2010.

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ADDITIONAL INFORMATION

The accompanying document is the proxy statement of XTO Energy Inc. for its special meeting of stockholders and the prospectus of Exxon Mobil Corporation for the shares of Exxon Mobil Corporation common stock to be issued as consideration for the merger. The accompanying proxy statement/prospectus incorporates important business and financial information about Exxon Mobil Corporation and XTO Energy Inc. from documents that are not included in or delivered with the accompanying proxy statement/prospectus. This information is available to you without charge upon your request. You can obtain documents incorporated by reference into the accompanying proxy statement/prospectus by requesting them in writing or by telephone from Exxon Mobil Corporation or XTO Energy Inc. at the following addresses and telephone numbers:

ExxonMobil Shareholder Services
c/o Computershare Trust Company, N.A.
P.O. Box 43078
Providence, Rhode Island 02940-3078

XTO Energy Inc.
810 Houston Street
Fort Worth, Texas 76102-6298
Attn: Investor Relations

Telephone: (800) 252-1800 (within the U.S. and Canada)

Telephone: (817) 870-2800 or (800) 299-2800

Telephone: (781) 575-2058 (outside the U.S. and Canada)

In addition, if you have questions about the merger or the accompanying proxy statement/prospectus, would like additional copies of the accompanying proxy statement/prospectus or need to obtain proxy cards or other information related to the proxy solicitation, please contact Innisfree M&A Incorporated, the proxy solicitor for XTO Energy Inc., toll-free at (877) 750-5836 (banks and brokers call collect at (212) 750-5833). You will not be charged for any of these documents that you request.

If you would like to request documents, please do so by June 18, 2010 in order to receive them before the special meeting.

See [Where You Can Find More Information](#) beginning on page 131 of the accompanying proxy statement/prospectus for further information.

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810 Houston Street

Fort Worth, Texas 76102

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

To the Stockholders of XTO Energy Inc.:

Notice is hereby given that a special meeting of stockholders of XTO Energy Inc., which is referred to as XTO Energy, a Delaware corporation, will be held on Friday, June 25, 2010 at 10:00 a.m., local time, in the Top of the Town Ballroom on the Twelfth Floor of The Fort Worth Club, 306 W. 7th Street, Fort Worth, Texas, solely for the following purposes:

To consider and vote on a proposal to adopt the Agreement and Plan of Merger, dated as of December 13, 2009 (as it may be amended from time to time), among Exxon Mobil Corporation, which is referred to as ExxonMobil, ExxonMobil Investment Corporation, a wholly owned subsidiary of ExxonMobil, and XTO Energy, a copy of which is attached as Annex A to the proxy statement/prospectus accompanying this notice; and

To approve the adjournment of the XTO Energy special meeting, if necessary to solicit additional proxies if there are not sufficient votes to adopt the merger agreement at the time of the special meeting.

These items of business, including the merger agreement and the proposed merger, are described in detail in the accompanying proxy statement/prospectus. **The XTO Energy board of directors has determined that the merger agreement and the transactions contemplated by the merger agreement, including the merger, are advisable and in the best interests of XTO Energy and its stockholders and recommends that XTO Energy stockholders vote FOR the proposal to adopt the merger agreement and FOR the adjournment of the XTO Energy special meeting if necessary to solicit additional proxies in favor of such adoption.**

Only stockholders of record as of the close of business on May 3, 2010 are entitled to notice of the XTO Energy special meeting and to vote at the XTO Energy special meeting or at any adjournment or postponement thereof. A list of stockholders entitled to vote at the special meeting will be available in our offices located at 810 Houston Street, Fort Worth, Texas 76102, during regular business hours for a period of no less than ten days before the special meeting and at the place of the special meeting during the meeting.

Adoption of the merger agreement by the XTO Energy stockholders is a condition to the merger and requires the affirmative vote of holders of a majority of the shares of XTO Energy common stock outstanding and entitled to vote thereon. Therefore, your vote is very important. **Your failure to vote your shares will have the same effect as a vote AGAINST the adoption of the merger agreement.**

By order of the board of directors,

VIRGINIA N. ANDERSON

Secretary

Fort Worth, Texas

May 20, 2010

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YOUR VOTE IS IMPORTANT!

WHETHER OR NOT YOU EXPECT TO ATTEND THE XTO ENERGY SPECIAL MEETING IN PERSON, WE URGE YOU TO SUBMIT YOUR PROXY AS PROMPTLY AS POSSIBLE (1) THROUGH THE INTERNET, (2) BY TELEPHONE OR (3) BY MARKING, SIGNING AND DATING THE ENCLOSED PROXY CARD AND RETURNING IT IN THE POSTAGE-PAID ENVELOPE PROVIDED. You may revoke your proxy or change your vote at any time before the XTO Energy special meeting. If your shares are held in the name of a bank, broker or other fiduciary, please follow the instructions on the voting instruction card furnished to you by such record holder.

We urge you to read the accompanying proxy statement/prospectus, including all documents incorporated by reference into the accompanying proxy statement/prospectus, and its annexes carefully and in their entirety. If you have any questions concerning the merger, the special meeting or the accompanying proxy statement/prospectus, would like additional copies of the accompanying proxy statement/prospectus or need help voting your shares of XTO Energy common stock, please contact XTO Energy's proxy solicitor:

Innisfree M&A Incorporated

501 Madison Avenue, 20th Floor

New York, New York 10022

Stockholders, call toll-free: (877) 750-5836

Banks and brokers, call collect: (212) 750-5833

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QUESTIONS AND ANSWERS ABOUT THE MERGER AND THE SPECIAL MEETING

The following are some questions that you, as a stockholder of XTO Energy, may have regarding the merger and the special meeting, and brief answers to those questions. You are urged to read carefully this proxy statement/prospectus and the other documents referred to in this proxy statement/prospectus in their entirety because this section may not provide all of the information that is important to you with respect to the merger and the special meeting. Additional important information is contained in the annexes to, and the documents incorporated by reference into, this proxy statement/prospectus.

Q: Why am I receiving this document?

A: ExxonMobil and XTO Energy have agreed to a merger, pursuant to which XTO Energy will become a wholly owned subsidiary of ExxonMobil and will cease to be a publicly held corporation. In order to complete the merger, XTO Energy stockholders must vote to adopt the merger agreement, and XTO Energy is holding a special meeting of stockholders solely to obtain such stockholder approval. In the merger, ExxonMobil will issue shares of ExxonMobil common stock as the consideration to be paid to holders of XTO Energy common stock.

This document is being delivered to you as both a proxy statement of XTO Energy and a prospectus of ExxonMobil in connection with the merger. It is the proxy statement by which the XTO Energy board of directors is soliciting proxies from you to vote on the adoption of the merger agreement at the special meeting or at any adjournment or postponement of the special meeting. It is also the prospectus by which ExxonMobil will issue ExxonMobil common stock to you in the merger.

Q: What will happen in the merger?

A: In the merger, ExxonMobil Investment Corporation, a wholly owned subsidiary of ExxonMobil that was formed for the purpose of the merger, will be merged with and into XTO Energy. XTO Energy will be the surviving corporation in the merger and will be a wholly owned subsidiary of ExxonMobil following completion of the merger.

Q: What will I receive in the merger?

A: If the merger is completed, each of your shares of XTO Energy common stock will be cancelled and converted automatically into the right to receive 0.7098 of a share of ExxonMobil common stock. XTO Energy stockholders will receive cash for any fractional shares of ExxonMobil common stock that they would otherwise receive in the merger.

Based on the closing price of \$72.83 for ExxonMobil common stock on the New York Stock Exchange on December 11, 2009, the last trading day before the public announcement of the merger agreement, the merger consideration represented approximately \$51.69 in value for each share of XTO Energy common stock. Based on the closing price of \$63.60 for ExxonMobil common stock on the New York Stock Exchange on May 14, 2010, the most recent practicable trading day prior to the date of this proxy statement/prospectus, the merger consideration represented approximately \$45.14 in value for each share of XTO Energy common stock. **The market price of ExxonMobil common stock will fluctuate prior to the merger, and the market price of ExxonMobil common stock when received by XTO Energy stockholders after the merger is completed could be greater or less than the current market price of ExxonMobil common stock.** See Risk Factors beginning on page 27 of this proxy statement/prospectus.

Q: What happens if the merger is not completed?

A:

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If the merger agreement is not adopted by XTO Energy stockholders or if the merger is not completed for any other reason, you will not receive any payment for your shares of XTO Energy common stock in

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connection with the merger. Instead, XTO Energy will remain an independent public company and its common stock will continue to be listed and traded on the New York Stock Exchange. If the merger agreement is terminated under specified circumstances, XTO Energy may be required to pay ExxonMobil a termination fee of \$900 million as described under *The Merger Agreement Termination Fee Payable by XTO Energy* beginning on page 101 of this proxy statement/prospectus.

Q: Will I continue to receive future dividends?

A: Before completion of the merger, XTO Energy expects to continue to pay its regular quarterly cash dividends on shares of its common stock, which currently are \$0.125 per share. However, XTO Energy and ExxonMobil will coordinate the timing of dividend declarations leading up to the merger so that a holder will neither receive two dividends, nor fail to receive one dividend, for any quarter. Receipt of the regular quarterly dividend will not reduce the merger consideration you receive. After completion of the merger, you will be entitled only to dividends on any shares of ExxonMobil common stock you receive in the merger. While ExxonMobil provides no assurances as to the level or payment of any future dividends on shares of its common stock, and ExxonMobil's board of directors has the power to modify dividend policy at any time, ExxonMobil presently pays dividends at a quarterly rate of \$0.42 per share of ExxonMobil common stock.

Q: What am I being asked to vote on?

A: XTO Energy's stockholders are being asked to vote on the following proposals:

to adopt the merger agreement between ExxonMobil and XTO Energy, a copy of which is attached as Annex A to this proxy statement/prospectus; and

to approve the adjournment of the special meeting, if necessary to solicit additional proxies if there are not sufficient votes to adopt the merger agreement at the time of the special meeting.

The approval of the proposal to adopt the merger agreement by XTO Energy stockholders is a condition to the obligations of XTO Energy and ExxonMobil to complete the merger.

Q: Does XTO Energy's board of directors recommend that stockholders adopt the merger agreement?

A: Yes. The XTO Energy board of directors has approved the merger agreement and the transactions contemplated thereby, including the merger, and determined that these transactions are advisable and in the best interests of the XTO Energy stockholders. Therefore, the XTO Energy board of directors recommends that you vote **FOR** the proposal to adopt the merger agreement at the special meeting. See *The Merger XTO Energy Reasons for the Merger; Recommendation of the XTO Energy Board of Directors* beginning on page 55 of this proxy statement/prospectus.

Q: What stockholder vote is required for the approval of each proposal?

A: The following are the vote requirements for the proposals:

Adoption of the Merger Agreement: The affirmative vote of holders of a majority of the shares of XTO Energy common stock outstanding and entitled to vote on the proposal. Accordingly, abstentions and unvoted shares will have the same effect as votes

AGAINST adoption.

Adjournment (if necessary): The affirmative vote of holders of a majority of the shares of XTO Energy common stock present in person or represented by proxy at the special meeting and entitled to vote on the proposal.

Q: *What constitutes a quorum for the special meeting?*

A: A majority of the outstanding shares of XTO Energy common stock entitled to vote being present in person or represented by proxy constitutes a quorum for the special meeting.

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Q: When is this proxy statement/prospectus being mailed?

A: This proxy statement/prospectus and the proxy card are first being sent to XTO Energy stockholders on or near May 24, 2010.

Q: Who is entitled to vote at the special meeting?

A: All holders of XTO Energy common stock who held shares at the close of business on the record date for the special meeting (May 3, 2010) are entitled to receive notice of and to vote at the special meeting provided that such shares remain outstanding on the date of the special meeting. As of the close of business on the record date, there were 584,362,872 shares of XTO Energy common stock outstanding and entitled to vote at the special meeting. Each share of XTO Energy common stock is entitled to one vote.

Q: When and where is the special meeting?

A: The special meeting will be held in the Top of the Town Ballroom on the Twelfth Floor of The Fort Worth Club, 306 W. 7th Street, Fort Worth, Texas, on Friday, June 25, 2010 at 10:00 a.m., local time.

Q: How do I vote my shares at the special meeting?

A: If you are entitled to vote at the XTO Energy special meeting and hold your shares in your own name, you can submit a proxy or vote in person by completing a ballot at the special meeting. However, XTO Energy encourages you to submit a proxy before the special meeting even if you plan to attend the special meeting. A proxy is a legal designation of another person to vote your shares of XTO Energy common stock on your behalf. If you hold shares in your own name, you may submit a proxy for your shares by:

calling the toll-free number specified on the enclosed proxy card and follow the instructions when prompted;

accessing the Internet web site specified on the enclosed proxy card and follow the instructions provided to you; or

filling out, signing and dating the enclosed proxy card and mailing it in the prepaid envelope included with these proxy materials. If you submit a proxy by telephone or the Internet web site, please do not return your proxy card by mail.

See the response to the next question for how to vote shares held through a broker or other nominee.

Q: If my shares are held in street name by my broker, will my broker automatically vote my shares for me?

A: No. If your shares are held in an account at a broker or through another nominee, you must instruct the broker or other nominee on how to vote your shares by following the instructions that the broker or other nominee provides to you with these materials. Most brokers offer the ability for stockholders to submit voting instructions by mail by completing a voting instruction card, by telephone and via the Internet. If you do not provide voting instructions to your broker, your shares will not be voted on any proposal on which your broker does not have discretionary authority to vote. This is called a broker non-vote. In these cases, the broker can register your shares as being present at the special meeting for purposes of determining a quorum, but will not be able to vote on those matters for which specific authorization is required. Under

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the current rules of the New York Stock Exchange, brokers do not have discretionary authority to vote on the proposal to adopt the merger agreement. **A broker non-vote will have the same effect as a vote AGAINST adoption of the merger agreement.**

If you hold shares through a broker or other nominee and wish to vote your shares in person at the special meeting, you must obtain a proxy from your broker or other nominee and present it to the inspector of election with your ballot when you vote at the special meeting.

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Q: How will my shares be represented at the special meeting?

A: If you submit your proxy by telephone, the Internet web site or by signing and returning your proxy card, the officers named in your proxy card will vote your shares in the manner you requested if you correctly submitted your proxy. If you sign your proxy card and return it without indicating how you would like to vote your shares, your proxy will be voted as the XTO Energy board of directors recommends, which is:

FOR the adoption of the merger agreement; and

FOR the approval of the adjournment of the special meeting, if necessary to solicit additional proxies if there are not sufficient votes to adopt the merger agreement at the time of the special meeting.

Q: Who may attend the special meeting?

A: XTO Energy stockholders (or their authorized representatives) and XTO Energy's invited guests may attend the special meeting. Stockholders may call the XTO Energy Office of the Corporate Secretary at (866) 255-0679 to obtain directions to the location of the special meeting.

Q: Is my vote important?

A: Yes, your vote is very important. If you do not submit a proxy or vote in person at the special meeting, it will be more difficult for XTO Energy to obtain the necessary quorum to hold the special meeting. In addition, an abstention or your failure to submit a proxy or to vote in person will have the same effect as a vote **AGAINST** the adoption of the merger agreement. If you hold your shares through a broker or other nominee, your broker or other nominee will not be able to cast a vote on the adoption of the merger agreement without instructions from you. **The XTO Energy board of directors recommends that you vote FOR the adoption of the merger agreement.**

Q: Can I revoke my proxy or change my voting instructions?

A: Yes. You may revoke your proxy and/or change your vote at any time before your proxy is voted at the special meeting. If you are a stockholder of record, you can do this by:

sending a written notice stating that you revoke your proxy to XTO Energy at 810 Houston Street, Fort Worth, Texas 76102, Attn: Corporate Secretary, that bears a date later than the date of the proxy and is received prior to the special meeting;

submitting a valid, later-dated proxy by mail, telephone or Internet that is received prior to the special meeting; or

attending the special meeting and voting by ballot in person (your attendance at the special meeting will not, by itself, revoke any proxy that you have previously given).

If you hold your shares through a broker or other nominee, you must follow the directions you receive from your broker or other nominee in order to revoke or change your voting instructions.

Q: What happens if I sell my shares after the record date but before the special meeting?

A: The record date for the special meeting is earlier than the date of the special meeting and the date that the merger is expected to be completed. If you sell or otherwise transfer your XTO Energy shares after the record date but before the date of the special meeting, you will retain your right to vote at the special meeting. However, you will not have the right to receive the merger consideration to be received by XTO Energy's stockholders in the merger. In order to receive the merger consideration, you must hold your shares through completion of the merger.

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Q: What do I do if I receive more than one set of voting materials?

A: You may receive more than one set of voting materials for the special meeting, including multiple copies of this proxy statement/prospectus, proxy cards and/or voting instruction forms. This can occur if you hold your shares in more than one brokerage account, if you hold shares directly as a record holder and also in street name, or otherwise through a nominee, and in certain other circumstances. If you receive more than one set of voting materials, each should be voted and/or returned separately in order to ensure that all of your shares are voted.

Q: Am I entitled to appraisal rights if I vote against the adoption of the merger agreement?

A: