

ALBERTA SECURITIES COMMISSION

ORDER

Citation: Re Kingsway Financial Services Inc., 2017 ABASC 69

Date: 20170504

Daniel Gundersen, Kingsway Financial Services Inc. and Eagle Energy Inc.

Background

1. The Alberta Securities Commission (the **Commission**) has received an application from Daniel Gundersen (**Gundersen**) and Kingsway Financial Services Inc. (together, the **Filers**) under the *Business Corporations Act* (Alberta) (the **ABCA**) for an order (the **Exemption Sought**) pursuant to section 151(a) of the ABCA exempting the Filers from the requirements of section 150(1)(b) of the ABCA in connection with the meeting (the **Meeting**) of the shareholders of Eagle Energy Inc. (**Eagle**) next following the issuance of this decision.

Interpretation

2. Terms defined in the *Securities Act* (Alberta) or in National Instrument 14-101 *Definitions* have the same meaning in this order, unless otherwise defined.

Representations

3. This decision is based on the following facts represented by the Filers:
 - (a) Eagle is a corporation incorporated under the ABCA and is a reporting issuer in all of the provinces of Canada.
 - (b) The common shares of Eagle (the **Shares**) are listed on the Toronto Stock Exchange.
 - (c) Gundersen is an individual residing in Calgary, Alberta.
 - (d) Gundersen owns and/or exercises control or direction over 515,254 Shares representing approximately 1.21% of the issued and outstanding Shares as at March 16, 2017.
 - (e) Kingsway Financial Services Inc. (**Kingsway**) is a corporation incorporated under the *Business Corporations Act* (Ontario).
 - (f) Kingsway owns and/or exercises control or direction over 1,116,000 Shares representing approximately 2.63% of the issued and outstanding Shares as at March 16, 2017.
 - (g) Together, Gundersen and Kingsway own and/or exercise control or direction over 1,631,254 Shares representing approximately 3.84% of the issued and outstanding Shares as at March 16, 2017.

- (h) Gundersen and Kingsway are considered to be acting jointly or in concert. Other than with each other, the Filers are not acting jointly or in concert with any other person or company in respect of the Shares.
- (i) Neither Gundersen nor Kingsway is in default of securities legislation in any jurisdiction of Canada.
- (j) The Filers wish to communicate with the holders of Shares (the **Shareholders**) in advance of the Meeting to solicit such Shareholders' proxies in respect of various matters including the composition of the board of directors of Eagle. The Filers wish to conduct the solicitations by public broadcast, speech or publication (the **Public Solicitation**) without sending a dissident's proxy circular to each of the Shareholders.
- (k) The Filers also wish to communicate with 15 or fewer Shareholders (the **Non-Public Solicitation**) in advance of the Meeting to solicit such Shareholders' proxies in respect of various matters including the composition of the board of directors of Eagle. The Filers wish to conduct the Non-Public Solicitation without the use of Public Solicitation or the sending of a dissident's proxy circular.
- (l) Section 150(1)(b) of the ABCA provides that no person (as defined in the ABCA) shall solicit proxies unless a dissident's proxy circular is provided to each shareholder whose proxy is solicited.
- (m) Section 150(2) of the ABCA provides that section 150(1)(b) of the ABCA does not apply to a corporation that has 15 or fewer shareholders entitled to vote at meetings of shareholders.
- (n) Paragraph 9.1(2)(b) of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) requires that a person or company that solicits proxies from registered holders of voting securities of a reporting issuer must, in the case of a solicitation other than by or on behalf of management of the reporting issuer, send an information circular to each registered securityholder whose proxy is solicited.
- (o) Subsection 9.2(2) of NI 51-102 provides that paragraph 9.1(2)(b) does not apply to a solicitation if the total number of securityholders whose proxies are solicited is not more than 15. In determining the total number of securityholders, subsection 9.2(3) provides that two or more persons or companies who are joint registered owners of one or more securities are considered to be one securityholder.
- (p) Subsection 9.2(4) of NI 51-102 provides an exemption (the **Broadcast Exemption**) to a person or company other than management of a reporting issuer or a person or company acting on behalf of management from the requirement to

send an information circular to each registered securityholder of a reporting issuer if:

- (i) the solicitation is made to the public by broadcast, speech or publication;
 - (ii) soliciting proxies by broadcast, speech or publication is permitted by the laws under which the reporting issuer exists; and
 - (iii) the person or company has filed the required information specified in paragraph 9.2(4)(c) of NI 51-102 and included the information specified in subparagraphs 9.2(4)(c)(i) to (iii) in the broadcast, speech or publication.
- (q) Subsection 9.2(6) of NI 51-102 provides that the Broadcast Exemption does not apply in the case of nominating an individual as a director unless the person or company soliciting proxies files an information circular or other document containing the information required by Form 51-102F5 *Information Circular* in respect of the proposed nominee and the solicitation refers to that information circular or other document and discloses that the information circular or other document is available on SEDAR.
- (r) The ABCA does not permit soliciting proxies only by broadcast, speech or publication.
- (s) The ABCA does not provide for Non-Public Solicitation where there are more than 15 shareholders entitled to vote.

Decision

4. The decision of the Commission under the ABCA is that the Exemption Sought is granted provided that:
- (a) the Public Solicitation complies with the requirements of paragraphs 9.2(4)(a), (c) and (d) and subsection 9.2(6) of NI 51-102;
 - (b) the Non-Public Solicitation is made to not more than 15 Shareholders (provided that for such purposes, two or more persons or companies who are joint registered owners of one or more Shares are considered to be one Shareholder); and
 - (c) a copy of this order is provided to Eagle.

"original signed by"

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