

ALBERTA SECURITIES COMMISSION

ORDER

Citation: Re Karnalyte Resources Inc., 2018 ABASC 90

Date: 20180601

Robin Phinney

and

Karnalyte Resources Inc.

Background

1. The Alberta Securities Commission (the **Commission**) has received an application from Robin Phinney (the **Filer**) under the *Business Corporations Act* (Alberta) (the **ABCA**) for an order (the **Exemption Sought**) pursuant to section 151(a) of the ABCA exempting the Filer from the requirements of section 150(1)(b) of the ABCA in connection with the next meeting (the **Meeting**) of the shareholders (the **Shareholders**) of Karnalyte Resources Inc. (**Karnalyte**) at which directors of Karnalyte are to be elected.

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 order is based on the following facts represented to the Commission by the Filer:
 - (a) Karnalyte is a corporation incorporated under the ABCA and is a reporting issuer in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador.
 - (b) The common shares of Karnalyte (the **Shares**) are listed on the Toronto Stock Exchange.
 - (c) Robin Phinney is resident in the Town of Okotoks, in the province of Alberta.
 - (d) Robin Phinney owns 1,528,577 Shares based on 28,116,565 issued and outstanding Shares as at May 14, 2018, as stated by Karnalyte in its management information circular dated May 14, 2018, issued in connection with the Meeting.
 - (e) The Filer is not acting jointly or in concert with any other person or company in respect of the Shares.

- (f) The Filer is not in default of securities legislation in any jurisdiction in Canada.
- (g) The Filer may wish to communicate with 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 Karnalyte.
- (h) The Filer may wish to conduct the solicitation by public broadcast, speech or publication (the **Public Solicitation**), without sending a dissident's proxy circular to each of the Shareholders.
- (i) The Filer may also wish to communicate with 15 or fewer of the Shareholders (the **Non-Public Solicitation**) in advance of the Meeting to solicit such Shareholders' proxies, without the use of public broadcast, speech, publication or the sending of a dissident's proxy circular.
- (j) 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.
- (k) 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.
- (l) 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.
- (m) 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.
- (n) Subsection 9.2(4) of NI 51-102 provides an exemption (the **Broadcast Exemption**) to a person or company other than management, 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 is incorporated, organized or continued, and the person or company making the solicitation complies with the requirements, if any, of such laws relating to the broadcast, speech or publication; and

- (iii) the person or company has filed the 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) of NI 51-102 in the broadcast, speech or publication.
- (o) 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.
- (p) The ABCA does not permit soliciting proxies only by broadcast, speech or publication.
- (q) The ABCA does not permit the Non-Public Solicitation of shareholders of a corporation if there are more than 15 shareholders of the corporation entitled to vote at a meeting.

Order

4. The order of the Commission under the ABCA is that the Exemption Sought is granted provided that the Filer complies with all of the following:
- (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 Karnalyte.

“original signed by”
Denise Weeres
Manager, Legal
Corporate Finance