

ALBERTA SECURITIES COMMISSION

ORDER

Citation: Re Highfields Capital Management LP, 2018 ABASC 125

Date: 20180801

Highfields Capital Management LP and MEG Energy Corp.

Background

1. The Alberta Securities Commission (the **Commission**) has received an application from Highfields Capital Management LP (the **Filer**) under the *Business Corporations Act* (Alberta) (the **ABCA**) for an order 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 meeting (the **Meeting**) of the shareholders of MEG Energy Corp (**MEG**) next following the issuance of this order (the **Exemption Sought**).

Interpretation

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

Representations

3. This decision is based on the following facts represented to the Commission by the Filer:
 - (a) MEG is a corporation incorporated under the ABCA and its head office is located in Calgary, Alberta. MEG is a reporting issuer in each jurisdiction of Canada.
 - (b) The common shares of MEG (the **Shares**) are listed on the Toronto Stock Exchange.
 - (c) The Filer is a limited partnership formed under the laws of Delaware and is not a reporting issuer in any jurisdiction of Canada. The Filer is the manager of Highfields Capital I LP, Highfields Capital II LP, Highfields Capital III L.P., and HFLO Partners LP (together, the **Funds**).
 - (d) Collectively, the Funds own 29,275,200 Shares, representing approximately 9.953631% of the issued and outstanding Shares.
 - (e) Neither the Filer nor any of the Funds are in default of securities legislation in any jurisdiction of Canada.
 - (f) The Filer wishes to communicate with the holders of Shares (the **Shareholders**) in advance of the Meeting to solicit such Shareholders' proxies in respect of the business to be transacted at the Meeting. The Filer may 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.

- (g) The Filer also wishes to communicate with 15 or fewer of the Shareholders (the **Non-Public Solicitation**) in advance of the Meeting to solicit such Shareholders' proxies in respect of the same matters. The Filer wishes to conduct the Non-Public Solicitation without the use of Public Solicitation or the sending of a dissident's proxy circular.
- (h) The Filer is not acting jointly or in concert with any other party in respect of the Public Solicitation or the Non-Public Solicitation.
- (i) 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.
- (j) 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.
- (k) 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 management of the reporting issuer, send an information circular to each registered securityholder whose proxy is solicited.
- (l) 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 (the **15 Securityholders Exemption**). 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.
- (m) In addition, 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 is incorporated, organized or continued and the person or company complies with the requirements of such laws as they pertain 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 includes the information specified in subparagraphs 9.2(4)(c)(i) to (iii) in the broadcast, speech or publication.
- (n) 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.
- (o) The ABCA does not contain provisions similar to the 15 Securityholders Exemption or the Broadcast Exemption.

Decision

4. The decision 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 MEG.

“original signed by”

Tim Robson
Manager, Legal
Corporate Finance