

# ALBERTA SECURITIES COMMISSION

## ORDER

Citation: Re Calfrac Well Services Ltd., 2020 ABASC 126

Date: 20200804

### Calfrac Well Services Ltd.

#### Background

1. The Alberta Securities Commission (the **Commission**) has received an application from Wilks Brothers, LLC (the **Filer**) for an order pursuant to section 151(a) of the *Business Corporations Act* (Alberta) (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 Calfrac Well Services Ltd. (**Calfrac**) next following the issuance of this order (the **Exemption Sought**).

#### 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) Calfrac is a corporation incorporated under the ABCA and is a reporting issuer in each province of Canada.
  - (b) The common shares of Calfrac (the **Shares**) are listed on the Toronto Stock Exchange.
  - (c) The Filer is a private company that has an investment division that manages family assets in Texas, U.S.A.
  - (d) The Filer is acting jointly and in concert with Dan and Staci Wilks (collectively, the **Wilkses**) but not with any other party.
  - (e) As of July 27,
    - (i) 17,387,695 Shares were held by the Filer, and
    - (ii) 11,332,477 Shares were held by the Wilkses,constituting 28,720,172 Shares over which the Filer and the Wilkses exercise control or direction, representing approximately 19.78% of the outstanding Shares based on 145,171,194 issued and outstanding Shares as at June 24, 2020, as stated by Calfrac in its management's discussion and analysis for the three months ended March 31, 2020 and 2019.

- (f) Neither the Filer nor the Wilkses are in default of securities legislation in any jurisdiction of Canada.
- (g) 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 various matters including the composition of the board of directors of Calfrac. The Filer wishes 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.
- (h) The Filer also wishes to communicate with 15 or fewer Shareholders (the **Non-Public Solicitation**) in advance of the Meeting to solicit such Shareholders' proxies in respect of business to be transacted at the Meeting. The Filer wishes to conduct the Non-Public Solicitation without the use of public broadcast, speech, publication or the sending of a dissident's proxy circular.
- (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 or on behalf of 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 Securityholder Exemption**). In determining the total number of securityholders, subsection 9.2(3) of NI 51-102 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) 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 the reporting issuer's incorporating legislation 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 included 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 to a person or company that is nominating or proposing to nominate, at the time of the solicitation, an individual for election 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 Securityholder Exemption or the Broadcast Exemption.

#### **Decision**

- 4. The Commission orders 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 Calfrac.

*“original signed by”*

Timothy Robson  
Manager, Legal  
Corporate Finance  
Alberta Securities Commission