

# ALBERTA SECURITIES COMMISSION

## ORDER

Citation: Re 933672 Alberta Ltd., 2020 ABASC 125

Date: 20200731

### 933672 Alberta Ltd. and Rifco Inc.

#### Background

1. The Alberta Securities Commission (the **Commission**) has received an application from 933672 Alberta Ltd. (the **Filer**) for an order: (i) 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 next meeting (the **Meeting**) of the shareholders of Rifco Inc. (**Rifco**) following the issuance of this decision (the **Exemption Sought**); and (ii) pursuant to section 221(5) of the *Securities Act* (Alberta) (the **Act**) that the application and this decision (collectively, the **Confidential Material**) be kept confidential and not made public.

#### Interpretation

2. Terms defined in the Act or in National Instrument 14-101 *Definitions* have the same meanings 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) Rifco is a corporation incorporated under the ABCA with its registered office in Red Deer, Alberta and is a reporting issuer in British Columbia and Alberta.
  - (b) The common shares of Rifco (the **Shares**) are listed on the TSX Venture Exchange.
  - (c) The Filer is a corporation incorporated under the ABCA and is not a reporting issuer in any jurisdiction in Canada.
  - (d) The Filer exercises control or direction over 3,909,824 Shares representing approximately 18.1% of the issued and outstanding Shares.
  - (e) The Filer is not in default of securities legislation in any jurisdiction in Canada.
  - (f) The Filer wishes to communicate with the other shareholders of Rifco to solicit such shareholders' proxies in respect of the business to be transacted at the Meeting, including the composition of the board of directors of Rifco (the **Public Solicitation**), by public broadcast, speech or publication and without sending a dissident's proxy circular.

- (g) The Filer also wishes to communicate with not more than 15 shareholders of Rifco in advance of the Meeting to solicit such shareholders' proxies in respect of the business to be transacted at the Meeting, including the composition of the board of directors (the **Non-public Solicitation**). The Filer wishes to conduct the Non-public Solicitation without the use of public broadcast, speech, publication or the sending of a dissidents' proxy circular.
- (h) The Filer is not acting jointly or in concert with any other individual or entity in respect of the Shares, 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) Subsection 150(2) of the ABCA provides that paragraph 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) Section 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 shareholder whose proxy is solicited.
- (l) Section 9.2(2) of NI 51-102 provides an exemption from the requirement to deliver an information circular to each securityholder of a reporting issuer in respect of a solicitation if the total number of securityholders whose proxies are solicited is not more than 15 (the **15 Securityholders Exemption**).
- (m) The ABCA does not contain a provision similar to the 15 Securityholders Exemption.
- (n) Section 9.2(4) of NI 51-102 provides an exemption (the **Broadcast Exemption**) from the requirement to deliver an information circular to each 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
  - (iii) the person or company has filed the information specified in section 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.

- (o) Section 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 contain a provision similar to the Broadcast Exemption.

**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 holders of Shares (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 holder of Shares); and
  - (c) a copy of this order is provided to Rifco.
- 5. The decision of the Commission under the Act is that the Confidential Material be kept confidential by the Commission and not made public under the earliest of:
  - (a) the date of the first Public Solicitation;
  - (b) the date on which the Filer or Rifco publicly discloses the decision;
  - (c) the date on which the Filer advises the Commission that there is no longer any need for the Confidential Material to remain confidential; and
  - (d) 90 days from the date of this order.

“original signed by”

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