

Citation: Griffiths Energy International Inc., Re, 2013 ABASC 98

Date: 20130307

In the Matter of  
the Securities Legislation of  
Alberta, Saskatchewan, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and  
Newfoundland and Labrador (the **Jurisdictions**)

and

In the Matter of  
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of  
Griffiths Energy International Inc. (the **Filer**)

Decision

**Background**

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Makers**) have received an application from the Filer(s) for a decision under the securities legislation of the Jurisdictions (the **Legislation**):

- (a) granting written permission to the Filer to include in the Canadian Preliminary Prospectus (defined below) statements to the effect that the Filer will apply to list the Common Shares (defined below) on the premium listing segment of the official list of the FSA (defined below) and will apply for such Common Shares to be admitted to trading on the LSE's (defined below) main market for listed securities; and
- (b) that the application and this decision be held in confidence by the Decision Makers (the **Confidentiality Relief**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a coordinated review application):

- (a) the Alberta Securities Commission is the principal regulator for this application; and

- (b) this decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

### **Interpretation**

Terms defined in National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined herein.

### **Representations**

This decision is based on the following facts represented by the Filer:

#### ***Background***

1. The Filer is a corporation incorporated under the *Canada Business Corporations Act*.
2. The head and registered office of the Filer is located in Calgary, Alberta.
3. The Filer is currently not a reporting issuer or the equivalent under the securities legislation of any province or territory of Canada and is not, to its knowledge, in default of any requirements under the securities legislation of any province or territory of Canada.
4. None of the securities of the Filer are listed or posted for trading on any exchange or quotation and trade reporting system.
5. The Filer is presently engaged in the exploration and development of crude oil and natural gas interests located in Chad, Africa.
6. As at December 31, 2012, the Filer had approximately 112.8 million common shares (the **Common Shares**) outstanding, which outstanding Common Shares were issued in a series of private placements and upon exercise of previously issued convertible securities (collectively, the **Private Placement Securities**).
7. The Private Placement Securities held by residents of a province of Canada are subject to an indefinite hold period under applicable securities laws.

#### ***Proposed Global Offer***

8. The Filer intends to (i) undertake an offering in the United Kingdom (**UK**) to persons who are “investment professionals”, in member states of the European Economic Area to persons who are “qualified investors”, in other European countries outside the United States in reliance on Regulation S, and within the United States to “qualified institutional buyers” in reliance on Rule 144A under the *United States Securities Act of 1933* (as amended) (the **Global Offer**), and (ii) make application for the admission of the Common Shares for listing on the premium listing segment of the official list of the Financial Services Authority (the **FSA**).

9. The Filer believes that admission to trading on the LSE and access to the capital markets in the UK and Continental Europe is in the best interests of the Filer given the anticipated interest of investors in those markets in investment opportunities in oil and gas issuers focused on the development of oil and gas interests in Africa.
10. The Filer will prepare a prospectus (the **UK Prospectus**) in accordance with the Prospectus Rules and Listing Rules of the FSA made under the *UK Financial Services and Markets Act 2000* (as amended) (the **FSMA**).
11. The Filer will offer Common Shares to investors in the Global Offer.
12. The UK Prospectus will be approved by the FSA in its capacity as the competent authority under the FSMA (the **UKLA**). Prior to the approval of the UK Prospectus, the Filer will distribute a pathfinder prospectus, which will be a substantially final draft of the UK Prospectus and which will have been reviewed by the UKLA as described in paragraph 19 below and the UKLA will have confirmed that it has no further substantive comments on the draft (the **Pathfinder Prospectus**). The Pathfinder Prospectus will be distributed outside Canada in connection with the Global Offer.
13. The Filer intends to make an application to the UKLA for all of the Common Shares issued and to be issued under the Global Offer to be admitted to the premium listing segment of the official list of the FSA and to the LSE for such Common Shares to be admitted to trading on the LSE's main market for listed securities (the **Admission**).
14. In connection with the Global Offer, as is customary in connection with an application for admission to trading on the LSE, the Filer will issue an "Intention to Float" press release (**ITF Press Release**) indicating the Filer's intention to seek Admission.
15. The ITF Press Release will be disseminated prior to the Pathfinder Prospectus being distributed. Filing of the Preliminary Canadian Prospectus will occur concurrently with dissemination of the ITF Press Release.
16. Following dissemination and distribution of the ITF Press Release, and as is customary in transactions of this nature, there will be at least a two week "cooling off" period prior to the Pathfinder Prospectus being distributed.

### ***The Canadian IPO***

17. As described in paragraph 9 above, the Filer believes the principal market for its Common Shares will be investors in the UK and in Continental Europe. However, the Filer intends to also file a preliminary long form prospectus in each of the provinces of Canada except Québec (the **Preliminary Canadian Prospectus**) for purposes of completing an initial public offering in Canada (the **Canadian IPO**) concurrent with the

Global Offer, as the Filer also wishes to raise additional capital from investors in Canada and to become a reporting issuer so as to allow the Private Placement Securities to become freely tradeable.

18. The Filer will not be interlisted on any Canadian stock exchange upon completion of the Canadian IPO.

*Timeline*

19. On December 10, 2012, January 9, 2013, January 24, 2013 and February 26, 2013, the Filer filed the first, second and third drafts, respectively, of the Pathfinder Prospectus with the UKLA on a confidential basis for review and comments. On the current timetable, the Filer anticipates filing further revised drafts of the Pathfinder Prospectus on or around March 7, 2013, March 18, 2013 and March 26, 2013, in each case on a confidential basis for further review and comments by the UKLA.
20. The following is the current anticipated sequence of certain filings and other events to occur in 2013 relating to the Global Offer, the Admission and the Canadian IPO:
  - (a) On or about the week of March 6, 2013, the ITF Press Release will be issued by the Filer and the Preliminary Canadian Prospectus will be filed with the securities commission or similar regulatory authority in each of the provinces of Canada except Québec. It is anticipated that the initial comment letter will be issued 10 business days following date of the receipt for the Preliminary Canadian Prospectus.
  - (b) On or about the week of April 8, 2013, the Pathfinder Prospectus will be distributed by the Filer.
  - (c) Concurrent with (b) above, marketing will commence through a roadshow marketing process.
  - (d) On or about the week of April 22, 2013, the final long form prospectus (**Final Canadian Prospectus**) will be filed in Canada and the final UK Prospectus will be dated and submitted for approval to the FSA, with closing of the Global Offer, the Admission and the Canadian IPO following shortly thereafter and trading to commence on the LSE on or about April 25, 2013.
21. In order to meet the above timeline it is necessary to file the Preliminary Canadian Prospectus, concurrently with the dissemination of the ITF Press Release, and approximately four weeks prior to the Pathfinder Prospectus being distributed as contemplated by paragraph 20(b) above.

### *Listing Representations*

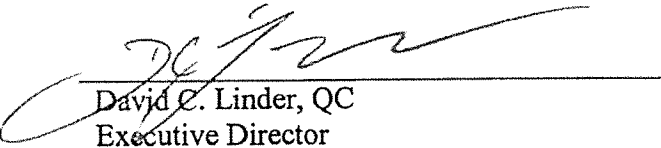
22. The UKLA will only approve the UK Prospectus on the day it is dated. At this time, the formal application for a listing is submitted to the UKLA and a formal application for admission to trading is submitted to the LSE. The admission to listing is officially granted by the UKLA in conjunction with admission to trading being granted by the LSE.
23. As a result of the foregoing timing, formal application will not have been made nor will the UKLA have granted approval (conditional or otherwise) to the listing of the Common Shares at the time of publishing the ITF News Release, the Preliminary Canadian Prospectus, the news release relating to the Preliminary Canadian Prospectus or the Pathfinder Prospectus. Formal application will have been made but the UKLA will not have granted approval (conditional or otherwise) to the listing of the Common Shares at the time of publishing the UK Prospectus, the Final Canadian Prospectus or the news releases relating to the foregoing documents (collectively with the ITF News Release and the news release relating to the Preliminary Canadian Prospectus, the **News Releases**).
24. Despite the foregoing, given that the Filer will be in the process of making (or will have made, as applicable) application for Admission, the Filer wishes to refer in each of the Pathfinder Prospectus, the UK Prospectus, the Preliminary Canadian Prospectus, the Final Canadian Prospectus and the News Releases, as applicable, to the fact that the Filer intends to make and/or has made application for Admission, as applicable, as the Filer believes that this information would be relevant to a potential purchaser of Common Shares.
25. It is customary in the context of the application process for Admission that the Filer disclose in the ITF News Release, the Pathfinder Prospectus and the UK Prospectus one or more representations identical or substantially similar to the following, as applicable (together with the representations in paragraph 24 above, the **Listing Representations**):
- “[Griffiths Energy International Inc. intends to apply] [OR] [Application has been made] to the FSA in its capacity as competent authority under the FSMA for all of the Common Shares to be admitted to the premium listing segment of the official list of the FSA and to the LSE for such Common Shares to be admitted to trading on the LSE’s main market for listed securities. Admission to trading on the LSE’s main market for listed securities constitutes admission to trading on a regulated market. Conditional dealings in the Common Shares are expected to commence on the LSE on ●, 2013. It is expected that Admission will become effective, and that unconditional dealings in the Common Shares will commence, on ●, 2013.”*
26. Except as described in paragraphs 24 and 25 above, the Filer will not make any other written or oral representations that the Common Shares will be listed on any other exchange or quoted on a quotation and trade reporting system.

27. The Filer is of the understanding that neither the UKLA or LSE will provide it with written confirmation indicating that it does not object to the Listing Representations or that it consents to the Listing Representations, other than its eventual formal approval of the UK Prospectus.
28. The Common Shares distributed in the UK at the time of the LSE listing will be distributed by the Filer in reliance on the prospectus exemption in Part 3 of ASC Rule 72-501 – *Distributions to Purchasers Outside of Alberta*. As such, absent the ASC, as principal regulator, granting an exemption for the Listing Representations in the Pathfinder Prospectus, the UK Prospectus and the News Releases, the Filer would be in violation of section 92(3) of the *Securities Act* (Alberta).
29. Absent the requested relief sought from all of the Decision Makers, the Listing Representations in the Preliminary Canadian Prospectus, the Final Canadian Prospectus and the News Releases would be in violation of section 92(3) of the *Securities Act* (Alberta), and substantially equivalent provisions in the other Jurisdictions

#### **Decision**

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

1. The decision of the Decision Makers under the Legislation is that the Exemptive Relief Sought is granted.
2. The Confidentiality Relief is granted until the earliest of:
  - (a) The date on which the Filer issues and files a news release in Canada announcing the Global Offer and/or the Canadian IPO;
  - (b) The date on which the Filer files the Canadian Preliminary Prospectus;
  - (c) The date that the Filer advises the Decision Makers that there is no longer a need for the application and this decision to remain confidential; and
  - (d) 90 days from the date of this decision.



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David C. Linder, QC  
Executive Director