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August 5, 2005

Headnote

Securities Act s. 48, 76 Business Associates - Exemption from s. 34(1)(a) requirement to be registered as a dealer in connection with a trade and s. 61 requirement to file a prospectus in connection with a distribution to a business associate or partner - Trades in securities of an organization that promotes the interests of a particular industry or cause - The securities are issued by a trade association to its members and auxiliary members; the members and auxiliary members will receive the same type of information as is required in an offering memorandum under Multilateral Instrument 45-103 *Capital Raising Exemptions* before they decide to invest in securities; there is no market for the securities; trades are limited to members, auxiliary members and the issuer

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61 and 76

In the Matter of
the Securities Legislation
of British Columbia, Alberta and Saskatchewan (the Jurisdictions)

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of Agrifoods International Cooperative Ltd. (the Filer)

MRRS Decision Document

Background

- ¶ 1 The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from the dealer registration requirement and the prospectus requirements of the Legislation for trades of membership shares and investment shares of the Filer (the Requested Relief);

Under the Mutual Reliance Review System for Exemptive Relief Applications:

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- (a) the British Columbia Securities Commission is the principal regulator for this application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

- ¶ 2 Defined terms contained in National Instrument 14-101 Definitions have the same meaning in this decision unless they are defined in this decision.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:
1. the Filer is a cooperative association organized under the *Canada Cooperatives Act* (the Federal Co-Op Act); the members of the Filer are dairy producers located in each of the Jurisdictions; the Filer offers its members the service of picking-up milk from their farms and delivering the milk to dairies for processing; the ability of some members to use this service is limited by Provincial milk board regulations or policies;
 2. the Filer is extraprovincially registered in each of the Jurisdictions;
 3. the Filer is not a reporting issuer in any of the Jurisdictions and has no intention of becoming a reporting issuer;
 4. the Filer currently has:
 - (a) approximately 1,244 members (the Members) who are actively involved in dairy farming; and
 - (b) approximately 1,924 auxiliary members (the Auxiliary Members) who are either:
 - (i) not currently active in dairy farming but have a continuing interest in the Filer in the form of member loans that were made at times in the past when the Auxiliary Members were Members actively involved in dairy farming, or
 - (ii) shareholders of active or formerly active corporate Members or partners of active or formerly active unincorporated Members;
 5. there are Members and Auxiliary Members resident in each of the Jurisdictions;

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6. as a cooperative association, the Filer has not historically sought to make a profit from its operations; each year, after withholding any reserves deemed necessary by the directors, any surplus from its operations was divided among its Members in proportion to the use those Members make of the Filer's services; these payments are known as patronage returns; in recent years, the Filer has retained available profits as a reserve and not made patronage returns;
7. to the extent that it requires funds for ongoing operations, the Filer can require its Members to re-invest a substantial portion of the yearly patronage returns (if any) back into the Filer; in the past this re-investment has been made as member loans;
8. the Filer plans to complete a capital reorganization under the Federal Co-Op Act that will create new classes of membership shares and investment shares;
9. after the capital reorganization, the Filer's capital structure will consist of:
 - (a) approximately \$21 million in loans by Members and Auxiliary Members;
 - (b) an unlimited number of membership shares with a par value of \$1.00 per share (the Membership Shares); and
 - (c) an unlimited number of investment shares without par value (the Investment Shares);
10. after the capital reorganization:
 - (a) every Member will receive a number of Membership Shares to be determined by the Filer's Board of Directors;
 - (b) new Members who join the Filer after completion of the capital reorganization will be required to purchase Membership Shares having a value to be determined by the Board of Directors; the value of those Membership Shares will not exceed \$5,000;
 - (c) Members, Auxiliary Members or the Filer may, within specified time periods, exercise a right to convert individual member loans to Investment Shares; and

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- (d) the Filer can require a Member to invest future patronage payments in Investment Shares;
- 11. after the reorganization, the Articles of the Filer will provide that Membership Shares may be issued and transferred only to Members, and that Investment Shares may be issued and transferred only to:
 - (a) Members or Auxiliary Members; and
 - (b) the executor or administrator of the estate of a Member or Auxiliary Member, provided that the executor or administrator may only hold and sell the Investment Shares owned by the deceased person at the time of his or her death and any additional Investment Shares issued to the deceased's estate as a result of the mandatory investment of patronage returns to the deceased or the deceased's estate for the purchase of Investment Shares, but the executor or administrator may not otherwise acquire additional Investment Shares;

in addition, no person or shareholder group can hold more than five percent of the issued and outstanding Investment Shares; previously issued Investment Shares can be transferred only to a person who has been a Member or Auxiliary Member for at least 12 months before the date of the transfer;
- 12. under the Federal Co-Op Act and the Articles and By-laws of the Filer:
 - (a) only Members will be able to hold Membership Shares;
 - (b) only Members and Auxiliary Members will be able to hold Investment Shares;
 - (c) membership will be limited to current Members, and to active dairy producers licensed by the Provincial milk board in one of the Jurisdictions who are: (i) capable of using the services of the Filer; (ii) use the Filer's services unless prevented from doing so by Provincial milk board regulations, orders or policies; and (iii) are admitted to membership in the Filer;
 - (d) auxiliary membership will be limited to current Auxiliary Members, Members who cease active dairy farming but continue to hold Investment Shares, and shareholders, partners or other owners

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of Members and Auxiliary Members who are admitted to auxiliary membership in the Filer; and

- (e) the Filer must send to each Member and Auxiliary Member, and place before each annual general meeting, its financial statements for the most recently completed year and each part year ending not more than six months before that meeting;
13. the information circular to be sent to Members and Auxiliary Members when seeking approval of the capital reorganization will include the information about the Filer, the Membership Shares and the Investment Shares required in an offering memorandum in Form 45-103F1;
14. the Saskatchewan Co-operative Securities Board has directed under subclause 217(2) of *The Co-operatives Act, 1996* (Saskatchewan) that the trades dealt with in this decision document be subject to *The Securities Act, 1988* (Saskatchewan);

Decision

- ¶ 4 Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted, provided that the following conditions are satisfied:

- (a) before the Filer issues Membership Shares to new Members, the Filer confirms that the acquisition cost to the purchaser of the Membership Shares, together with the value of any Investment Shares then held by the Member, does not exceed \$5,000;
- (b) if the Filer issues Investment Shares as, or by the application of, a dividend, interest or a patronage return, no commission or other remuneration is paid or given to others in respect of the trade except for administrative or professional services or for services performed by a registered dealer;
- (c) before the Filer issues Investment Shares on the conversion of Member Loans, the Filer has provided the Member or Auxiliary Member with the information circular described in paragraph 13 above;

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- (d) a Member or Auxiliary Member may trade an Investment Share if the purchaser of the security is a Member or Auxiliary Member and has been a Member or Auxiliary Member for at least 12 months; and
- (e) the first trade in Membership Shares to a person other than a Member or the Filer will be deemed to be a distribution;
- (f) the first trade in Investment Shares to a person other than the Filer or a person specified in paragraph (d) or 11(b) above will be deemed to be a distribution; and
- (g) the exemptions in this decision cease to be effective if any of the provisions of the articles or by-laws of the Filer relevant to the exemptions granted are amended in any material way unless the Decision Makers consent to that amendment.

Martin Eady, CA
Director, Corporate Finance
British Columbia Securities Commission