

THE SECURITIES ACT) Order No. 5533
)
Section 20(1)) November 27, 2007

THE JEWISH FOUNDATION OF MANITOBA

WHEREAS:

(A) The Jewish Foundation of Manitoba (the "Foundation") has applied to The Manitoba Securities Commission (the "Commission") for an order pursuant to subsection 20(1) of *The Securities Act* (Manitoba) (the "Act") exempting (i) the Foundation from the requirements of section 6 of the Act; and (ii) that the issuance of and other dealings in units of interest in the Foundation's pool of funds is not subject to sections 6 or 37 of the Act.

(B) The Foundation has represented to the Commission that:

1. The Foundation is a corporation which is continued pursuant to *The Jewish Foundation of Manitoba Act*, S.M. 2004, c. 46 (the "JFM Act"). The Foundation is not subject to the continuous disclosure requirements of the Act. The Foundation was established in 1964 and operates as a community foundation.
2. The mission of the Foundation is to encourage and facilitate the creation and growth of endowment funds to enable the community to realize its potential. The Foundation maintains effective stewardship over the assets entrusted to it, distributes grants that reflect community priorities and donors' wishes and provides leadership in the general and Jewish community.
3. In the course of its activities, the Foundation receives donations from non-profit organizations, for-profit organizations and registered charities authorized to operate in Manitoba (together, "Non-Related Entities"). This function is authorized by section 11(3) of the JFM Act which empowers the Foundation to receive, invest and manage funds on behalf of Non-Related Entities. In accordance with section 16(1) of the JFM Act, the Foundation is obligated to comply with any trusts or conditions that attach to property that it receives, and to observe any direction of a donor expressed in the instrument creating the trust or effecting the donation to the Foundation, unless, in the opinion of the Foundation's Board of Directors, to do so would jeopardize the Foundation's status as a Qualified Donee. A Non-Related Entity which provides funds to the Foundation does so with the view that such funds shall be invested by the Foundation with the Foundation's invested capital. The Foundation records an entry on its financial records equal to the amount of capital contributed to the Foundation by the Non-Related Entities (all such entries of each Non-Related Entity's interest in the Foundation's invested capital, and all acts in connection therewith, occurring on or before the date of this Order as referred to as the "Past

Trades"). The Foundation's endowment funds comprise a much larger pool of monies than would otherwise be available to the Non-Related Entity. It also provides access to professional investment managers used by the Foundation that would otherwise be inaccessible to Non-Related Entities. In short, the investments of the Foundation consist of the Foundation's own monies and the monies of Non-Related Entities which have been contributed or deposited in the manner described herein.

4. The Foundation currently uses four professional investment managers, Jarislowsky Fraser Limited, Tetrem Capital Partners Ltd., Gluskin Sheff & Associates Inc., and Letko Brosseau & Associates Inc.

5. Contributions are made by Non-Related Entities to the Foundation in one of two ways:

(a) Qualified Donees may donate funds to the Foundation for investment by the Foundation's money managers, but at the same time retain the right to receive the income derived from the contributed funds to use for its own purposes (hereinafter an "Organizational Endowment Fund"). If that Qualified Donee ceases to exist because of an amalgamation or a replacement by a successor organization, then the entitlement to the income earned on the funds deposited transfers to that successor organization. If there is no successor organization, the discretion rests with the Board of the Foundation to designate a beneficiary whose aims are similar to those of the dissolved Qualified Donee which contributed the funds in the first instance. Qualified Donees as well as other Non-Related Entities or individuals making contributions to Organizational Endowment Funds are not entitled to a return of capital contributed because the contribution is a gift;

(b) Qualified Donees may deposit funds with the Foundation for investment by the Foundation's money managers, but, as opposed to the situation with Organizational Endowment Funds, a Qualified Donee may also require that the original capital deposited be returned upon request. Essentially, upon giving reasonable notice on terms and conditions to be agreed upon with the Foundation, a Qualified Donee depositing funds in this way (a "Managed Fund") may reclaim the current value of their invested capital based on prevailing market conditions, effected through payment to the Qualified Donee of the cash value of such amount by the Foundation.

6. Other than the ability to recoup a small portion of its investment management or custodial costs no portion of the income attributable to the Organizational Endowment Funds or the Managed Funds is payable to the Foundation. However,

the Foundation is entitled to retain an amount towards its administrative expenses as may be determined by the Board of Directors from time to time.

7. The Foundation is not registered in any capacity under the Act, and a prospectus has never been filed in respect of any matters pertaining to the Foundation. All of the activities of the Foundation are overseen by its Board of Directors and its Executive Director, in all cases in accordance with the provisions of the JFM Act, the policies of the Foundation and its by-laws.

9. The Foundation is required by the Act to retain an independent auditor to audit its financial statements on an annual basis. The Foundation is also obligated to make copies of the auditors report available to the public on request and is further obligated to distribute to its members a summary of its audited annual financial statements.

10. As a result of the fact that the Non-Related Entities that establish Organizational Endowment Funds are entitled to income from the Foundation based upon investments made, and in the case of Managed Funds, to the return of original capital contribution as well, the registration and prospectus exemptions available under the Act concerning the distribution of securities of a charitable organization are not available in this instance.

11. There are no exemptions from the registration and prospectus requirements available in connection with any trades between the Foundation and the Non-Related Entities.

(C) The Commission is of the opinion that it would not be prejudicial to the public interest to grant the order requested.

IT IS ORDERED:

1. **THAT**, under subsection 20(1) of the Act, the Foundation is hereby exempted in the Past Trades and all future trades and all activities in furtherance of such trades involving Non-Related Entities from sections 6 and 37 of the Act provided that, in the case of Organizational Endowment Funds and the Managed Funds only:

(a) that prior to engaging in any future trades with an Organizational Endowment Fund or a Managed Fund a disclosure document in a form acceptable to staff be provided to the third party charity establishing the Organizational Endowment Fund or the Managed Fund;

(b) all activities in connection with the trades in the Organizational Endowment Funds or the Managed Funds including all activities in furtherance of such trades shall be conducted through the Chief Executive Officer and/or the Director of Finance of the Foundation.

2. **THAT**, pursuant to section 20(1) of the Act, the Foundation is hereby exempted with respect to the Past Trades, all future trades and all activities in furtherance of such trades involving Organizational Endowment Funds and Managed Funds, from sections 6 and 37 of the Act provided that prior to engaging in any future trades with a Non-Related Entity with respect to an Organizational Endowment Fund or a Managed Fund, a disclosure document in a form acceptable to Commission staff be provided to the Non-Related Entity.

3. **THAT** the fee for this Order is \$1,000.00.

BY ORDER OF THE COMMISSION

Deputy Director - Legal