

THE SECURITIES ACT) Order No. 3113
)
Section 20) September 6, 2000

AMENDED AND RESTATED

THE WINNIPEG FOUNDATION

WHEREAS:

(A) The Winnipeg Foundation (the "Foundation") makes application to The Manitoba Securities Commission (the "Commission") for an order pursuant to subsection 20(1) of the *Securities Act*, R.S.M. 1988, c. S50 (the "Act") exempting (i) the Foundation from the requirements of section 6 of the Act; and (ii) the issuance of and other dealings in units of, or other securities held in, the Foundation's Consolidated Trust Fund by the Fund to other charitable organizations, from sections 6 and 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 Winnipeg Foundation Act*, L.R.M. 190, c. 222. The Foundation is not subject to the continuous disclosure requirements of the Act.

2. The Foundation was Canada's first community foundation established in 1921 with a mission to benefit the people of Winnipeg and, to a lesser extent, surrounding communities in Manitoba by supporting non-profit, charitable, educational and cultural organizations. Donations received by the Foundation are deposited to the Consolidated Trust Fund (the "Foundation Fund") of the Foundation. The Foundation has discretion as to how income earned in the Foundation Fund is allocated though a donor can request that monies be used in a specific fashion.

3. In addition to receiving funds donated to the Foundation itself, contributions can be made by donors to non-related charities or by non-related charities in one of two forms:

(a) a non-related charity may donate funds to the Foundation for investment in the Foundation Fund while retaining the right to receive or direct the income derived from the funds contributed (a non-related charity that retains the right to receive the income derived from the funds that it donates to the Foundation is hereinafter referred to as an "Agency Fund" and those non-related charities that direct the income derived from the funds that it donates to the Foundation to someone other than itself is

hereinafter referred to as a "Designated Fund"); however, the donor of the funds has no right to recall or redeem such funds and ownership of the funds transfers to the Foundation when the donation is made. Individuals may also make donations to a specific Designated Fund.

(b) a non-related charity may contribute funds to the Foundation for investment in the Foundation Fund but retain the right to recall or redeem their original capital contribution and in addition would be entitled to all income derived from the Fund and attributable to its interest in the Foundation Fund (a "Managed Fund").

Repayments may be made in the form of cash or, if market conditions dictate and the Foundation so elects, in the form of securities held in the Foundation Fund (the "Security Repayment").

4. In addition to the establishment of Designated Funds and Managed Funds, the Foundation is, or will be, accepting contributions from two non-profit organizations; namely the Manitoba Law Foundation and The J.W. Dafoe Foundation (collectively, the "Non-Profit Organizations"). The Non-Profit Organizations may contribute funds to the Foundation for investment in the Foundation Fund, but retain the right to recall or redeem their original capital contribution and in addition would be entitled to all income derived from the Fund and attributable to its interest in the Foundation Fund.

5. For each of the Agency Funds, the Designated Funds, the Managed Funds and the Non-Profit Organizations (sometimes hereinafter collectively referred to as the "Third Party Funds"), the contributions are deposited into and commingled with other monies in the Foundation Fund (including those of the Foundation itself). The Foundation in turn has in effect unitized the Foundation Fund and records in a book entry system the number of Units of the Foundation Fund to which the non-related charitable organization is entitled by virtue of the capital investment it has made (all trades occurring on or before the date of this Order are hereinafter referred to as the "Past Trades").

6. The Foundation currently uses two professional investment managers being Jarislowsky Fraser Limited Investment Counsel and Knight Bain Seath and Holbrook Capital Management Inc. to manage the Funds.

7. Each of the Third Party Funds is charged a fee which essentially is a cost recovery mechanism used by the Foundation, since it is responsible for paying the investment management and custodial costs for the Foundation Fund. Other than that cost recovery amount, no fee or commission is charged by the Foundation for the Units.

8. The Foundation is required by its statute to publish its Annual Report wherein it discloses information relevant to the Foundation, its financial affairs and operations.

9. The Agency Funds and the Managed Funds also receive an agency fund report which is specific to the Fund under management as well as a report indicating the current capital account for the Fund.

10. In addition, the Foundation has adopted a statement of investment policies and guidelines which will be made available to the Agency Funds, the Managed Funds and the Non-Profit Organizations at their request.

11. The Foundation is not registered in any capacity under the Act.

12. Because the non-related charities are entitled to the income from the Agency Funds and the Designated Funds and, in the case of the Managed Funds to the original capital contribution as well, the registration and prospectus exemptions available under the Act concerning the distribution of securities of a charitable organization is not available in this instance.

13. There are no exemptions from the registration and prospectus requirements available in connection with any trades between the Foundation and the Non-Profit Organizations.

(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, pursuant to 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 the Third Party Funds from sections 6 and 37 of the Act provided that, in the case of the Agency Funds, the Managed Funds and the Non-Profit Organizations only:

a) that prior to engaging in any future trades with an Agency Fund, Managed Fund or the Non-Profit Organizations a disclosure document in a form acceptable to staff be provided to the third party charity establishing the Agency Fund or the Managed Fund, and in the case of the Non-Profit Organizations, to the Non-Profit Organization itself; and

b) all activities in connection with the trades in the Agency Funds, the Managed Funds, or the Non-Profit Organizations, including all activities in furtherance of such trades, shall be conducted through the Executive Director and/or the Director of Financing and Gift Planning of the Foundation.

2. THAT the fee for this Order is \$650.00.

BY ORDER OF THE COMMISSION

Director – Legal