

IN THE MATTER OF

THE SECURITIES LEGISLATION  
OF MANITOBA AND ONTARIO

AND

IN THE MATTER OF  
THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF  
APPLICATIONS

AND

IN THE MATTER OF TRUSERV CANADA CO-OPERATIVE INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of the Provinces of Manitoba and Ontario (the "Jurisdictions") has received an application filed on behalf of Truserv Canada Co-operative Inc. (the "Filer") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the registration requirement and prospectus requirement contained in the Legislation (the "registration and prospectus requirements") shall not apply to trades in securities of Truserv to GROWMARK, Inc. ("GROWMARK"), Ontario GROWMARK Members (as defined below) and Country Depot Dealers (as defined below) pursuant to a proposed business alliance between Truserv and GROWMARK.

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), The Manitoba Securities Commission is the principal regulator for this application;

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions*;

AND WHEREAS the Filer has represented to the Decision Makers that:

1. TruServ is a co-operative originally incorporated under the *Canada Cooperatives Association Act* by Articles of Association dated January 31, 1992 under the name "Cotter Canada Hardware and Variety Cooperative". The Articles of Association of TruServ were amended by Articles of Amendment dated December 29, 1997 and Articles of Amendment dated May 21, 1999. Pursuant to the Certificate of Supplemental Registration dated July 6, 1999, the name of the cooperative was changed to "TruServ Canada Cooperative Inc." Pursuant to Articles of Amendment dated September 27, 2001, TruServ was continued under the *Canada Cooperatives Act*. Pursuant to Articles of Amendment dated November 18, 2002, TruServ amended its

authorized share capital. TruServ's registered and head offices are located in Winnipeg, Manitoba.

2. TruServ is a 100% retailer-owned co-operative with more than 575 member stores across Canada operating under the trade names of True Value Hardware, V&S Department Stores, V&S Opt!ons and Pet Junction. TruServ supplies hardware, tools, paint, electrical, plumbing, lawn and garden, automotive, sporting goods, housewares, stationary, toys, pet food and supplies, domestics, apparel and crafts to its member stores.

3. TruServ is not a reporting issuer in any jurisdiction and none of its securities are listed for trading on any stock exchange.

4. The authorized capital of TruServ is comprised of the following:

- (a) an unlimited number of Class A Membership Shares,
- (b) an unlimited number of Class B Investment Shares,
- (c) an unlimited number of Class C Investment Shares,
- (d) an unlimited number of Class D Investment Shares, and
- (e) an unlimited number of Class E Investment Shares.

5. As at the date hereof, there are 9,880 Class A Membership Shares and 62,327 Class B Investment Shares issued and outstanding.

6. Class A Membership Shares evidence membership in TruServ. Holders of such shares have a right to vote, are entitled to receive dividends when, as and if declared thereon by the board of directors of TruServ and, in the event of liquidation, dissolution or winding up of TruServ, are entitled to share the property and assets of TruServ ratably with the holders of Class B Investment Shares, subject to the preference of holders of Class C Investment Shares, Class D Investment Shares and Class E Investment Shares. Class A Membership Shares are also redeemable by TruServ at any time upon payment of the issue price of such shares (\$100.00).

7. Class B Investment Shares represent the patronage returns paid to holders of Class A Membership Shares. Holders of such shares have no right to vote (except as provided under the CCA), are not entitled to receive dividends and, in the event of liquidation, dissolution or winding up of TruServ, are entitled to share the property and assets of TruServ ratably with the holders of Class A Membership Shares, subject to the preference of holders of Class C Investment Shares, Class D Investment Shares and Class E Investment Shares. Class B Investment Shares are also redeemable by TruServ at any time upon payment of the issue price for such shares (\$100.00).

8. Class C Investment Shares are evidence of capital contributions to TruServ. Holders of such shares have no right to vote (except as provided under the CCA), are entitled to receive dividends when, as and if declared thereon by the board of directors of TruServ, and, in the event of liquidation, dissolution or winding up of TruServ, are entitled to receive an amount equivalent to the redemption price for each share, together with all dividends declared and remaining unpaid on such shares, in priority to amounts distributed to holders of any Class A Membership Shares,

Class B Investment Shares or Class D Investments Shares. The Class C Investment Shares are also redeemable by TruServ at any time upon payment of the issue price for such shares. No Class C Investment Shares are issued and there is no intention at this time for such issuance.

9. Class D Investment Shares are evidence of capital contributions to TruServ by the members of a federation (a cooperative of cooperatives). Holders of Class D Investment Shares are entitled to vote for the election of directors of TruServ in conjunction with the holders of Class A Membership Shares and, in the event of liquidation, dissolution or winding up of TruServ, the holders of Class D Investment Shares are entitled to receive an amount equivalent to the redemption price for such share, together with all dividends declared and remaining unpaid on such Class D Investment Shares, in priority to amounts distributed to the holders of any Class A Membership Shares or Class B Investment Shares, but after payment to holders of Class C Investment Shares. The Class D Investment Shares are also redeemable by TruServ at any time upon payment of the issue price for such shares.

10. Class E Investment Shares are evidence of capital contributions to TruServ. Holders of Class E Investment Shares have no right to vote, other than the right to elect one director of TruServ as a separate class in the event the aggregate dollar value of the products purchased by the members of the holder of the Class E Investment Shares from TruServ in either of the two (2) twelve-month fiscal periods of TruServ preceding the election of directors represents at least ten (10%) percent of the total revenue of TruServ in respect of the applicable preceding twelve-month fiscal period. The Class E Investment Shares are also redeemable by TruServ at any time upon payment of the issue price for such shares.

11. GROWMARK is a corporation, which was incorporated under the laws of the State of Delaware in 1962 under the name "FS Services Inc." ("FS Services Inc." changed its name to "GROWMARK, Inc." in 1980. GROWMARK is based in Bloomington, Illinois and has a distribution center and Canadian office located in Mississauga, Ontario.

12. GROWMARK is an "accredited investor" within the meaning of Ontario Securities Commission Rule 45-501 ("OSC 45-501").

13. GROWMARK carries on business as a federated agricultural co-operative, primarily in the states of Illinois, Wisconsin and Iowa and in the Province of Ontario. It provides products and services to its Agronomy and Consumer Division co-operative members and to Country Depot dealers located in Ontario (the "Country Depot Dealers").

14. The member companies of GROWMARK consist of approximately 327 agricultural co-operatives located primarily in Illinois, Wisconsin, Iowa and Ontario. As of the date hereof, there are 27 members of GROWMARK resident in Ontario ("Ontario GROWMARK Members"), each of which is a corporation incorporated under the *Co-operative Corporations Act* (Ontario) (the "OCCA") and approximately 40 Country Depot Dealers located in Ontario.

15. Pursuant to an agreement to be dated on or about January 6, 2003 (the "Agreement"), Truserv will purchase certain assets (primarily the inventory and goodwill of the consumer products

business carried on in Canada by GROWMARK), and assume specified liabilities (primarily ongoing contracts), of GROWMARK.

16. In connection with the business alliance, each of the Country Depot Dealers will be offered 20 Class A Membership Shares of TruServ at a price of \$100 per share. In addition, each of the Ontario GROWMARK Members will be offered one (1) Class D Investment Share of TruServ at a subscription price of \$2,000 per share or, in the event that TruServ determines that issuing Class D Investment Shares to Ontario GROWMARK Members would result in unfavourable tax consequences to TruServ, each of the Ontario GROWMARK Members will be offered 20 Class A Membership Shares at an aggregate subscription price of \$2,000. The purpose of the Country Depot Dealers becoming members of TruServ and the Ontario GROWMARK Members becoming shareholders (or members) of TruServ is to facilitate the business alliance and commercial relationship between TruServ and the Country Depot Dealers and between TruServ, GROWMARK and the Ontario GROWMARK Members.

17. The purchase price will be paid by TruServ to GROWMARK partially in cash, and a short term promissory note, partially by way of the assumption of specified liabilities of GROWMARK and partially by way of the issuance of certain securities of TruServ to GROWMARK as follows:

(a) Class B Investment Shares will be issued to GROWMARK as principal at an issue price of \$100.00 per share for 40% of the value of the inventory purchased by TruServ from GROWMARK. The balance of the purchase price which is not paid in cash, or short term promissory notes ("Promissory Notes"), will be satisfied through the assumption of liabilities and through the issuance of shares referred to in paragraphs (b) through (d) below;

(b) 20 Class A Membership Shares will be issued to GROWMARK as principal at an issue price of \$100.00 per share; and

(c) 1 Class E Investment Share will be issued to GROWMARK at an issue price of \$2,000 per share.

Under the Agreement, TruServ will agree not to redeem the Class A Membership Shares, the Class B Investment Shares or the Class E Investment Shares held by GROWMARK unless GROWMARK is in breach of a material membership obligation owed to TruServ. The Articles of TruServ provide that, in respect of any proposed disposition of shares of TruServ by a shareholder other than a disposition of investment shares from one member of TruServ to another, TruServ has a right of first refusal to purchase shares for the redemption price of such shares.

18. Upon completion of the transactions described above, from time to time TruServ will pay patronage returns to the holders of Class A Membership Shares, including Country Depot Dealers and GROWMARK. The patronage returns paid to GROWMARK will be based upon the aggregate of the patronage of the Ontario GROWMARK Members (who will acquire Class D

Investment Shares following the completion of the transactions described in the Agreement and upon the granting of the relief requested herein) with respect to Truserv's goods and services. Truserv will pay patronage returns through the issuance of additional Class B Investment Shares and, after certain capital requirements are met, paid in cash. Since the Class D Investment Shares do not provide the holder thereof to the right to receive patronage returns, the Ontario GROWMARK Members will participate in patronage returns to the extent that they are permitted to do so under their membership arrangements with GROWMARK.

19. The following is a summary of trades in TruServ securities in connection with the Agreement:

- (a) TruServ's issuance to GROWMARK of Class A Membership Shares (the "GROWMARK Class A Trades");
- (b) TruServ's issuance to the Country Depot Dealers of Class A Membership Shares (the "Country Depot Class A Trades");
- (c) TruServ's issuance to GROWMARK of Class B Investment Shares (the "Class B Trades");
- (d) TruServ's issuance of one (1) Class D Investment Share or 20 Class A Membership Shares to each Ontario GROWMARK Member (the "Ontario GROWMARK Member Trades");
- (e) TruServ's issuance to GROWMARK of one (1) Class E Investment Share (the "Class E Trade"); and
- (f) TruServ's issuance to GROWMARK of the Promissory Notes (the "Promissory Notes Trades").

20. The primary purpose of the ownership of the shares of Truserv by GROWMARK, the Ontario GROWMARK Members and the Country Depot Dealers is not for investment, but for the purpose of facilitating the overall commercial relationship and business alliance between TruServ, GROWMARK and the Ontario GROWMARK Members and between TruServ and the Country Depot Dealers. The Ontario GROWMARK Members will be purchasing consumer products and other goods sold by TruServ for resale to their members on a co-operative basis. The Country Depot Dealers will become full members in TruServ and will purchase consumer products and goods sold by TruServ for resale.

21. The GROWMARK Members and the Country Depot Dealers will be involved in a close business relationship with TruServ and, as such, the prospectus and registration requirements are not necessary with respect to the Country Depot Class A Trades and the Ontario GROWMARK Member Trades.

22. Each of the Ontario GROWMARK Members and the Country Depot Dealers will voluntarily choose whether or not to subscribe, or accept, shares of Truserv.

23. The issue price for each of the Class A Membership Shares and Class D Investment Shares is repayable by TruServ at the time that such shares are redeemed.

24. The Class D Investment Shares entitle the holder thereof to notice of, to attend and to vote at the election of directors of TruServ. Holders of such shares are not entitled to receive any dividends. The Class D Investment Shares have been created and, subject to TruServ determining that such issuance will not have unfavourable tax consequences to it, will be issued to the Ontario GROWMARK Members in order to provide such members with the right to vote at the election of directors of TruServ.

25. In the absence of the relief requested herein, the Country Depot Class A Trades and the Ontario GROWMARK Member Trades would not be exempt from the registration and prospectus requirements of the Legislation.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

AND WHEREAS 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 registration and prospectus requirements do not apply to the Country Depot Class A Trades and the Ontario GROWMARK Member Trades, provided that the first trade in shares issued pursuant to such trades shall be deemed to be a distribution or a primary distribution to the public, as the case may be, unless the conditions in subsections (2) or (3) of section 2.5 of Multilateral Instrument 45-102 Resale of Securities are satisfied or unless such trade are otherwise exempt from the registration and prospectus requirements of the Legislation.

DATED "January 31", 2003 at Winnipeg, Manitoba.

"Doug Brown"  
Director – Legal