



THE MANITOBA
SECURITIES
COMMISSION

THE SECURITIES ACT

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Order No. 7494

Section 20

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November 27, 2019

HENSALL DISTRICT CO-OPERATIVE, INCORPORATED

WHEREAS:

(A) Hensall District Co-Operative, Incorporated ("Hensall") has applied to The Manitoba Securities Commission (the "Commission") for an order pursuant to subsection 20(1) of The Securities Act (Manitoba) that section 37 shall not apply to the issuance by Hensall in Manitoba (the "Offering"), from time to time, of member loans in the initial principal amount of \$500.00 ("Mandatory Member Loans") as well as unsecured debentures ("Special Member Loans") and unsecured demand loans ("Unsecured Demand Loans") in the aggregate principal amount of up to \$73,900,00.00 pursuant to an offering statement dated March 1, 2018 (the "Offering Statement") filed by Hensall in Ontario under section 34(1) of the Co-operative Corporations Act (Ontario).

(B) Hensall conducts a concurrent continuous issuance of those securities in the Province of Ontario pursuant to the Offering Statement. The Offering Statement was received by the Superintendent of the Financial Services Commission of Ontario, now operated and known as the Financial Services Regulatory Authority ("FSRA") under the provisions of the Co-operative Corporations Act (Ontario) on March 1, 2019 and is current as at the date hereof.

(C) In this Order, "Prospective Member or Member" means an individual, partnership or corporation engaged in the agricultural business, either on a full time or part time basis, (including the immediate family members of such individual, of the partners of such partnership or of the controlling shareholders of such corporation), who are expected to transact on an annual basis a minimum of \$15,000.00 of products or services from, or to, Hensall and who would benefit from the knowledge and expertise that Hensall offers to the agricultural business. For the purposes of the foregoing, an "immediate family member" is restricted to the spouse, parent, grandparent, brother, sister, child or grandchild of such individuals, partners or shareholders or the parent, grandparent, brother, sister, child or grandchild of such spouse, and except in respect of the first trade relief contemplated by this Order, such family member must be involved in the agricultural business with the Prospective Member or Member.

- (D) Hensall has represented to the Commission that:
1. Hensall is a farm supply, grain processing and marketing co-operative incorporated under the Ontario Co-Op Act. Originally formed in 1938 as Huron Farmers Company Co-operative, Hensall has operated under its present name since 1946 and is the largest retail farm supply and grain marketing co-operative in Ontario.
 2. The head office of Hensall is located in the Village of Hensall, in the County of Huron, in the Province of Ontario.
 3. To date, Hensall has only offered securities within Ontario and has conducted those offerings in compliance with, the provisions of the Ontario Co-Op Act. Under subsection 73.1(6) of the *Securities Act* (Ontario), securities issued by a corporation to which the Ontario Co-Op Act applies are exempt from the prospectus requirement of Ontario securities laws. No similar exemption is available in Manitoba.
 4. Hensall is not in default of any securities legislation in any jurisdiction. Hensall is not presently, and will not become, a reporting issuer, or the equivalent, in any jurisdiction, and there is no present intention of becoming one.
 5. There is currently no established market for which the securities of Hensall may be sold and no such market is likely to develop. Hensall has no present intention of listing its securities on any stock exchange or market.
 6. Hensall has four (4) main business units which include a food products division, a feed business division, an energy business division and a global logistics business division. The food products division includes crop inputs and origination which focuses on the sale of seed, chemicals, fertilizer, their related services and origination of value-added edible beans and soybeans. Hensall has an edible bean marketing department which contracts sixteen (16) classes of beans worldwide and a grain and soybean marketing department that includes corn, wheat, soybean meal, dried distillers' grain, canola, spring cereals, crusher soybeans and edible soybeans. The division also includes grain and bean elevator operations which involves intake, processing and storage.
 7. The feed business consists of manufacturing and selling a range of livestock feed from Hensall's manufacturing facilities. The energy business distributes petroleum and propane products to farm, commercial and residential customers. The Hensall global logistics business offers ocean-container trucking, freight-forwarding and other services to facilitate the movement of freight from origin to

destination for other Hensall business divisions as well as a global external customer base.

8. Hensall operates twelve (12) retail crop input outlets, eighteen (18) grain handling facilities, five (5) feed mill outlets, and one (1) farm supply/hardware store location. All Hensall owned facilities, except the Rignold, Bloom and Miami, Manitoba locations, are in Ontario.
9. In order to become a member of Hensall, a \$50.00 lifetime membership fee and approval from Hensall's Board of Directors (the "Board") is required. Members are expected to conduct at least \$15,000 worth of business with Hensall on an annual basis. All Members receive the right to vote at meetings of members of the co-operative and there is only one class of membership. Membership is open to any Prospective Member.
10. Neither the Special Member Loans nor the Unsecured Demand Loans provide a Member with a right to vote. Each Member is entitled to one vote upon becoming a member. Subsequent investments by that Member in Hensall do not increase any voting right and do not otherwise affect that one vote.
11. Special Member Loans and Unsecured Demand Loans become repayable within 6 months of the withdrawal by a Member from membership. If a Member dies or ceases to farm, they are also eligible to receive a return of their monies invested. Hensall's Board of Directors have the right to defer payments over several years if required. Specifically, the Directors may by resolution extend such payments over a period of not more than 5 years and pay in each year not less than 20% percent of the amount to be repaid.
12. Securities of Hensall may not be transferred without the express consent of its Board of Directors.
13. Members are entitled to receive patronage dividends, as and when declared and approved by the Board, based on the amount of the Members' approved purchases and sales with Hensall. Declared patronage dividends are transferred into members' patronage loan accounts. Before members can receive any cash payment for their patronage dividends, they must first make a loan of \$500.00 to Hensall (a "Mandatory Member Loan"), which bears simple interest at a maximum mandatory rate of 2.00% above the Bank of Montreal prime rate or at a lesser rate as declared by the Board.
14. The Mandatory Member Loan may be paid either in cash, at any time, or through the yearly automatic allocation, in \$50 increments, of patronage dividends. Until the \$500 initial amount is satisfied, cash payments for patronage dividends cannot be received by the member. Once that initial amount is paid, a member can elect to

reinvest their patronage dividends in the member's loan account. As a result, Mandatory Member Loans can, and often do, exceed the initial principal amount of \$500.

15. Mandatory Member Loans have no maturity date and are only redeemable upon the death of a member, the sale of a member's farm assets, or the withdrawal of a member from membership upon the approval by the Board.
16. In addition to the Mandatory Member Loans, members of Hensall have the ability to finance the business as investors through other forms of security: namely, Special Member Loans and Unsecured Demand Loans.
17. Unsecured debentures (also known as "Special Member Loans") are available in 2-5, 7 and 10-year terms. Special Member Loans are not a requirement of membership, are unsecured, and bear a fixed rate of interest throughout the entire term as set by the Board. The rate is based on the applicable Bank of Montreal guaranteed investment certificate rate plus a premium of 3.45% to 5.25%. Holders of Special Member Loans have three options for the payment of interest: (i) paid annually on March 31st of each year (ii) compounded annually on March 31st until maturity or (iii) paid monthly on the last day of each month.
18. Unsecured demand loans ("Unsecured Demand Loans") bear a variable rate of interest set monthly by the Board within 1.00% to 3.00% of the Bank of Canada rate. Interest on these loans is calculated and compounded monthly and paid out on repayment of the loan. The maximum amount that an individual member can subscribe to under an Unsecured Demand Loan is \$300,000.00. Again, an Unsecured Demand Loan is not a requirement of membership in Hensall. The Board is authorized to and may change the interest rates charged and the terms of both Special Member Loans and Unsecured Demand Loans from time to time.
19. Pursuant to the Ontario Co-Op Act, a co-operative with more than 35 investors or members cannot sell any of the securities it offers unless it has issued a prospectus or filed an offering statement with the Superintendent of the Financial Services Commission of Ontario, now operated and known as the Financial Services Regulatory Authority ("FSRA") and obtained a receipt for it. The offering statement must be prepared in compliance with section 12 of Regulation 178, as amended, under the Ontario Co-Op Act. The Superintendent of FSCO may issue a receipt when satisfied that the offering statement contains full, true and plain disclosure of all material facts relating to the securities proposed to be issued. The test for what would be required in such an offering statement is the

same as the test for what would be required to be included in a prospectus.

20. Co-operatives must make their receipted offering statement available for inspection by anyone requesting it, at the co-operative's head office during normal business hours. A co-operative cannot accept a subscription for securities from anyone unless the person has been given a copy of the receipted offering statement and any material change statement.
21. Until recently, Hensall's presence in Manitoba consisted of a grain handling and edible bean origination facility in the community of Rignold. A seed and chemical warehouse was also developed at the Rignold location during the July 31, 2018 fiscal year.
22. In January 2019, Hensall strengthened its footprint in Manitoba through a purchase transaction involving a bean processing plant in the community of Bloom and a satellite receiving location in the community of Miami, Manitoba.
23. As a result of its expanding presence in Manitoba, Hensall would like to offer Manitoba residents an opportunity to invest in the co-operative on the same basis as their Ontario counterparts. The Mandatory Member Loans, although mandatory in order for a member to receive patronage dividends, are not required as a condition of membership and are therefore not exempt from the prospectus requirements of the Manitoba securities legislation by virtue of subsection 58(3) of the MB Securities Act since they are not securities that are memberships issued by a co-operative entity for the purpose of qualifying a person or company as a member of the co-operative entity. The Unsecured Demand Loans and the Special Member Loans can be subscribed for voluntarily by members of Hensall and thus are similarly not exempt under subsection 58(3) of the MB Securities Act.
24. Each Prospective Member who contemplates becoming an investor of Hensall receives a copy of the Offering Statement.
25. As Hensall expands its presence in Manitoba, it will pursue new members in the Province. Hensall wishes to be able to offer Members in Manitoba the ability and opportunity to receive all benefits of their memberships, including all of the investment options in the co-operative, on the same basis as is made available to its Ontario members.
26. In Manitoba, Hensall will restrict the offering of Mandatory Member Loans, the Unsecured Demand Loans and Special Member Loans to Members only. There is no intention of, nor any request for relief in respect to, offering securities of any kind to any person in

Manitoba who does not become a Member. In the event that Hensall is granted the relief sought herein, any Member in Manitoba who contemplates subscribing for an Unsecured Demand Loan or Special Member Loan will, just like their Ontario counterparts, receive a copy of the Offering Statement prior to purchasing those securities.

27. In addition to providing Prospective Members with the (then current) Offering Statement, and an addendum to the (then current) Offering Statement advising of any differences in the material attributes of the securities being offered for holders in Manitoba compared to holders outside of Manitoba that are not described in the Offering Statement (the "Addendum"), Hensall would also provide such Prospective Member with the of Amalgamation and Articles of Amendment of Hensall, the By-laws of Hensall, this Order, a form of Subscription Agreement and the most recent financial statements of Hensall and the related auditor's report. Collectively, these materials will be referred to herein as the "Disclosure Documents".
28. Concurrently with or prior to the receipt of the Disclosure Documents, Prospective Members will be provided with a risk acknowledgement form, substantially similar to Form 45-106F4 (the "Risk Acknowledgement Form") which Prospective Members will be required to sign.
29. In addition to the requirement that Hensall send Members a copy of the financial statements and auditor's report on an annual basis as described above, Hensall will provide an updated Offering Statement and statement of material change (if any) in the event that the Member seeks to purchase additional securities of Hensall.
30. Members will be provided with a contractual right of action against Hensall with respect to any misrepresentation contained in the disclosure provided in the Disclosure Documents equivalent to the statutory right provided by section 141.1 of The Securities Act (Manitoba) (the Contractual Right Of Action), in addition to any other right or remedy available at law to the Member. The Disclosure Documents will contain a description of the Contractual Right of Action and a statement that the Contractual Right of Action is in addition to any other right or remedy available at law to the Member.
31. Hensall will send Members a copy of its financial statements and auditor's report in accordance with section 140 of Ontario Co-Op Act, which requires that the financial statements and auditor's report be sent out at least 10 days before each annual members' meeting.

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

IT IS ORDERED:

1. **THAT**, pursuant to subsection 20(1) of the Securities Act (Manitoba), the prospectus requirement set forth in Section 37 shall not apply to the sale of Mandatory Member Loans, Special Member Loans and Unsecured Demand Loans to Prospective Members or Members resident in, or otherwise subject to, the laws of the Province of Manitoba, provided that:

- a. Hensall is in compliance with the provisions of and will provide ongoing disclosure to members in accordance with the requirements of the Ontario Co-Op Act;
- b. Hensall is not a reporting issuer, or the equivalent, in any jurisdiction;
- c. no securities of Hensall are listed on a stock exchange or marketplace;
- d. the sale of Mandatory Member Loans, Special Member Loans and Unsecured Demand Loans to persons in Manitoba is limited to Prospective Members or Members;
- e. solicitations for membership in Hensall are conducted solely by Hensall, and there are no finder's fees or commission paid in connection with the issuance or transfer of its securities;
- f. at the time of entry into a subscription agreement to subscribe for a Special Member Loan and/or an Unsecured Demand Loan, Members and Prospective Members are provided with the Contractual Right of Action and the Right of Withdrawal;
- g. in the case of Special Member Loans and Unsecured Demand Loans, the member purchases the security as principal and, at the same time or before the member signs the agreement to purchase the security, Hensall delivers a copy of the following to the member:
 - i. the then current Offering Statement, which includes the required financial statements;
 - ii. the Addendum;
 - iii. the Disclosure Documents;

iv. the Risk Acknowledgement Form; and

v. this Order;

- h. Hensall will provide ongoing disclosure to Members in accordance with the requirements of the Ontario Co-Op Act;
- i. the exemptions contained in this Decision cease to be effective if any of the provisions of the constating documents of Hensall relevant to the exemptions granted herein are amended in any material respect without prior written notice to, and consent of, the Commission;
- j. Hensall files a copy of the Offering Statement and any update of a previously filed Offering Statement with the Commission on or before the 10th day after each distribution under the Offering Statement or update of the Offering Statement.
- k. the first trade of Mandatory Member Loans, Special Member Loans and Unsecured Demand Loans, other than a trade to the Filer, another Member, or to an immediate family member of a Member, shall be deemed a primary distribution to the public.

2. **THAT**, the fee for this order shall be \$1,000.00.

BY ORDER OF THE COMMISSION



Director