



DECISION DOCUMENT

In the Matter of
the Securities Legislation of
Manitoba
(the **Jurisdiction**)

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
Canterra Seeds Holdings Ltd.
(the **Filer**)

Decision

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**), pursuant to subsection 20(1) of *The Securities Act* (Manitoba) (the **Manitoba Act**), that the prospectus requirement contained in the Manitoba Act (section 37) (the **Prospectus Requirement**) shall not apply to the issuance, from time to time, of a specified number of Class B Shares of the Filer to Eligible Investors (as defined below) or to the first trade of such shares by an Eligible Investor to the Filer or another Eligible Investor (the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

- (a) The Manitoba Securities Commission is the principal regulator for this Application;
- (b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in each of British Columbia, Alberta, and Saskatchewan.

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, and National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**) have the same meaning if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer was incorporated under the laws of the Province of Saskatchewan on March 14, 1996.
2. The head and registered office for the Filer is located at 201 – 1475 Chevrier Blvd., Winnipeg, Manitoba, Canada, R3T 1Y7.
3. The Filer is a reporting issuer in the province of Saskatchewan. The Filer is currently compliant with all filing requirements under applicable securities laws.
4. No securities of the Filer are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported. The Filer has no present intention of listing its shares on any stock exchange or market.
5. The Filer is in the business of developing, acquiring, producing, marketing, and selling market-leading seed varieties to its customers throughout Western Canada and the Great Northern Plains and Pacific Northwest of the United States.
6. The Filer enters into license agreements with the producers of seeds. There are two type of license agreements, seed grower license agreement (the **Seed Grower License Agreement**) and the retailer license agreement (the **Retailer License Agreement** and together with the Seed Grower License Agreement, the **License Agreements**).
7. Licensees under Seed Grower License Agreement (**Seed Grower Licensees**) are granted the right and license to produce, retail and wholesale certain seed varieties.
8. Licensees under the Retail License Agreement (the **Retail Licensees** and together with the Seed Grower Licensees, the **Licensees**) are granted the right and license to retail and to produce under contract with or purchase from Seed Grower Licensees certain seed varieties to which the Filer has rights.
9. Both License Agreements require the Licensees entering into Licensing Agreements to hold at minimum 2,400 Class A Shares and exactly 12,000 Class B Shares, of any series, in the capital of the Filer. The price per Class A Share is currently \$2.48 per share and the price per Class B Share is \$1.00 per share. The Board of Directors of the Filer determines the value of the Class A Shares and the Class B Shares.
10. A Licensee who also holds the requisite number of shares of the Filer, receives the benefit of the rights under the applicable License Agreement, being the rights to retail and produce seed varieties to which the Filer has rights.

11. Licensees are seed growers who are licensed with the Canadian Seed Growers Association. It is a condition of the License Agreements that the Licensee becomes and remains a member in good standing of the Canadian Seed Growers Association. Licensed seed growers would generally be familiar with the Filer's business and operations.
12. The authorized capital of the Filer includes: (a) an unlimited number of Class A Shares; (b) an unlimited number of Class B Shares; (c) an unlimited number of class C shares without nominal or par value, non-voting, and non-redeemable; and (d) an unlimited number of class D shares without nominal or par value, non-voting, and non-redeemable. There are currently 7,551,147 Class A Shares and 2,118,000 Class B Shares issued and outstanding. There are no issued and outstanding Class C shares or Class D shares.
13. Subject to the rights of any shares of the Filer ranking prior to the Class A Shares, the Class A Shares are entitled to receive dividends declared by the directors of the Filer on such shares. Subject to the rights of any shares of the Filer ranking prior to the Class A Shares, the Class A Shares are entitled to receive the remaining property of the Filer on liquidation, dissolution or winding-up. The holders of Class A Shares are entitled to receive notice of, to attend and to vote at all meetings of shareholders of the Filer. There are no shares with rights ranking prior to the Class A Shares. The Class A Shares are not redeemable (or retractable) at the option of the Filer or the shareholder.
14. The holders of the Class B Shares are not entitled to receive dividends or share in the distribution of the Filer's assets on liquidation, dissolution or winding-up of the Filer. Except as otherwise provided at law, the holders of the Class B Shares are not entitled to receive notice of, attend or vote at any meeting of the shareholders of the Filer. Upon termination of the License Agreement, the Filer has the right to redeem the Class B Shares of the holder for a price which does not exceed the greater of \$1.25 per Class B Share and the amount originally paid for such shares. However, the Filer has not historically redeemed such Class B Shares, as there are typically interested buyers on the secondary market.
15. The primary benefit to a Licensee of holding Class B Shares is the right to have access to produce and sell the proprietary seed varieties of the Filer. The Filer owns proprietary seed varieties which are registered with the Canadian Food Inspection Agency pursuant to the Plant Breeders' Rights Act (Canada). The Filer has the exclusive right to produce such registered seed varieties for 25 years from the time of registration. These seed varieties have unique attributes, with advantages over other seed varieties, which can be desirable to Licensees. Licensees gain access to these registered seed varieties which they can produce and retail, thereby adding value to their own businesses. Accordingly, the Class B Shares are more akin to a membership share, as they do not have voting or participation rights, rather they provide holders of the shares with contractual rights and economic benefits that a non-shareholder would not be entitled to.
16. There are sufficient numbers of Class A Shares which trade among the existing shareholders of the Filer, which can be acquired by potential Licensees in order to satisfy the minimum Class A shareholding requirement under the License Agreement. However, there are not sufficient numbers of Class B Shares which trade among the existing shareholders of the Filer and can be acquired by

potential Licensees, in order to satisfy the minimum Class B shareholding requirement under the License Agreement.

17. The Filer is not always able to rely on any prospectus exemption in NI 45-106 to issue the Class B Shares to its licensees as under NI 45-106, the Filer is not a private issuer, it will not be issuing any offering memorandum, and the individuals designated to receive such shares may not be "accredited investors" or "family, friends and business associates." In particular, many of the new licensees will be producers, in the early stages of their farming businesses, who may not be accredited investors. Further, the Filer only expects up to 10 subscribers each year for Class B Shares. The cost to prepare and annually update an offering memorandum would be prohibitive to accommodate such a small group of subscribers.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that:

- (a) The maximum number of shares that the Filer may issue to an eligible investor under this exemptive relief will be limited to exactly 12,000 Class B Shares (each such investor, an **Eligible Investor**).
- (b) In order to be an Eligible Investor the investor must concurrently with the execution of a subscription agreement to acquire the 12,000 Class B Shares (the **Subscription Agreement**) enter into a License Agreement with the Filer, and be entitled to all the rights of a licensee under such applicable License Agreement.
- (c) Each Eligible Investor will receive a disclosure package, concurrently with signing a Subscription Agreement, including:
 - i. The most recent audited annual financial statements and annual MD&A of the Filer;
 - ii. The most recent unaudited interim financial statements and interim MD&A of the Filer;
 - iii. The most recent management information circular of the Filer issued in connection with annual meeting of shareholders;
 - iv. The current articles and bylaws of the Filer;
 - v. A description of the Contractual Right of Action (defined below) and a statement that the Contractual Right of Action is in addition to any other right or remedy available at law to the

Eligible Investor.

(collectively, the **Disclosure Document**)

- (d) Each Eligible Investor will receive a certificate signed by the Chief Executive Officer or Chief Financial Officer of the Filer stating that the Disclosure Document contains no untrue statement of a material fact and does not omit to state a material fact that is required to be stated or omit to state a material fact that is necessary to make a statement not misleading in light of the circumstances in which it was made (the **Certificate**).
- (e) Each Eligible Investor will be provided with a contractual right of action against the Filer with respect to any misrepresentation contained in the Disclosure Document (the **Contractual Right of Action**) provided to the Eligible Investor upon entering into the subscription agreement, which provides as follows:

Purchaser Rights. Upon acceptance of this Agreement, the Issuer agrees that the Subscriber, is granted a contractual right of action against the Issuer for any misrepresentation in the Disclosure Document, provided to the Subscriber which is equivalent to the statutory right of action against the Issuer available to purchasers of Shares who are resident in Manitoba pursuant to 141.1 of *The Securities Act* (Manitoba).
- (f) Each Eligible Investor will be provided with the right to withdraw from their subscription commitment within two business days of signing the Subscription Agreement (the **Right of Withdrawal**).
- (g) Each Eligible Investor will also receive, and must sign, a risk acknowledgment form substantially similar to Form 45-106F4 *Risk Acknowledgement* (the **Risk Acknowledgement Form**) concurrently with executing their Subscription Agreement.
- (h) Each Eligible Investor will receive certificates representing its Class B shares, which shall bear a legend indicating that such shares are subject to restrictions on transfer contained in this exemptive relief.
- (i) Each Eligible Investor will be entitled to receive all the continuous disclosure of the Filer, to which any shareholder is entitled to under National Instrument 51-102 – *Continuous Disclosure Obligations* and *The Business Corporations Act* (Saskatchewan).
- (j) No securities of the Filer are listed on a securities exchange or other marketplace.

- (k) Solicitations for Eligible Investors to acquire shares under this exemptive relief are conducted solely by the Filer and there are no finder's fees or commissions paid in connection with the issuance of Class B Shares under this exemptive relief.
- (l) The first trade in any Class B Shares by a Eligible Investor acquired under this exemptive relief to a person or company, other than the Filer or another Eligible Investor, shall be deemed to be a distribution or primary distribution to the public.



Chris Besko, Director
The Manitoba Securities Commission