



Manitoba
Financial Services
Agency

THE SECURITIES ACT)
)
National Instrument 24-102)

Order No. 7649

February 27, 2024

CO-ORDINATED REVIEW

DETERMINATION

AGRIFOODS INTERNATIONAL COOPERATIVE LTD.

The Manitoba Securities Commission makes the same determination on the application as the Principal Jurisdiction, a copy of which is attached, and opts in on the attached Decision Document.

Director

Headnote

Application for relief from the prospectus and registration requirements in connection with the issuance, from time to time, of membership and investment shares of a federally incorporated co-operative. The purpose of the co-operative is to assist members in the collection and delivery of milk to dairies for processing through a co-operative organized under the Canada Cooperatives Act -- relief granted subject to conditions.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 53 and 74(1).

February 27, 2024

IN THE MATTER OF THE SECURITIES LEGISLATION OF ONTARIO (the Jurisdiction) AND IN THE MATTER OF AGRIFOODS INTERNATIONAL COOPERATIVE LTD. (the Filer)

DECISION

Background

The Ontario Securities Commission (the **Commission**) has received an application from the Filer for a decision under the securities legislation of Ontario (the **Legislation**) for exemptive relief from the dealer registration requirement, the prospectus requirement and any resale restrictions of the Legislation applicable to distributions of Membership Shares and Investment Shares (each as defined in the *Canada Cooperatives Act* (the **Federal Co-Op Act**)) of the Filer and trades of Investment Shares on a private facility operated by the Filer (collectively, the **Requested Exemptive Relief**).

Interpretation

Terms defined in National Instrument 14-101 *Definitions* 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 is a cooperative organized under the Federal Co-Op Act. The members of the Filer are dairy producers located in British Columbia, Alberta, Manitoba, Saskatchewan and Ontario (the **Jurisdictions**). The Filer offers its members the service of picking up milk

from their farms and delivering the milk to dairies for processing. The ability of some members to use this service is limited by Provincial milk board regulations or policies.

2. The Filer is not a reporting issuer in any jurisdiction and has no intention of becoming a reporting issuer.

3. The Filer's capital structure consists of an unlimited number of Membership Shares with a par value of \$1.00 per Membership Share and an unlimited number of Investment Shares without par value.

4. There are currently approximately 4,015 Membership Shares and 19,462,422 Investment Shares issued and outstanding.

5. The Filer currently has:

(a) approximately 806 members (the **Members**) who are actively involved in dairy farming;

(b) approximately 1,692 auxiliary members (the **Auxiliary Members**) who either

(i) were previously, but are no longer, active in dairy farming, but have a continuing interest in the Filer in the form of Investment Shares, or

(ii) are shareholders of active or formerly active corporate Members or partners of or participants in active or formerly active unincorporated Members.

6. Under the Federal Co-Op Act and the Articles and By-laws of the Filer,

(a) only Members are able to hold Membership Shares;

(b) only Members, Auxiliary Members and employees of the Filer (in accordance with the terms of an employee share ownership, stock option or similar plan for employees of the Filer (an **Employee Plan**)) are able to hold Investment Shares;

(c) membership is limited to active dairy producers licensed by the Provincial milk board in one of the Jurisdictions who are: (i) capable of using the services of the Filer; (ii) use the Filer's services unless prevented from doing so by Provincial milk board regulations, orders or policies; and (iii) are admitted to membership in the Filer; and

(d) auxiliary membership is limited to former Members who have ceased dairy farming but continue to hold Investment Shares, and shareholders, partners or other owners of Members and Auxiliary Members who are admitted to auxiliary membership in the Filer.

7. There are currently Members and Auxiliary Members resident in each of the Jurisdictions. Members in Ontario have been admitted since December 2017. Prior to that time, there were only Members resident in British Columbia, Alberta and Saskatchewan. There is also one Auxiliary Member resident in Nova Scotia. Auxiliary Members all became so while resident in British Columbia, Alberta or Saskatchewan, and those now resident in Manitoba, Ontario or Nova Scotia moved to those provinces subsequent to becoming Auxiliary Members.

8. Originally, Auxiliary Members were individuals, companies or organizations who were: (a) no longer active in dairy farming; and (b) owed member loans by the Filer that were converted to Investment Shares (the **Original Auxiliary Members**). The Original Auxiliary Members make up the majority of the Auxiliary Members. Now, shareholders of active or formerly active corporate Members, or partners of or participants in active or formerly active unincorporated Members, are allowed to apply to be Auxiliary Members for the purpose of holding Investment Shares as individuals rather than through their interest in corporate Members or unincorporated Members (the **New Auxiliary Members**). New Auxiliary Members must meet the Auxiliary Member criteria set out in the bylaws of the Filer and apply for admittance as an Auxiliary Member, which is subject to approval by the Board of the Filer.

9. The Articles of the Filer provide that its Investment Shares may be issued and transferred only to:

(a) Members or Auxiliary Members;

(b) the executor or administrator of the estate of a Member or Auxiliary Member, provided that the executor or administrator may only hold and sell the Investment Shares owned by the deceased person at the time of his or her death and any additional Investment Shares issued to the deceased's estate as a result of the mandatory investment of patronage returns to the deceased or the deceased's estate for the purchase of Investment Shares, but the executor or administrator may not otherwise acquire additional Investment Shares; and

(c) employees of the Filer, pursuant to and in accordance with the terms of, an Employee Plan, and, in addition, no person or shareholder group can hold more

than five percent of the issued and outstanding Investment Shares. Previously issued Investment Shares can be transferred only to a person who has been a Member or Auxiliary Member for at least 12 months before the date of transfer.

10. No securities of the Filer, including debt securities, 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.

11. Pursuant to exemptive relief granted by the securities regulators in British Columbia, Alberta and Saskatchewan dated February 28, 2006, the Filer operates a private facility in these jurisdictions whereby Members and Auxiliary Members are able to trade the Investment Shares. The Filer is seeking separate marketplace relief to operate the private facility in Ontario and Manitoba.

12. The relief granted by the securities regulators in British Columbia, Alberta and Saskatchewan for Filer's private facility did not include clearing agency relief, which is required to operate the facility. Consequently, the Filer is also seeking separate clearing agency relief to operate the private facility in the Jurisdictions.

13. Other than having operated the private facility without the required clearing agency relief, the Filer is not in default of applicable securities legislation.

14. The Filer does not have an Employee Plan and no employees of the Filer hold Investment Shares.

15. Section 247 of the Federal Co-Op Act requires that each Member and Auxiliary Member be provided with the Filer's annual financial statements for the most recently completed year and each part year ending not more than six months before every annual meeting of members.

16. Pursuant to section 3.4 of Ontario Securities Commission Rule 45-501 -- *Ontario Prospectus and Registration Exemptions*, the issuance of Membership Shares to new Members or Investment Shares to new Members or Auxiliary Members, as applicable, from time to time would, if the Filer were a corporation to which the *Co-operative Corporations Act* (Ontario) (the **Provincial Co-op Act**) applied, be exempt from Subsection 25(1) of the *Securities Act* (Ontario) (the **Act**).

17. Pursuant to Subsection 73.1(6) of the Act, the distribution of Membership Shares to new Members or Investment Shares to new Members or Auxiliary Members, as applicable, from time to time and any subsequent trades of Investment Shares by the holders thereof

would, if the Filer were a corporation to which the Provincial Co-op Act applied, be exempt from Subsection 53(1) of the Act.

18. Pursuant to Subsection 34(1) of the Provincial Co-op Act and the applicable regulation, a co-operative subject to that act must file and obtain a receipt for an offering statement from the Financial Services Regulatory Authority of Ontario in order to sell, dispose of or accept directly or indirectly any consideration for securities of the co-operative where the co-operative has more than 35 security holders, or where the sale or disposition of or acceptance of consideration for the securities would have the effect of increasing the number of security holders in the co-operative to more than 35. Subsection 34(2) of the Provincial Co-op Act and paragraph 6 of section 12.6 of the applicable regulation, provide an exception to the offering statement requirement where the value of each issue of shares to a member does not: (i) exceed \$1,000 per member in a year; (ii) does not exceed an aggregate value of \$10,000 per member; and (iii) result in the co-operative having more than \$200,000 of issued and outstanding securities.

19. The Federal Co-Op Act incorporates the fundamental cooperative principles which are also contained in the Provincial Co-op Act. Accordingly, the policy rationale for permitting distributions and trades of securities of provincial cooperative associations applies equally to securities of cooperative associations incorporated under the Federal Co-Op Act.

20. The Filer does not and will not be providing recommendations or advice to Members, Auxiliary Members or potential Members or Auxiliary Members regarding the decision to purchase, sell or hold Membership Shares or Investment Shares.

21. Before each annual general meeting, the Filer will send to each Member and Auxiliary Member, and make available on its website, its financial statements for the most recently completed year and each part year ending not more than six months before that meeting.

22. The Investment Shares are uncertificated and the register of Investment Shares is maintained by the Filer. As such, all trades of Investment Shares must be facilitated by the Filer and the Filer reviews and is able to prevent any trades of Investment Shares that are: (i) non-compliant with the terms of the Requested Exemptive Relief; (ii) non-compliant with the terms of an available prospectus exemption; and (iii) made from outside of the Jurisdictions.

Decision

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

The decision of the Decision Maker under the Legislation is that the Requested Exemptive Relief is granted, provided that the following conditions are satisfied:

- (a) the Filer continues to be a co-operative to which the Federal Co-op Act applies;
- (b) the Filer only issues Membership Shares to Members and only issues Investment Shares to Members, Auxiliary Members, and employees of the Filer, pursuant to and in accordance with the terms of, an Employee Plan;
- (c) before the Filer issues Membership Shares or Investment Shares, the Filer confirms that each issue of Membership Shares or Investment Shares to a member does not:
 - (i) exceed \$1,000 per Member or Auxiliary Member, as applicable, in a year;
 - (ii) exceed an aggregate value of \$10,000 per Member or Auxiliary Member, as applicable; and
 - (iii) result in the Filer having more than \$200,000 of issued and outstanding securities in Ontario.
- (d) if the Filer issues Investment Shares as, or by the application of, a dividend or interest, no commission or other remuneration is paid or given to others in respect of the trade except for administrative or professional services or for services performed by a registered dealer;
- (e) the Filer only facilitates trades of Investment Shares on its private facility and in accordance with the representations and terms and conditions of the exemptive relief granted by securities regulators of the Jurisdictions as described in representations 11 and 12;
- (f) a Member or Auxiliary Member may trade an Investment Share if the purchaser of the security is a Member or Auxiliary Member and has been a Member or Auxiliary Member for at least 12 months, or is an employee of the Filer and the trade is conducted in accordance with an applicable Employee Plan;
- (g) the first trade in Membership Shares to a person other than a Member or the Filer will be deemed to be a distribution;

(h) the first trade in Investment Shares to a person other than the Filer or a person specified in paragraph (f) hereof or representation 9 above will be deemed to be a distribution;

(i) the exemptions in this decision cease to be effective if any of the provisions of the articles or by-laws of the Filer relevant to the exemptions granted are amended in any material way unless staff of the Ontario Securities Commission consents to that amendment;

(j) the Filer deals fairly, honestly and in good faith with Members, Auxiliary Members, and employees;

(k) the Filer will not recommend or advise Members, Auxiliary Members, employees or potential Members or Auxiliary Members regarding the decision to purchase, sell or hold Membership Shares or Investment Shares; and

(l) Investment Shares will not be transferred to persons identified at representation 9 above, unless the Filer obtains relief to operate its private facility in the Jurisdictions.

"Michael Balter"
Manager, Corporate Finance
Ontario Securities Commission
OSC File #: 2018/0684