

Dated: May 9, 2013

In the Matter of
the Securities Legislation of
Saskatchewan and Ontario (the Jurisdictions)

and

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

and

In the Matter of
Canadian Lamb Producers Cooperative Inc.
(the Filer or Cooperative)

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the prospectus requirement contained in the Legislation of the Jurisdictions (the Prospectus Requirement) shall not apply to the issuance, from time to time, of Membership Shares and Investment Shares of the Filer to Prospective Members (as defined below) or to the first trade of such shares by a Member (as defined below) to another Member or the Filer (the Exemption Sought).

Furthermore, the Decision Maker have received a request from the Filer for a decision under the Legislation that the application for this decision, the supporting materials and this decision (the Decision, and collectively, the Confidential Material) be kept confidential until the earlier of (i) the date that the Filer advises the Decision Maker that there is no longer any need for the Confidential Material to remain confidential; and (ii) the date that is 90 days after the date of this Decision.

Under National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* (for a dual application):

- (a) the Financial and Consumers Affairs Authority of Saskatchewan is the principal regulator for this Application;

- (b) the Filer has provided notice that Section 4.7(1) of Multilateral Instrument 11-102 – *Passport System* (MI 11-102) is intended to be relied upon in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Quebec and Yukon (collectively, Other Jurisdictions); and
- (c) this Decision is the Decision of the principal regulator and evidences the Decision of the securities regulatory authority or regulator in Ontario.

Interpretation

Terms defined in NI 14-101 – *Definitions* and MI 11-102 have the same meanings if used in this Decision, unless otherwise defined.

Representations

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

The Filer

1. The Filer is incorporated under the *Canada Cooperatives Act* and will extend membership solely to lamb producers meeting its eligibility requirements (discussed below) in each of the Jurisdictions and Other Jurisdictions in order to facilitate the production, processing and marketing of lamb products on a national basis for both the domestic and export markets.
2. The Filer will incorporate a subsidiary, tentatively to be called the Canadian Lamb Company Inc. (the Company), under the *Canada Business Corporations Act* to conduct the day-to-day business activities of the Filer, as discussed further below. The Filer will remain the controlling shareholder of the Company as the articles of incorporation of the Company will contain a restriction on the transfer of shares of the Company or any interest therein that would result in the Filer ceasing to directly or indirectly own less than 75 per cent of the voting rights attached to all outstanding securities of the Company. As a result of the aforesaid restriction, the Filer will have ownership of sufficient voting rights to enable the election of a majority of the members of the board of directors of the Company.
3. The Chair of the board of directors of the Filer will also be the Chair of the board of directors of the Company, and three individual lamb producers are to be appointed to the Company's board of directors.
4. The Filer's ownership interest in the Company is intended to facilitate the business objectives of the Filer and is not for investment purposes.
5. The securities of the Company to which voting rights are attached that are not owned directly or indirectly by the Filer may be owned by not more than 12 investors who are not Members and are at arm's length at the time of investment to each of the Filer and the Company and their respective directors or officers, and in each case are either participants in, or otherwise knowledgeable about, the lamb industry.

6. The articles of incorporation of the Company will contain a restriction limiting the percentage of shares of all classes of the Company that may be issued to any person or company other than the Filer to no more than 25 per cent.
7. In accordance with the requirements of the *Canada Cooperatives Act*, the Filer will have a fixed place of business in more than one province and will thus establish offices in two jurisdictions, namely, in Guelph, Ontario and in Saskatoon, Saskatchewan. The registered and head office of the Filer is located in Saskatoon.
8. In compliance with the applicable provisions of the *Canada Cooperatives Act*, the Filer will hold annual meetings of Members.
9. The Filer is not a reporting issuer under applicable Canadian securities laws of any jurisdiction and has no present intention of becoming a reporting issuer in Saskatchewan or any of the other Jurisdictions.
10. There is currently no market for the shares in the capital stock of the Filer. The Filer has no present intention of listing its shares on any stock exchange or market.

Business of the Filer and the Company

11. The business of the Filer is restricted in its articles of incorporation to the purchase of lamb for processing and the subsequent marketing and sale thereof. The Filer's principal activities (as distinct from those of the Company, discussed below) will be to recruit members of the Filer (Members), and to purchase lamb from Members and, if required to meet the Filer's needs, non-Member lamb producers and approved feedlots.
12. To be eligible for membership in the Cooperative, lamb producers will be required to execute a producer agreement with the Filer pursuant to which the lamb producer will provide its commitment to deliver to the Filer, and the Filer will undertake to purchase from the lamb producer, a specified number of lambs per calendar year that is not less than 25 (the Producer Agreement). The price to be paid by the Filer under the Producer Agreement will be at a premium of \$0.05 per pound live weight to an amount equal to the average of three specified lamb price standards (namely, Ontario Stockyards at Cookstown, Ontario, the Ontario Livestock Exchange at Kitchener, Ontario and the Brussels Livestock Exchange at Brussels, Ontario, or in each case any successor stockyard chosen by the Filer) as of the date that title to the lamb is transferred to the Filer.
13. The commitment of the Filer to purchase the producer's lambs under the Producer Agreement at this premium price is the principal benefit that Members will receive from membership in the Cooperative, providing them with a reliable source of income. This level of certainty is not currently attainable in the market, as it is common practice for purchasers to vary a previously discussed purchase price at the time of sale, or to defer the time of purchase by several weeks.
14. Over time, Members will be provided with exclusive access to extension and business services designed to help increase productivity and improve profitability. As minor

improvements in productivity may be expected to have a significant impact on the profitability of a Member's operation, such services represent a potentially significant business benefit to Members.

15. The lamb purchased by the Filer will be sold by the Filer to the Company at a price equal to the purchase price paid by the Filer plus an administrative fee, which initially will be 3%. Such fees will represent a principal source of funding for the Filer's activities.
16. Generally, the Company will undertake to conduct the business and marketing activities of the Filer. Key areas of responsibility for the Company will include transportation, processing, product development, marketing, distribution and sale of lamb purchased from the Filer.
17. The Company will be involved in transporting the purchased lamb from various designated collection points. It is also planned that the Company will be responsible for the establishment and operation of processing facilities in various jurisdictions in order to reduce transportation costs. Processing facilities will be utilized to develop and manufacture a range of value-added lamb-based products on a regular basis. The Company will be responsible for the storage of fresh or frozen lamb products as well as for the marketing, distribution and sale of such products to customers.
18. The Company will make its sale arrangements of lamb and lamb products directly and without the employment of third party brokers, thereby avoiding broker and related fees otherwise customarily paid by producers to the extent that they sell their lamb and lamb products directly. The associated savings will enhance the Company's ability to pay a premium price to the Filer that in turn enhances its ability to pay the premium price to producers pursuant to the Producer Agreement.
19. The board of directors and management of the Filer is comprised of individuals with extensive and diverse experience in the lamb industry, representing a number of geographic regions in Canada. The Filer and the Company will have separate boards of directors and management teams, recognizing the need for operational expertise and experience in the functional areas to be performed by the Company. The board of directors of the Company will include individuals with the marketing and business expertise relevant to the Company's contemplated operations.
20. The Company will raise capital from sources independent of Members pursuant to debt arrangements and/or the issuance of securities pursuant to available exemptions from the Prospectus Requirement.
21. Any profits earned by the Company from the sale of lamb products will initially be used to fund its operations. Such profits may ultimately result in the payment of dividends to the shareholders of the Company, including the Filer, to the extent the Company has positive net income and available cash after payment of any required dividends to preferred shareholders of the Company. Such dividends will, in turn, be used by the Filer to fund its activities and operations. The Filer may also distribute dividends to its shareholders, to the extent the Filer has positive net income and available cash.

22. As Members will be required to purchase a number of Investment Shares (defined in paragraph 25 below) equal to the number of lambs that each Member agrees to sell to the Filer pursuant to the Producer Agreement, any distribution of dividends to Members will be proportionate to the dollar value of each Member's net sales of lambs to the Filer.

The Offering of Shares by the Filer

23. As a condition of membership in the Filer: (i) a Prospective Member will be required to enter into a Producer Agreement with the Filer; and (ii) membership in the Filer will be restricted to active lamb producers in all Canadian jurisdictions (collectively the Eligibility Criteria, and any person or company meeting the Eligibility Criteria, a Prospective Member). Active lamb producers include individuals, partnerships, business corporations and cooperative associations engaged in the production of lamb. To be considered an active lamb producer and qualify for membership in the Filer, the Producer Agreement requires that a Member must have a sufficient number of ewes such that the producer is able to commit to deliver a minimum of 25 lambs to the Filer per calendar year for market. To the extent that a lamb producer is commencing its operations, it may as an exception to the foregoing be permitted to become a Member if it is able to acquire lambs that, together with its own, enable it to meet the minimum requirement to deliver 25 lambs in its first calendar year of operations. It is anticipated that the number of lamb producers that will be interested in membership under this exception and that will be accepted for membership will be very limited.
24. In addition, as a condition of membership to be reflected in the Producer Agreement, during the first year of membership, the number of lambs that a Member may commit to sell to the Filer will be limited to the number that is equivalent to 25% of the Member's ewe flock.
25. The Filer will be authorized to issue an unlimited number of membership shares (Membership Shares) and an unlimited number of Class 1 and Class 2 investment shares (Investment Shares).
26. Members will be required to purchase a number of Investment Shares equal to the number of lambs that the producer agrees to sell to the Filer pursuant to the Producer Agreement. Members will not be required to purchase additional shares, but will be permitted to do so to the extent they determine to do so in order to sell additional lambs to the Filer in accordance with the terms of the Producer Agreement, which requires ownership by a Member of a number of Investment Shares equal to the number of lambs to be sold by such Member to the Filer in each calendar year.
27. In general terms, Investment Shares will be non-voting (unless afforded voting rights under the *Canada Cooperatives Act*), will bear non-cumulative dividends declared at the discretion of the board of directors of the Filer (the Board), and will be redeemable at any time for a price equal to their fair market value as determined by the Board. In the event of the dissolution of the Cooperative, the holders of Investment Shares will be entitled to receive, on a *pro rata* basis with the holders of other classes of Investment Shares but before any distribution of assets among the holders of Membership Shares, the applicable

redemption price, including any declared and unpaid dividends thereon, with Class 1 Investment Shares having a limited dissolution preference over the Class 2 Investment Shares of an aggregate of \$1.00.

28. Class 1 Investment Shares will be offered to Prospective Members producing lamb for sale within Canada, while Class 2 Investment Shares will be offered to lamb producers entering into an agreement with the Filer to sell lambs for export to foreign jurisdictions.
29. Investment Shares will be offered at an initial purchase price of \$30.00 per share, and the purchase price may be varied by the Filer in the future up to a maximum price of \$100.00 per share as a function of fluctuations in the market price of lamb and potential changes to the premiums offered by the Filer.
30. The number of lambs to be delivered to the Filer by each Member for domestic sale will be limited to a maximum of 1,000 lambs per calendar year, resulting in a maximum investment in Class 1 Investment Shares at \$30.00 per share of \$30,000.00. The number of lambs to be delivered to the Filer by each Member for export will be limited to a maximum of 3,000 lambs per calendar year, resulting in a maximum investment in Class 2 Investment Shares at \$30.00 per share of \$90,000.00. This higher limit is designed to meet the objectives of lamb producers that have made significant capital investments in their operations for the purpose of selling to the export market, which offers prices at a premium to that received for domestic sales.
31. As a condition of acquiring Investment Shares, each Member must subscribe for or hold one Membership Share.
32. Membership Shares will have voting rights and will entitle the holders of such shares to a right to share in the distribution of assets of the Filer upon its dissolution. Membership Shares will have an initial purchase price of \$500.00 per share, and the offering price may be varied by the Filer in the future up to a maximum price of \$2,500.00 per share as a function of fluctuations in the market price of lamb and potential changes to the premiums offered by the Filer.
33. The initial purchase price of the Investment Shares and the Membership Shares was determined by the Board with the input of an advisory group of active lamb producers from 6 provinces after consultation with other non-advisory group lamb producers. The purchase price of the Investment Shares and Membership Shares and their respective redemption prices will be determined by the Board on an ongoing basis, having regard to the input of lamb producers, supporting provincial lamb marketing agencies and the Filer's management, and consideration of the Filer's business, financial condition and operating results, and other factors determined relevant from time to time.
34. Members to which the Filer issues Membership Shares or Investment Shares will be provided with a contractual right of action against the Filer with respect to any misrepresentation contained in the disclosure provided in the Disclosure Document (defined below) equivalent to the statutory right provided by section 130.1 of the *Securities Act* (Ontario) (the Contractual Right of Action), in addition to any other right

or remedy available at law to the Member. The Disclosure Document 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.

35. Prospective Members also will be provided with the Contractual Right of Action upon entry into the subscription agreement to acquire shares of the Filer and with the right to withdraw from their subscription commitment within two business days of signing their subscription agreement (the Right of Withdrawal).
36. Each lamb producer approached for membership in the Cooperative will receive a disclosure document (a Disclosure Document) containing a certificate signed by the Chief Executive Officer, the Chief Financial Officer, and two directors 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 Disclosure Document will include disclosure respecting:
 - (a) the proposed business operations of the Filer;
 - (b) an overview of the industry and market for lamb products;
 - (c) the objectives and operations of the Filer and the Company;
 - (d) the marketing to be conducted;
 - (e) the initial working capital requirements;
 - (f) the basis for determination of the purchase price and the redemption price of the Investment Shares and Membership Shares by the Board referred to in paragraph 33;
 - (g) the membership solicitation to be undertaken;
 - (h) the ownership structure of the Company and limits on that ownership;
 - (i) description of officers and directors of the Filer and Company;
 - (j) compensation of officers and directors of the Filer and Company on an aggregate basis;
 - (k) conflicts of interest between the Filer and Company and any of their respective officers and directors;
 - (l) restrictions on transfer of shares and the terms of the two classes of shares;
 - (m) description of the Contractual Right of Action and Right of Withdrawal;
 - (n) a description of any exemptive relief granted in respect of the securities of the Filer; and

- (o) risks associated with membership, including risk factors for a start-up indicating that the operations of the Filer and the Company have not yet been established and that there can be no assurance of their profitability or of the ability of the Filer and the Company to perform their obligations under the Producer Agreement.

The Disclosure Document will have appended thereto the following: the articles of incorporation and by-laws of the Filer; a copy of the Producer Agreement; a form of subscription agreement; and, to the extent that the Filer has been in operation for a period in excess of 90 days or more after its first fiscal year end, its most recent audited annual financial statements referred to in paragraph 40.

37. Concurrently with or prior to the receipt of the Disclosure Document, 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.
38. In addition to sending copies of updated Disclosure Documents to Members on an annual basis, the Filer will provide Members with reports of any material change in the business of the Filer or the Company in a timely manner and an updated version of the Disclosure Document to Members on an annual basis.
39. Shares in the Filer will only be issued to Prospective Members that the Filer reasonably determines will be in a position to evaluate whether the business benefit of membership in the Filer supports the cost of the shares to be purchased from the Filer.
40. The Filer will send Members copies of its audited annual financial statements in accordance with section 247 of the *Canada Cooperatives Act*, and a proxy circular and form of proxy in respect of the annual meeting of Members in accordance with section 166 of the *Canada Cooperatives Act*.
41. In addition, the Filer intends to provide the Members with voluntary monthly financial and operating reports on the activities of the organization. Financial information, including financial statements of the Company and any other subsidiary of the Filer, will be made available to any Member upon request and may be viewed at either the Saskatoon Saskatchewan head office or the marketing office in Guelph Ontario, in accordance with section 249 of the *Canada Cooperatives Act*.
42. The Filer does not currently intend to issue any securities other than the Membership Shares and the Investment Shares.

Restrictions on the Transfer of Shares

43. Any transfer of Membership Shares or Investment Shares will be subject to a restriction requiring that the transfer shall be approved by resolution of the Board or a person authorized by such resolution to approve such transfers. As referred to in paragraph 23, and pursuant to the Articles of the Filer as a condition of membership in the Filer, a Prospective Member will be required to enter into a Producer Agreement with the Filer.

The transferee of such shares shall be required to meet the Eligibility Criteria for admission to membership in the Filer prior to the transfer. Approval of the transfer of Investment Shares will be conditional upon the transferee's commitment to sell the requisite number of lambs in accordance with the terms of the Producer Agreement.

Termination of Membership

44. A Member's membership in the Filer shall be terminated: on the date of receipt by the Filer of such Member's written request to terminate membership, or the date specified in such notice, whichever is the later, provided that the Member will agree not to withdraw prior to expiry of the initial three year term of the Producer Agreement; by resolution of the Board to terminate such Member's membership; or by delivery to such Member of the written decision of a person authorized by Board resolution to make such determination at his/her reasonable discretion. Membership Shares and Investment Shares held by such Member shall be redeemed at a redemption price determined in accordance with paragraph 33.
45. Upon death of a Member, Membership Shares and Investment Shares held by such Member shall be redeemed in accordance with paragraph 33 and shall form part of the deceased Member's estate, provided that if one or more of the deceased Member's heirs meet the Eligibility Criteria and enters into a Producer Agreement with the Filer, the deceased Member's shares may be transferred to such heir(s) subject to the transfer restriction referred to in paragraph 43 and to the following requirements: Such deceased Member's heir(s) may acquire the deceased Member's shares and become the registered holder of such shares (or designate a registered holder) provided that the heir(s), in accordance with the *Canada Cooperatives Act*, deposits the following information with the Filer, together with any reasonable assurances that the Filer may require: (i) the share certificate representing the shares appropriately endorsed or, in the alternative, a document proving that the deceased Member was the shareholder; (ii) a document proving the death of the deceased Member; and (iii) a document proving that the heir has the right under the law of the place in which the deceased Member was domiciled immediately before their death to deal with the shares.

Decision

Each of the Decision Makers is satisfied that the Decision meets the tests set out in the Legislation for the Decision Maker to make the Decision.

Relief from the Prospectus Requirement

The Decision of the Decision Maker under the Legislation is that the Exemption Sought is granted provided that:

- (a) the Filer is in compliance with the provisions of the *Canada Cooperatives Act*.
- (b) the only shares to be issued by the Filer are Membership Shares and Investment Shares.
- (c) neither the Filer nor the Company is a reporting issuer in any of the Jurisdictions.

- (d) no securities of the Filer or the Company are listed on a securities exchange or other marketplace.
- (e) the articles of incorporation of the Company contain a restriction limiting the percentage of shares of all classes of the Company that may be issued to any person or company other than the Filer to no more than 25 per cent.
- (f) the Filer maintains ownership of securities of the Company to which are attached not less than 75 per cent of the voting rights attached to all outstanding securities of the Company so as to enable the Filer to elect a majority of the board of directors of the Company.
- (g) shares in the Filer are only issued to Members and to Prospective Members that the Filer reasonably determines will be in a position to evaluate whether the business benefit of membership in the Cooperative supports the cost of the shares to be purchased from the Filer.
- (h) the Filer does not make any written or oral representations to Prospective Members regarding potential future profits from membership in the Filer or regarding any profits arising from the Filer's interest in the Company.
- (i) at the time of entry into the subscription agreement to acquire Membership Shares and Investment Shares, Prospective Members are provided with the Contractual Right of Action and the Right of Withdrawal.
- (j) solicitations for membership in the Filer are conducted solely by the Filer, and there are no finder's fees or commission paid in connection with the issuance or transfer of shares of the Filer.
- (k) the Filer restricts the issuance and transfer of shares of the Filer to Prospective Members that meet the Eligibility Criteria.
- (l) prior to the initial trade of any shares by the Filer to a lamb producer meeting the Eligibility Criteria for membership in the Filer, the Filer delivers to such lamb producer a copy of:
 - (i) the articles of incorporation of the Filer;
 - (ii) the by-laws of the Filer;
 - (iii) the Producer Agreement;
 - (iv) this Decision;
 - (v) a form of subscription agreement;
 - (vi) the Disclosure Document containing all of the disclosure specified in paragraph 36 above;

- (vii) the Risk Acknowledgement Form; and
- (viii) to the extent that the Filer has been in operation for a period of 90 days or more after its first fiscal year end, its most recent audited annual financial statements.
- (m) the Filer will provide ongoing disclosure to Members in accordance with the requirements of the *Canada Cooperatives Act*, including certain disclosure as to the affairs of the Company, as described in paragraphs 37 and 40 above.
- (n) the exemptions contained in this Decision cease to be effective if any of the provisions of the articles of incorporation of the Filer relevant to the exemptions granted herein are amended in any material respect without prior written notice to, and consent of, the Decision Maker.
- (o) the first trade in any Membership Share or Investment Share by a Member to a person or company other than another Member or the Filer is deemed to be a distribution.

Furthermore, the Decision of the Decision Maker is that the confidentiality sought is granted.



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