

### Headnote

Relief from the requirement to be recognized as a clearing agency – relief to facilitate the operation of a platform that facilitates the buying and selling of shares of a cooperative organized under the *Canada Cooperatives Act* – relief granted subject to certain conditions set out in the decision — relief granted based on the particular facts and circumstances – decision should not be viewed as precedent for others.

### Applicable legislative provisions and instruments

Securities Act, R.S.B.C. 1996, c. 418, sections 25 and 33  
National Instrument 24-102, Clearing Agency Requirements

February 26, 2024

Exemption Order  
Agrifoods International Cooperative Ltd.

(Agrifoods)

Section 33 of the *Securities Act*, R.S.B.C. 1996, c. 418

(the Act)

### ¶ Background

Agrifoods is a federally regulated co-operative association which operates a trading system in respect of certain securities, as further described below.

Agrifoods was previously granted relief in British Columbia and certain other provinces from the prospectus requirement, and from marketplace operations and trading rules requirements in connection with the operation of its trading system, as further described herein.

### ¶ Relief Requested

The British Columbia Securities Commission (the **Commission**) may make an order under section 33(2) of the Act exempting Agrifoods from the requirement to be recognized as a clearing agency under Section 25 of the Act and from the requirements of National Instrument 24-102 *Clearing Agency Requirements* (**NI 24-102**) (the **Clearing Agency Relief**).

### ¶ Representations

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

1. Agrifoods is a cooperative organized under the *Canada Cooperatives Act*, S.C. 1998, c. 1 (the **Federal Co-Op Act**), having its head office in British Columbia. Its members include dairy producers located in British Columbia and certain other provinces. Agrifoods offers its members the service of picking up milk from their farms and delivering the milk to dairies for processing, among other things.
2. Agrifoods is not a reporting issuer in any jurisdiction and has no intention of becoming a reporting issuer.
3. Agrifoods operates a private trading facility (the **Trading System**), which facilitates the trading of investment shares in the capital of Agrifoods (**Investment Shares**).
4. Agrifoods's capital structure consists of an unlimited number of Membership Shares (as defined in the Federal Co-Op Act) with a par value of \$1.00 per Membership Share, and an unlimited number of Investment Shares without par value.

5. There are currently 4,015 Membership Shares and 19,462,422 Investment Shares issued and outstanding.
6. Agrifoods 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 Agrifoods 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.
7. Under the Federal Co-Op Act and the Articles and By-laws of Agrifoods:
  - (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 a province of Canada approved by Agrifoods (currently British Columbia, Alberta, Saskatchewan, Manitoba and Ontario) who: (i) are capable of using the services of Agrifoods; (ii) use Agrifoods's services unless prevented from doing so by provincial milk board regulations, orders or policies; and (iii) are admitted to membership in Agrifoods; 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 Agrifoods.
8. There are currently 275 Members and 471 Auxiliary Members resident in British Columbia.
9. Originally, Auxiliary Members were individuals, companies or organizations who were: (a) no longer active in dairy farming; and (b) owed member loans (as defined in the Federal Co-op Act) by Agrifoods that were converted to Investment Shares (the **Original Auxiliary Members**) on February 28, 2006. The Original Auxiliary Members make up the majority of the Auxiliary Members.
10. Since amendments to the bylaws in 2016, shareholders of active or formerly active corporate Members or partners of or participants in active or formerly active unincorporated Members have been 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**).
11. The Articles of Agrifoods provide that its Investment Shares may be issued and transferred only to (collectively, **Participants**):
  - (a) Members or Auxiliary Members, who in either case have had such status for at least 12 months before the date of transfer;

- (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 Agrifoods, 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.
- 12. Agrifoods was granted relief in British Columbia, Alberta and Saskatchewan from the requirements of National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) and National Instrument 23-101 *Trading Rules* (**NI 23-101**), in connection with the operation of its Trading System, pursuant to a decision granted under the Mutual Reliance Review System for Exemptive Relief Applications on February 28, 2006, which is still in effect, where the Alberta Securities Commission acted as principal regulator.
- 13. Agrifoods has applied for relief from the requirements of NI 21-101, NI 23-101 and the clearing agency requirements in Manitoba and Ontario, and for clearing agency relief in Alberta and Saskatchewan.
- 14. Many holders of Investment Shares reside in remote geographical locations. Therefore, in order to facilitate trading of Investment Shares among the Participants, the board of directors of Agrifoods established the Trading System.
- 15. The Trading System is governed by a set of rules, dated effective June 1, 2016 (the **Trading Rules**) established by Agrifoods and made available to its Members and Auxiliary Members.
- 16. The Trading Rules provide a method by which:
  - (a) interested sellers may give notice to Agrifoods of their desire to sell Investment Shares;
  - (b) interested buyers may give notice to Agrifoods of their desire to buy Investment Shares;
  - (c) such interested buyers and sellers are "matched"; and
  - (d) Agrifoods receives payment for purchased Investment Shares from a matched buyer and pays out funds to a matched seller of Investment Shares.
- 17. Agrifoods charges a flat fee to Participants for the purchase and sale of Investment Shares under the Trading System. The amount of the fee is disclosed in the Trading Rules and partially offsets the costs to Agrifoods of operating the Trading System. The fee is currently \$10 per purchase or sale.
- 18. Agrifoods keeps the identity of the buyers and sellers confidential unless the buyers and sellers consent to the release of that information.
- 19. In order for any members to purchase or sell Investment Shares using the Trading System, pursuant to the Trading Rules, members are required to provide Agrifoods with a current address. As part of the settlement process under the Trading System, Agrifoods reviews the jurisdiction of residence of parties to each trade and is able to ensure trades are accepted only in jurisdictions where permitted pursuant to applicable law.

20. Agrifoods was granted relief in British Columbia, Alberta and Saskatchewan from the prospectus requirement, in connection with distributions and trades of Member Shares and Investment Shares pursuant to a decision under the Process for Exemptive Relief Applications in Multiple Jurisdictions on April 5, 2016, which is still in effect, where the Commission acted as principal regulator.
21. By acting as an intermediary in the payment of funds between buyers and sellers under the Trading System, Agrifoods carries on business as a clearing agency and, in the absence of the Clearing Agency Relief, would be required to be recognized as a clearing agency under the Act.

**¶ Order**

Considering that to do so would not be prejudicial to the public interest, the Commission orders that the Clearing Agency Relief is granted, provided that:

- (a) Agrifoods does not engage in any clearing agency activity in respect of the Trading System that is not described in this order without obtaining prior approval of the Commission.
- (b) Agrifoods makes the Trading System available only to Participants;
- (c) New Auxiliary Members meet the Auxiliary Member criteria set out in the bylaws of Agrifoods and apply for admittance as an Auxiliary Member, which is subject to approval by Agrifoods's board of directors;
- (d) Agrifoods maintains a website on which Participants may access Agrifoods's annual financial statements and other disclosure documents, the Trading Rules, current and historical trading information, contact information, appropriate cautions regarding compliance with applicable securities laws and the need to obtain independent professional advice;
- (e) Agrifoods's participation in the Trading System is purely administrative in nature and no director, officer, employee or agent of Agrifoods will solicit Participants to use the Trading System or provide investment advice to Participants;
- (f) Agrifoods holds any funds received in connection with the trading of Investment Shares in a segregated account in trust for the benefit of the relevant Participants, and discloses such fact on its website, in the Trading Rules and on any other materials relating to the Trading System that are prepared by Agrifoods;
- (g) Agrifoods does not extend margin or offer credit to Participants in connection with the Trading System;
- (h) Agrifoods maintains records of all trades conducted and uses an independent third party accountant to conduct an audit of the share transfer register at least once per year; and
- (i) Agrifoods retains records of all trades for a minimum of seven years, which will be kept in a readily accessible location for the first two years.

*"Brenda Leong"*

Brenda M. Leong  
Chair