

IN THE MATTER OF
THE SECURITIES ACT, 1988, S.S. 1988, c. S-42.2

AND

IN THE MATTER OF AN APPLICATION MADE BY THE
SASKATCHEWAN WHEAT POOL

DECISION

Hearing Held July 23, 1996

Before: Marcel de la Gorgendiere, Q. C., Chairman
Rand Flynn, Commission Member
Art Wakabayashi, Member

Appearances: Dean Murrison, representing Commission staff
A. John Beke and Glen Lekach, representing the Respondent

Decision dated: August 22, 1996

DECISION

This is an application on behalf of the Saskatchewan Wheat Pool (SWP) for an order under section 89 of *The Securities Act, 1988* (the Act) dispensing with the mailing of quarterly and annual financial statements to all of the Class A voting shareholders of the SWP. In the alternative, the applicant requested an order dispensing with the need to mail the quarterly financial statements to all of the Class A voting shareholders (also referred to as "members").

The SWP was founded in 1924 pursuant to a private act of incorporation, which from time to time has been amended, by the Saskatchewan legislature. SWP was reorganized most recently under the *Saskatchewan Wheat Pool Act, 1995* (SWP Act). This act allowed for the sale of Class B non-voting shares which became dividend paying equity shares of the company, while the Class A voting shares became restricted. The purpose of the Class A shares was established as allowing the shareholder to vote to elect delegates and those delegates can, under the bylaws of the company, appoint the directors of the corporation.

It was, firstly, argued by the applicant's counsel that the Commission had no jurisdiction to make any ruling regarding the Class A shares by virtue of section 7 of the SWP Act. It provides that:

- 7
- (1) *"The Securities Act, 1988* does not apply to:
 - (a) any issue of Class "A" Voting Shares by the corporation;
 - (b) any redemption of Class "A" Voting Shares by the corporation.
 - (2) Subsection (1) shall cease to be operative:
 - (a) upon the passage of any resolution by the delegates altering or seeking to alter any of the rights, privileges, restrictions and conditions attaching to the Class "A" Voting Shares; or
 - (b) if the par value of the Class "A" Voting Shares exceeds \$200 per share.

Counsel suggested that as the Commission had not previously required the SWP to mail out financial statements to shareholders that this was due to a similarly phrased

exemption of jurisdiction expressed in the previous statute as is in the SWP Act and therefore the Commission does not have jurisdiction. We do not accept this interpretation and hold we have jurisdiction. There are two reasons for this:

1. The Commission made no attempt to require mailing of financial statements solely because the SWP was not a reporting issuer at that time and as a result not required under the Act to mail financial statements to shareholders. The applicant is now a reporting issuer; and
2. Under the plain and ordinary meaning of the words it is clear that the exclusion of jurisdiction goes only to the "issue" or "redemption" of Class A voting shares. Subsection 2 makes it clear that there are circumstances when even subsection (1) will not apply.

The applicant's counsel is well aware of the discussions that took place in regard to the limitations of jurisdiction of the Commission when section 7 was drafted. While that may not necessarily indicate what was in the mind of the legislature when it passed the statute, we believe that the decision to assert jurisdiction in this situation is not only consistent with the understandings arrived at then, but also with any rules of statutory interpretation. The first recourse is the words themselves and the plain meaning is that the Act does apply unless it is a question of the issue or redemption of shares that occurs when outside the application of subsection 7(2). The application in this case does not involve the issue or redemption of shares and therefore the Act applies, and the Commission has jurisdiction to make a ruling denying, granting, or granting with modifications the application before it.

The reason for the application is that the SWP wishes to avoid the cost of mailing quarterly financial statements as well as annual financial statements to Class A voting shareholders who do not also own the Class B non-voting shares. There is no question of the Class B non-voting shareholders not receiving the requisite information required to be mailed pursuant to section 88 of the Act. Evidence was presented by Vern Mebs, the Manager, Democratic Processes for the SWP, that there were in excess of 70,000 Class A shareholders and approximately 59,000 of those Class A shareholders are active members who deal with the SWP. He also stated that approximately 60% of the 70,000 of the Class A shareholders own Class B shares. Given the large number involved, it is easy to see that the cost of individual mailing to those Class A shareholders who do not hold Class B shares would be substantial.

The question is whether the expense is justified in the circumstances. In the usual situation, communication of the interim and annual financial statements is the only significant information available about a company. The amount of information made available through the public media varies considerably, depending upon the nature of the corporation and the degree of public interest in its operations. The question the Commission has to determine is whether, after considering the attributes attaching to the Class A voting shareholders, it is in the public interest that they obtain this information directly? The Commission has decided that there is no public interest requirement for individual delivery of the interim quarterly financial statements, but that there is justification, until it can be otherwise established, that they receive the annual financial statements.

In reaching this decision the Commission considered the following matters:

1. The rights, privileges and restrictions and conditions attached to the Class A voting shares pursuant to section 14 of the SWP Act, namely the fact that no person may hold more than one share, there is no entitlement to any dividend and on winding up of the corporation they are only entitled to payment of the par value of the share, currently \$25.00, the shares cannot be transferred and thus there is no market for the shares. The only substantive right is to vote for delegates, provided in the bylaws. It is those delegates who, pursuant to the bylaws elect the directors of the corporation.
2. That previously the voting shares of the corporation had different attributes and there was only one type of shareholder and they owned \$1 par value shares (called the "Membership Shares"). There was evidence that not all members received copies of financial statements subsequent to 1989. From the earliest days of the SWP, members (holders of the par value shares) would attend meetings in sub-districts for the purpose of voting for delegates. It was not unusual to have over 19,000 members turn up during the course of the various membership meetings in order to take part in the discussion of the affairs of the SWP. They would vote for delegates in alternate years as well as elect members to various committees and review financial statements. The Commission feels that this method of obtaining participation, which continues, leads to reasonable consideration of the affairs of the corporation within a large number of different communities
3. That given the traditional structure for members participating in the activities of the corporation little could be gained from having a direct mailing of the quarterly financial statements. The Commission feels that quarterly financial statements are useful for holders of shares that are capable of being traded in the market where

decisions have to be made as to the value in retaining or selling the shares. In the case of the Class A shareholders, as stated, they do not have a dividend, cannot be traded, and can only vote at meetings for election of delegates. If the quarterly statements were not sent, the Class A shareholder would still be in a position of having one or possibly two years annual financial statements complete with Management Discussion and Analysis (MD&A) before voting. That information would be more substantive and less subject to the volatility of quarterly statements.

4. The Commission feels that the expense of mailing the quarterly information to the Class A shareholders is a negative factor to be considered. The absence of those statements would not affect the quality of the Class A shareholders decision when voting as they would have the latest audited annual statement when voting. Why then burden the Class B shareholders with this expense? This opinion can be arrived at without the necessity of concluding whether, in fact, any Class A shareholders who were not already Class B shareholders would attend the meetings to vote.

In reaching this decision, the Commission has not accepted the argument that the annual financial statements should not be sent to Class A shareholders who are not Class B shareholders. The Commission does feel, however, that there is the possibility of considering such an application in the future when it has more information on which to base a decision. The Commission is interested in the results of any effort to bring the Class A shareholder list in conformity with the current bylaw requirement that the holders be engaged in farming. This could well reduce the list to of Class A shareholders who do not own Class B shares to such a de minimis number that there would be a negligible cost to such a mailing and no change would be required. Even if this assumption is not correct, the Commission also suggests that the SWP when mailing its current Class A shareholders the annual statements required pursuant to the Act include a request to advise the SWP if they desire to receive the annual information that they have just received, in future years, and do so in a form that is acceptable to the staff of the Commission. and report the results of such a questionnaire. The Commission could then

use that information if there is a request not to mail the annual statements to Class A shareholders when coming to a decision. Without more accurate information, the requirement to mail the annual financial statements and MD&A to the Class A shareholders will continue.

DATED at the City of Regina, in the Province of Saskatchewan, this 22nd day of August, 1996.



Marcel de la Gorgendière, Q.C.
Chairman