

ALBERTA SECURITIES COMMISSION
SETTLEMENT AGREEMENT AND UNDERTAKING

Citation: The Hear Now Inc., Re, 2010 ABASC 85

Date: 20100226

Docket: E/03797

Securities Act, R.S.A. 2000, c. S-4, as amended (Act)

The Hear Now Incorporated

Agreed Facts

Introduction

1. The staff of the Alberta Securities Commission (respectively, **Staff** and **Commission**) conducted an investigation into allegations that securities of The Hear Now Incorporated (**THN** or **The Corporation**) were distributed to Alberta investors in contravention of Alberta securities laws and that such distribution was contrary to the public interest.
2. The investigation confirmed and THN admits that it breached the sections of the *Act* set out below and that it acted contrary to the public interest.
3. Solely for the purposes of the regulation of securities in Alberta, and elsewhere, and as the basis for the settlement set out below, THN makes the admissions set out in this Settlement Agreement and Undertaking (**Agreement**).
4. Terms used in this Agreement have the same meaning as provided for in Alberta securities laws, as that term is defined in the *Act*.

Circumstances – Illegal Distribution

5. THN is a Canadian corporation that has been extra-provincially registered in Alberta since 2005. From 2005 to 2008, THN carried on business as a developer and distributor of high technology pet products.
6. From 2006 to 2008, THN raised approximately \$7,000,000 from investors in Alberta.
7. The Corporation admits that it raised capital in two ways: (1) by limited distributions of THN common stock to individuals and (2) by “indirect” investment in THN through purchases of shares in companies variously termed “Investment Clubs” or “Financial Clubs” (**Investment Clubs**).

8. THN admits that, to the best of its understanding, the Investment Club capital raising model operated in the following way:
 - 8.1. Varying amounts of THN Class A voting stock were sold to each Investment Club at a cost of \$4.00 a share;
 - 8.2. The creators of the various Investment Clubs sold stock in their respective companies to individual investors at a cost of \$7.00 a share;
 - 8.3. The creators of the various Investment Clubs remitted some or all of the proceeds realized from the sale of Investment Club stock directly to THN; and
 - 8.4. The creators of the individual Investment Clubs were advised to tell investors that dividends realized by the Investment Clubs on THN stock would, in turn, be passed on to subscribers by the issuance of dividends on the stock of the individual Investment Clubs.
9. THN admits that the vast majority of capital raised for THN was obtained through the “Investment Club” model.
10. THN admits that approximately CAD\$6,600,000 worth of investment in THN common stock was obtained through the operation of Investment Clubs.
11. THN states that it never filed any Reports of Exempt Distribution with the Commission in connection with the distribution of THN securities, or otherwise attempted to formally claim any of the registration or prospectus exemptions available under Alberta securities laws in connection with the distribution of THN securities.

Breaches

12. THN admits that it breached s. 75 of the *Act* by trading in, and engaging in a distribution of, the securities of THN while not registered in accordance with the *Act*, and without the benefit of an applicable exemption from this requirement.
13. THN admits that it breached s. 110 of the *Act* by engaging in a distribution of the securities of THN without a prospectus, and without the benefit of an applicable exemption from this requirement.
14. THN admits that its conduct during the material time, as described above, was contrary to the public interest.

Undertakings

15. Based on these facts and admissions, THN undertakes to the Executive Director of the Commission as follows:
 - 15.1. THN shall refrain from purchasing or trading in securities and exchange contracts, as those terms are defined in the *Act*, and shall not attempt to benefit from any

exemptions otherwise available to it under Alberta securities laws, permanently from the date of execution of the within Agreement.

Administration

- 16. THN acknowledges that it has sought and received independent legal advice and that it has voluntarily made the admissions herein.
- 17. THN waives any right existing under the *Act*, or otherwise, to a hearing, review, judicial review or appeal of this matter.
- 18. THN acknowledges that this Agreement may be referred to solely for securities regulatory purposes in Alberta and elsewhere.
- 19. This Agreement resolves all issues involving THN as described in the above paragraphs, and Staff will take no further steps against it arising from these facts.
- 20. This Agreement may be executed by facsimile and in counterpart.

Signed by CALVIN BUTTERWORTH)
 on behalf of THE HEAR NOW)
 INCORPORATED at Calgary, Alberta)
 this)
 26 day of February 2010, in the)
 presence of:)

"Julie-Rae Isaac")
 WITNESS NAME)

"original signed by")
 SIGNATURE)

"original signed by")
 THE HEAR NOW INCORPORATED)
 per CALVIN BUTTERWORTH, Director)

) ALBERTA SECURITIES COMMISSION)
)
 Calgary, Alberta, 26th February 2010)

) "original signed by")
) John P. Petch)
) Director, Enforcement)