

ORD. #99/02/085
APP. #99/01/0422
REC. #3364
FILE #B12149
DOC. #300944

ALBERTA SECURITIES COMMISSION

IN THE MATTER OF the Securities Act
(S.A. 1981, c. S-6.1, as amended) (the "Act")

- and -

IN THE MATTER OF the Investment Dealers Association of Canada

- and -

IN THE MATTER OF Special Warrants

ORDER
(Subsection 116(1))

1. WHEREAS the Investment Dealers Association of Canada ("IDA") has made an application to the Alberta Securities Commission (the "Commission") for an order pursuant to subsection 116(1) of the Act that certain trades in securities which are issued for cash consideration by an issuer under a private placement exemption and entitle the holder to acquire other securities of the issuer for no material additional consideration ("Special Warrants") are exempt from section 81 of the Act;
2. AND WHEREAS it was represented by the IDA to the Commission that:
 - 2.1 the issue of Special Warrants has become increasingly popular with both issuers and investment dealers in reducing the period of "market risk" and transaction completion of a prospectus and facilitating the subsequent delivery of "freely-trading" securities to investors;
 - 2.2 the private placement exemptions of the Act have, generally, restricted the market for Special Warrants to financial institutions, exempt purchasers and investors who can purchase securities having an aggregate acquisition cost of not less than \$97,000; and
 - 2.3 restrictions other than those set forth in the Act could allow the private placement of Special Warrants to a broader market and maintain appropriate safeguards;

3. AND WHEREAS the Commission is satisfied that to do so would not be prejudicial to the public interest;
4. IT IS HEREBY ORDERED pursuant to subsection 116(1) of the Act that the issue by an issuer of Special Warrants is exempt from section 81 of the Act provided that:
 - 4.1 the terms of the Special Warrants include the right of the purchaser to require the issuer to return at least the full amount of the consideration paid by the purchaser for the Special Warrants in the event that the issuer fails to obtain:
 - 4.1.1 within 30 days of the distribution of the Special Warrants, a receipt from the executive director of the Commission (the "Executive Director") for a preliminary prospectus; and
 - 4.1.2 within 120 days of the distribution of the Special Warrants, a receipt from the Executive Director for a prospectus;with respect to the distribution of securities on the exercise of the Special Warrants (the "Underlying Securities");
 - 4.2 the final prospectus with respect to the distribution of the securities to the purchaser upon the exercise of the Special Warrants contains a contractual right of rescission in the event of:
 - 4.2.1 a material misrepresentation in the information contained in the latest financial statements of the issuer of the securities obtainable upon the exercise of the Special Warrants (the "Underlying Security Issuer") filed with the Commission, or any written information distributed by the issuer of the Special Warrants and, in the case of Special Warrants issued by an issuer which is not the Underlying Security Issuer, the Underlying Security Issuer in support of the sale of Special Warrants; or
 - 4.2.2 a misrepresentation in the prospectus;which entitles the purchaser to rescission of not only the purchaser's exercise of its Special Warrants, but also the private placement transaction pursuant to which the Special Warrants were initially acquired by the purchaser, thereby entitling the purchaser to the return of the full amount of the consideration paid for the Special Warrants;
 - 4.3 the purchaser purchases as principal and the trade is in a security which has an aggregate acquisition cost to the purchaser of not less than \$25,000;

- 4.4 the purchaser is a "sophisticated purchaser" within the meaning of subsection 1(1)(j) of the rules made under the Act (the "Rules");
 - 4.5 the Underlying Security Issuer has been a reporting issuer in Alberta for not less than two years prior to the issue of the Special Warrants;
 - 4.6 the Underlying Securities, or securities into which the Underlying Securities are convertible, have been listed on one of the Alberta Stock Exchange, the Vancouver Stock Exchange, The Toronto Stock Exchange or the Montreal Exchange for not less than two years prior to the issue of the Special Warrants;
 - 4.7 the Underlying Security Issuer had a minimum of \$2,500,000 of revenue from continuing operations for the twelve month period ending at the end of the last fiscal quarter of the issuer prior to the issue of the Special Warrants;
 - 4.8 the proceeds from the issue of the Special Warrants are held in trust by a financial institution, as such is defined in subsection 1(g.2) of the Act, until such time as the right referred to in paragraph 4.1 has expired;
 - 4.9 the issue of Special Warrants is effected through an investment dealer registered under the Act;
 - 4.10 the issuer of the Special Warrants and, if not the same as the issuer of the Special Warrants, the Underlying Security Issuer is not in default of any requirement of the Act or the Rules; and
 - 4.11 the issuer of the Special Warrant files a Form 20 not later than 10 days after the distribution of Special Warrants to a purchaser in reliance on this order;
5. AND IT IS HEREBY FURTHER ORDERED pursuant to subsection 116(1) of the Act that where the issuer of the Special Warrants is not the same as the Underlying Security Issuer, the trade by the issuer of Special Warrants of securities upon the exercise of Special Warrants issued in reliance upon the provision of section 4 of this Order is exempt from section 81 of the Act if no unusual effort is made to prepare the market or to create a demand for the securities and no extraordinary commission or consideration is paid or given in respect of the distribution;
 6. AND IT IS HEREBY FURTHER ORDERED pursuant to subsection 116(1) of the Act that the first trade in Special Warrants or Underlying Securities shall be a distribution unless such first trade is made in accordance with the Act as if the Special Warrants were previously acquired under the exemption in subsection 107(1)(d) of the Act and if the issuer of the Special Warrants is not the same as the Underlying Security Issuer, as if the Underlying Security Issuer had issued the Special Warrants;

7. AND IT IS HEREBY FURTHER ORDERED that this Order will be in force until December 31, 2000.

Dated at the City of CALGARY)
)
in the Province of ALBERTA)
) (original signed by) _____
this 11th day of February, 1999) Walter B. O'Donoghue, Q.C., Member
)
)
) (original signed by) _____
) John W. Cranston, Member
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