

A.S.C. Notice 11

Interpretation of the Words "Listed and Posted for Trading" in the Context of Section 110.1 of the Securities Act

1. Section 110.1 of the Securities Act provides that the first trade in securities previously acquired pursuant to a trade exempted by section 107(1)(f)(iii) is not a distribution provided that certain conditions are satisfied. Among those conditions is subsection 110.1(b) which requires, in essence, that the underlying securities acquired upon the exercise of a right to purchase, convert or exchange previously granted by the issuer are "listed and posted for trading on a stock exchange recognized for this purpose by the Commission".
2. The Alberta Securities Commission (the "Commission") recognizes that there is a problem with the above wording since, at the time that the receipt is issued for an issuer's first prospectus, the underlying securities are not in fact listed and posted for trading on a stock exchange because the underlying securities have not yet been issued and hence the distribution requirements of the exchange cannot yet have been satisfied. Therefore, based upon a strict reading of the phrase "listed and posted for trading on a stock exchange recognized for this purpose by the Commission", it can be argued that unless the issuer's underlying securities are actually listed and posted for trading on a recognized stock exchange, the issuer's prospectus should disclose restrictions on resale respecting the underlying securities.
3. If a recognized stock exchange has conditionally accepted the listing of the issuer's underlying securities subject to satisfaction of the exchange's distribution requirements, then section 110.1(b) of the Securities Act will be interpreted by the Commission to have been satisfied.

Effective date: March 15, 1987