

Local Policy 3.09

Registration Of Transfers After Issue Of A Cease Trading Order

Date: July 15, 1977

A trade in securities made in violation of a cease trading order is an offence against The Securities Act and is therefore an illegal contract. A transfer resulting from such a trade is therefore not entitled to be registered and the transfer agent must refuse to register it. But a transfer presented for registration after the issue of a cease trading order does not necessarily result from an illegal trade. It may, for example, result from a trade made before the order was issued, or it may be a gift and not a trade at all; if such is the case it is entitled to be registered.

To assist transfer agents in Manitoba in discharging their duties after the issue of a cease trading order, the Commission has decided to implement a system of affidavits similar to that recently adopted in Ontario. Forms of these affidavits are attached to this policy statement. There are six possible sets of circumstances in which it may be proper to register a transfer while a cease trading order is in force. The first three of them are covered by these affidavits, the other three are not. They are as follows:

1. — A transfer by way of gift

This may be registered on production of an affidavit in Form A sworn by the donor.

2. — A transfer resulting from a trade made before the issue of a cease trading order

This may be registered on production of an affidavit in Form B sworn by the purchaser or an agent of the purchaser.

3. — A transfer which does not result in any change of beneficial ownership of the security

This may be registered on production of an affidavit in Form D sworn by the transferor.

Examples of a transfer which does not result in a change of beneficial ownership are:

(i) A transfer to give effect to the appointment of a new trustee of a trust;

(ii) A transfer of securities registered in the name of a trustee or executor into the name of a beneficiary on the winding-up of a trust or estate.

4. — A transfer on death from the name of the deceased into the name of a legatee or heir

If a certificate in the name of the deceased is produced, duly endorsed off by the executor and accompanied by the probate or letters of administration, it is the usual practice to issue a new certificate in the name of the transferee. It is normally of no concern to the transfer agent whether the transferee is a legatee (or heir) or a purchaser. But if a cease trading order is in force, this

does concern the transfer agent and the transfer must not be registered until the transfer agent is satisfied that the transferee is entitled to the securities as legatee or heir. The terms of the will, if there is one, may well be sufficient for this purpose; in the case of an intestacy some other proof will be necessary. (The wording of Form D is not appropriate, which makes it impossible to use it in this instance).

5. — A transfer resulting from a trade authorized by the Commission

The Commission may occasionally permit a particular trade or trades to be made. If so, it will be done by an order of the Commission, and the applicant should be required to produce the order.

6. — Changes of ownership of an unusual nature

An instance of this would be a foreclosure by the mortgagee of the securities. These will be very rare and, if and when one arises, it should be referred to the Commission before the transfer is registered.

Every transfer registered pursuant to this policy must be reported to the Commission within 5 days thereafter. In cases 1 to 3 a copy of the affidavit must accompany the report.

The following are not transfers and are not affected in any way by a cease trading order:

- (a) Replacing lost or damaged certificates,
- (b) Issuing a new certificate on a change of (e.g. name on marriage),
- (c) A transmission by operation of law; e.g., from the name of a bankrupt into the name of his trustee, or from the name of a deceased into the name of his executor or administrator (Note that this applies to a change into the name of the executor or administrator only; any further change involves a transfer, see Nos. 3 and 4 above).

An issue of new shares from the company treasury is a trade and is affected by a cease trading order and must not be made without a specific authorization from the Commission.

Copies of the forms of affidavit may be obtained from the Commission. However, they have been copied from the Ontario forms with as few changes as possible so that affidavits on an Ontario form can be accepted provided the references in them to Ontario are deleted. It will be noted that the Ontario Form C has not been adopted; there would not appear to be any occasion to use this form in Manitoba.

The purpose in requiring affidavits is that a deponent who swears a false affidavit is guilty of a criminal offence. However, a prosecution will not be possible unless the commissioner or other person before whom it is sworn can be identified. Transfer agents must therefore require that his name be written legibly. Further, if the affidavit is sworn outside Manitoba, it should be sworn before a notary public under his seal.

