

THE SECURITIES ACT

)

Order No. 2939

)

Subsection 20(1) and 19(5)

)

June 2, 2000

OKANAGAN BEVERAGE CORP.

WHEREAS:

(A) Okanagan Beverage Corp. (the "Issuer") has applied to The Manitoba Securities Commission (the "Commission") for an order pursuant to subsection 20(1) of the *Securities Act*, R.S.M. 1988, c. S50 (the "Act") exempting the Corporation from the requirements of sections 6 and 37 of the Act in the context of certain trades in securities of the Corporation, as more particularly described herein. The Corporation also seeks the *post facto* approval of the Commission to the inclusion in the Offering Memorandum, as defined herein, of a representation that an application may be made to list the common shares of the Corporation on the Canadian Venture Exchange.

(B) It has been represented to the Commission by the Issuer that:

The Applicant

1. The Corporation was initially registered as Okanagan Beverages Unlimited Distributors Ltd. pursuant to Certificate of Incorporation issued pursuant to the provisions of the *Companies Act* (British Columbia) on September 22, 1993. By Certificate of Change of Name filed on October 28, 1997, the name of the Corporation was changed to its current name. In addition, on October, 28, 1997, the authorized share capital of the Corporation was amended.
2. The head office address of the Corporation is 9385 B Jim Bailey Road, Kelowna, B.C. V4V 1S4. The Corporation is authorized to issue 101,000,000 shares, divided into 100,000,000 Class A common voting shares without nominal or par value ("Class A Shares") and 1,000,000 Class B non-voting redeemable 8% non-cumulative preferred shares without par value ("Class B Shares"). As at March 22, 2000, there were 6,978,000 issued and outstanding Class A Shares and no issued and outstanding Class B Shares. Other than the potential Manitoba purchasers described herein, the Corporation has no shareholders resident in Manitoba.
3. The Corporation commenced operations as a juice distributor in 1993. The Corporation is now a full service beverage distributor of fountain and packaged goods products. The Corporation is currently pursuing opportunities to enter into the micro-brewery market in order to take advantage of perceived synergies with its current business operations.

4. The Corporation is not a reporting issuer in British Columbia, nor is it subject to Parts X, XI or XII of the Act.

The Offering

5. Pursuant to an offering memorandum dated March 22, 2000 (the "Original Offering Memorandum"), the Corporation offered for sale to certain members of the public in the Province of British Columbia 2,400,000 units ("Units"), each Unit comprised of one Class A common share and one non-transferrable half share purchase warrant, at a price of \$0.25 per Unit (the "B.C. Offering"). The minimum subscription was 20,000 Units (\$5,000). Each whole share purchase warrant entitles the holder thereof to acquire one additional common share at a price of \$0.25 per common share, at any time prior to 4:30 p.m. (Vancouver time) on the earlier of:

a) seven days from the date of issuance by the British Columbia Securities Commission of a receipt for a final prospectus qualifying the common shares of the Corporation;

b) seven days prior to the receipt of final approval by The Canadian Venture Exchange or another stock exchange of any merger, amalgamation, reverse take-over or similar transaction which would result in shareholders of the Corporation receiving shares of a public company; and

c) 16 months from the date of closing of the offering;

(the "Expiry Date").

Any warrants not exercised prior to the Expiry Date are deemed to have expired.

6. The B.C. Offering was effected in reliance on exemptions contained in the *Securities Act* (British Columbia) and Rules.

Trades in Manitoba

7. The Corporation has received signed subscription agreements to acquire Units from four persons and one corporation resident in the Province of Manitoba who are related to, or who are close friends or close business associates of, David Redekop, a director of the Corporation, (the "Manitoba Purchasers"). The Manitoba Purchasers are Mr. Redekop's mother, a corporation owned by his father, and three uncles of Mr. Redekop.

8. The contact with the Manitoba Purchasers was not initiated by the Corporation, but rather came as a result of the desire of the Manitoba Purchasers to invest in

the Corporation, which itself derived from the close family relationship between the Manitoba Purchasers and Mr. Redekop. The potential investment was initiated by Mr. Redekop's father who expressed the desire to invest in a company in which his son was involved.

9. Discussions as to the potential purchases by the Manitoba Purchasers occurred prior to the filing with the Commission by the Corporation of a Notice in Form 23. Contact with the Manitoba Purchasers was through David Redekop, a director, and through Derek Buchan, the President and CEO of the Corporation.

10. The proposed sales to the Manitoba Purchasers were intended to occur pursuant to the applicable exemption being relied upon in British Columbia and the applicable exemption in Manitoba, which was unknown at the time. The Corporation assumed that an exemption would be available due to the limited nature of the offering. In that regard, the Corporation had received legal advice that sales pursuant to the B.C. Offering were to be made only to B.C. residents and that any other sales could not be closed and would require review of applicable legislation in order to determine the availability of an exemption.

11. The funds received by the Corporation from the Manitoba Purchasers were delivered to the Corporation's solicitors, in trust, on the understanding that it was necessary to determine if sales could be effected in accordance with applicable securities law in Manitoba. Manitoba legal counsel was retained to determine if an exemption was available. Based upon advice received, it was determined no exemptions were available.

12. The Manitoba Purchasers received a copy of the Original Offering Memorandum, as is required by British Columbia securities legislation. While the document was not drafted so as to comply with the laws of any jurisdiction other than British Columbia, the Corporation intended, in addition to any applicable requirements of any other applicable jurisdiction, to grant contractual rights of action to purchasers as set out in the Original Offering Memorandum.

Representation as to Listing Application

13. The Original Offering Memorandum contained a statement which indicated that the Corporation intended to file an application with CDNX to have the common shares of the Corporation listed on CDNX, such representation being contrary to section 69(3) of the Act. The amended Offering Memorandum to be delivered to Manitoba Purchasers will contain information as to a proposed merger of the Corporation with Peak Brewing Group Inc., which company is currently listed on CDNX, and state that any steps to obtain an independent listing on CDNX have been suspended until the merger has been fully pursued.

14. At the time the representation was made, the Corporation did intend to make such an application, and disclosure of that fact fell within the ambit of disclosing

all material facts related to the Corporation and the securities being offered. The disclosure in the Original Offering Memorandum was in compliance with British Columbia securities legislation.

(C) The Commission is of the opinion that it would not be prejudicial to the public interest to grant the order requested.

IT IS ORDERED:

1. THAT, pursuant to subsection 20(1) of the Act, the Corporation is exempt from the requirements of sections 6 and 37 of the Act in connection with trades in Units to the Manitoba Purchasers, provided that:

(a) The Manitoba Purchasers receive a copy of the Amended Offering Memorandum;

(b) The Manitoba Purchasers receive a copy of this Order;

(c) Units, or underlying securities comprising a Unit, shall not be traded without the prior written consent of the Director unless:

(i) The Unit or underlying securities comprising a Unit has been held for a period of at least 12 months from the date the Unit was purchased;

(ii) The Corporation has filed a prospectus with the Commission with respect to the underlying securities comprising the Unit and has obtained a receipt therefore;

(iii) The proposed purchasers had acquired a Unit under the BC Offering or is one of the Manitoba Purchasers; or

(iv) The proposed purchaser is a corporation all the equity shares of which are owned by a purchaser who acquired a Unit under the BC Offering or is one of the Manitoba Purchasers;

(d) A copy of the amended Offering Memorandum, a specimen subscription agreement and a list of the Manitoba Purchasers setting out their names, addresses, number of securities and the consideration paid is filed with the Commission within 14 days of the earlier of September 18, 2000 or the date the sale of Units to Manitoba Purchasers has closed.

2. THAT, pursuant to section 19(5) of the Act, clause 91(a) of the *Securities Regulation* to the Act does not, with respect to such of the trades referred to therein, apply to the Corporation.

3. THAT, the Corporation is granted permission to have included in the Original Offering Memorandum a statement as to its intention to file an application to list the Class A Shares on a stock exchange;

4. THAT, the fee for this order shall be \$1000.00.

BY ORDER OF THE COMMISSION

Director – Capital Markets