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## Headnote

Relief from registration and prospectus requirements for trades of stock options to members of advisory board

## Exemption Order

### Springbank Ventures Inc.

Sections 48 and 76 of the *Securities Act*, R.S.B.C. 1996, c. 418

## Background

- ¶ 1 Springbank applied for exemption from the requirements to be registered to trade and to file and obtain receipts for a preliminary prospectus and prospectus in sections 34(1)(a) and 61 of the Act (the registration and prospectus requirements) for certain intended trades.

## Representations

- ¶ 2 Springbank represents that:
1. it was incorporated under the laws of British Columbia, is a reporting issuer in British Columbia and Alberta and is not in default of any requirement of the Act or the *Securities Rules*, B.C. Reg. 194/97, or any of the requirements of the securities legislation of Alberta;
  2. the authorized capital of Springbank consists of 100,000,000 common shares without par value, of which 1,353,129 common shares were issued and outstanding as at January 27, 2004;
  3. the common shares of Springbank are listed and posted for trading on the NEX and, upon closing of the Acquisition (as defined below) and subject to its approval by the TSX Venture Exchange, Springbank will graduate to Tier 2 of the TSX Venture and its common shares will be listed and posted for trading on the TSX Venture;

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4. Springbank has entered into an Amended Asset Transfer Agreement with Ondine Biopharma Inc. (a private British Columbia company) to acquire certain assets of Ondine (the Acquisition), including all of Ondine's intellectual property rights pertaining to its newly developed photoactivated disinfection technology for the treatment of periodontal disease and other viral and bacterial infections;
5. the Acquisition represents a reverse takeover under TSX Venture policies and was approved by the shareholders of Springbank at a shareholder meeting held on February 27, 2004;
6. upon closing of the Acquisition, Springbank proposes to implement a stock option plan (the Plan) accepted by the TSX Venture providing for the grant of stock options to directors, officers and employees of Springbank and to such other persons as provide a service of value to Springbank and who contribute to its success;
7. Springbank has formed a Scientific Advisory Board comprised of consultants (Scientific Advisors), each of whom is an experienced scientist and medical practitioner, who will:
  - (a) provide ongoing consulting services to Springbank under written contract;
  - (b) provide guidance to enable Springbank's technology to reach its full clinical and commercial potential;
  - (c) possess medical, technical, clinical and scientific experience and expertise in therapeutic or research fields that are related to Springbank's technology; and
  - (d) have knowledge of the business and affairs of Springbank that is equivalent to that held by certain directors, officers and employees of Springbank;
8. at the request of management, the Scientific Advisors review and provide Springbank with advice regarding individual research and development projects;
9. the Scientific Advisory Board meets at least annually to make its recommendations directly to Springbank's management;
10. individual Scientific Advisors are not consultants as defined under Multilateral Instrument 45-105 *Trades to Employees, Senior Officers, Directors and Consultants* because, as members of the Scientific Advisory Board, they do not spend a significant amount of time and attention on the business and

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affairs of Springbank or an affiliate of Springbank, but are consulted by Springbank on an ongoing basis in the area of their expertise;

11. Springbank proposes to grant incentive stock options under the Plan to Scientific Advisors who are not directors, officers or employees of Springbank and who are not affiliated, associated or related in any other way to Springbank;
12. the options are to be granted as an incentive mechanism for the Scientific Advisors to provide *bona fide* service of value to Springbank and not for the purpose of repayment or partial repayment of a debt owed to the Scientific Advisors;
13. the participation of the Scientific Advisors in the trade is voluntary;
14. the aggregate number of common shares of Springbank to be reserved for issuance under the Plan to consultants and to the Scientific Advisors will not exceed two percent of the issued and outstanding common shares of Springbank as of the date of the grant of the options to the consultants and the Scientific Advisors;
15. so long as Springbank's common shares are listed on the TSX Venture the incentive stock options will comply with or will be granted in accordance with the by-laws, rules and policies of the TSX Venture, as applicable, governing stock options and stock option plans, and will be issued at an exercise price determined by reference to the prevailing market price of the common shares of Springbank without any discount therefrom;
16. the options will be non-transferable and non-assignable except that, upon the death of a Scientific Advisor, any options may be transferred to and exercised by a deceased Scientific Advisor's executor or other legal representative or the beneficiaries of a deceased Scientific Advisor's estate in accordance with the terms of the Plan and the policies of the TSX Venture;
17. each option will expire not later than five years from the date of the grant of the option; and
18. the Scientific Advisors will not be induced to acquire common shares of Springbank upon the exercise of the options by expectation of continued membership on the Scientific Advisory Board or employment with Springbank.

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### **Order**

- ¶ 3 Because it is not prejudicial to the public interest the Executive Director orders, under sections 48 and 76 of the Act, that the intended trades of options by Springbank to the Scientific Advisors are exempt from the registration and prospectus requirements, provided that:
- (a) Springbank provides each Scientific Advisor with a copy of this order; and
  - (b) Springbank files a Form 45-103F4 on or before the 10<sup>th</sup> day after the distribution of options to Scientific Advisors in reliance on this order.
- ¶ 4 March 15, 2004

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