

2003 BCSECCOM 770

COR#03/168

Headnote

Relief granted from the registration and prospectus requirements for trades of securities issued under an employee incentive plan to participants and certain permitted transferees

Exemption Order

Sophos Plc

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

Background

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

Representations

- ¶ 2 Sophos represents that:
1. it was incorporated under the laws of England and Wales under the *Companies Act 1985*, in 1987;
 2. its head office is in Abingdon, the United Kingdom;
 3. it is in the business of software supply and consultancy;
 4. it is not a reporting issuer or the equivalent thereof in any of the provinces or territories of Canada and its shares are not currently listed or quoted on any stock exchange;
 5. its authorized capital consists of £10,000,000, divided into 8,000,000,000 Ordinary Shares, 1,000,000,000 B Ordinary Shares and 1,000,000,000 Preferred Ordinary Shares; as of October 14, 2003, Sophos had approximately

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49,594,680 Ordinary Shares, no B Ordinary Shares and 14,022,320 Preferred Ordinary Shares outstanding;

6. it has established a world-wide employee share purchase plan for Sophos and Sophos's subsidiaries, as amended or replaced from time to time (the Plan), under which shares of Sophos (the Shares) are made available for purchase;
7. the purpose of the Plan is to promote the interests of Sophos by providing eligible participants with the opportunity to acquire an interest in Sophos as shareholders in recognition of their contribution to the growth and financial success of Sophos and to foster in those individuals an active interest in Sophos's future success;
8. eligible directors, officers, employees and consultants (within the meaning of that term as defined in Multilateral Instrument 45-105 *Trades to Employees, Senior Officers, Directors and Consultants*) of Sophos and its subsidiaries (the Participants) may purchase Shares of Sophos in accordance with the terms of the Plan;
9. the purchase price of the Shares (the Purchase Price) is set by the directors of Sophos at a price that is not less than the fair market value of the Shares at the time of purchase, based on an independent valuation;
10. all Shares issued under the Plan must be held by a nominee (the Nominee) as a bare trustee for the Participants or their Permitted Transferees (as defined below);
11. over each ten year period, a maximum of ten percent of the issued Shares of Sophos may be issued or issuable under the Plan and all other employee stock schemes and awards;
12. Participants may elect during a limited period each year to sell their Shares to other Participants for the Purchase Price specified by the Board of Directors of Sophos for that trading period;
13. if allowed by the Board of Directors of Sophos and the Articles of Association of Sophos (the Articles), the Participants may transfer their Shares to: their spouse; adult children or issue; adult stepchildren or step-issue; successors under a will or the laws of intestacy; the trustee(s) of a family trust set up primarily for the benefit of the foregoing people; the trustee(s) of a trust registered as a charity; or, provided that there is no transfer of beneficial ownership, to a nominee or trustee for that Participant (the Permitted Transferees);

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14. the Plan and the Articles contemplate a number of possible trades of Shares of Sophos between Sophos, the Nominee, the Participants and the Permitted Transferees (the Plan Trades) in accordance with the provisions of the Plan;
15. the Plan and the Articles contemplate possible trades of Shares by the Nominee, the Participants or the Permitted Transferees in connection with the listing of the Shares on a qualifying stock exchange (the Listing Trades);
16. Sophos currently has no shareholders who are resident in Canada.

Order

¶ 3 Because it is not prejudicial to the public interest, the Commission orders:

1. under sections 48 and 76 of the Act that Plan Trades made in accordance with the Plan and Articles are exempt from the registration and prospectus requirements;
2. under sections 48 and 76 of the Act that Listing Trades made in accordance with the Articles are exempt from the registration and prospectus requirements, provided that:
 - (a) Sophos is not a reporting issuer or the equivalent in any province or territory of Canada at the distribution date of any Share forming part of a Listing Trade; and
 - (b) the Listing Trade is made through an exchange, or a market, outside of Canada; and
3. under section 76 of the Act, any trade in Shares acquired under this order is deemed to be a distribution unless the conditions in subsections (3) or (4) of section 2.6 of Multilateral Instrument 45-102 *Resale of Securities* are satisfied.

¶ 4 November 14, 2003

Joyce C. Maykut, Q.C.
Vice Chair