

ONCOLYTICS BIOTECH INC
Form 6-K
November 25, 2009

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
Form 6-K

Report of Foreign Private Issuer
Pursuant to Rule 13a-16 or 15d-16
of the Securities Exchange Act of 1934
For the month of November 2009
Commission File Number: 000-31062
Oncolytics Biotech Inc.

(Translation of registrant's name into English)

Suite 210, 1167 Kensington Crescent NW
Calgary, Alberta, Canada T2N 1X7

(Address of principal executive offices)

Indicate by check mark whether the registrant files or will file annual reports under cover Form 20-F or Form 40-F.

Form 20-F Form 40-F

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(1):

Note: Regulation S-T Rule 101(b)(1) only permits the submission in paper of a Form 6-K if submitted solely to provide an attached annual report to security holders.

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(7):

Note: Regulation S-T Rule 101(b)(7) only permits the submission in paper of a Form 6-K if submitted to furnish a report or other document that the registrant foreign private issuer must furnish and make public under the laws of the jurisdiction in which the registrant is incorporated, domiciled or legally organized (the registrant's "home country"), or under the rules of the home country exchange on which the registrant's securities are traded, as long as the report or other document is not a press release, is not required to be and has not been distributed to the registrant's security holders, and, if discussing a material event, has already been the subject of a Form 6-K submission or other Commission filing on EDGAR.

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This report on Form 6-K and the Warrant Indenture dated November 18, 2009 attached hereto as Exhibit 99.1 are hereby incorporated by reference into the Registration Statement on Form F-10 (File No. 333-151513) of Oncolytics Biotech Inc. filed with the United States Securities and Exchange Commission on June 6, 2008, as amended June 17, 2008, pursuant to the United States Securities Act of 1933, as amended.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Oncolytics Biotech Inc.
(Registrant)

Date: November 25, 2009

By: /s/ Doug Ball
Doug Ball
Chief Financial Officer

EXHIBIT INDEX

Number Description

99.1 Warrent Indenture Dated November 18, 2009

WARRANT INDENTURE

Providing for the Issue of Warrants

BETWEEN

Oncolytics Biotech Inc.

- and -

Computershare Trust Company of Canada

Dated as of November 18, 2009

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THIS WARRANT INDENTURE is made as of the 18th day of November, 2009.

BETWEEN:

ONCOLYTICS BIOTECH INC., a corporation incorporated under the laws of the Province of Alberta, having an office in the City of Calgary, in the Province of Alberta (hereinafter referred to as the "Corporation")

OF THE FIRST PART

- and -

COMPUTERSHARE TRUST COMPANY OF CANADA, a trust company incorporated under the laws of Canada and authorized to carry on business in all provinces of Canada (hereinafter referred to as the "Trustee")

OF THE SECOND PART

WHEREAS:

- A. The Corporation has agreed to issue 4,250,000 Units (as defined below), each Unit consisting of one Common Share (as defined below) and 0.4 of one Warrant (as defined below) at no additional cost;
- B. the Corporation has agreed to grant the Underwriters (as defined below) an Over-Allotment Option (as defined below) to purchase up to an additional 637,500 Common Shares at a price of U.S.\$2.95 and up to 255,000 Warrants at a price of U.S.\$0.05 per 0.4 of one Warrant;
- C. one whole Warrant shall, subject to adjustment, entitle the holder thereof to purchase from the Corporation one Common Share at the Exercise Price (as defined below) at any time prior to the Time of Expiry (as defined below) on the Expiry Date (as defined below), upon the terms and conditions herein set forth;
- D. all acts and deeds necessary have been done and performed to make the Warrants, when certified, issued and delivered as provided in this Indenture, legal, valid and binding upon the Corporation with the benefits and subject to the terms of this Indenture; and
- E. the Trustee has agreed to enter into this Indenture and to hold all rights, interests and benefits contained herein for and on behalf of those persons who from time to time become holders of Warrants issued pursuant to this Indenture.

NOW THEREFORE, the parties hereto agree as follows:

ARTICLE I

INTERPRETATION

1.1 Definitions

In this Indenture, including the recitals and schedules hereto, and in all indentures supplemental hereto:

- (a) “Applicable Legislation” means the provisions of the *Business Corporations Act* (Alberta) as from time to time amended, and any other statute of Canada or a province thereof, and the regulations under any such named or other statute, relating to trust indentures or to the rights, duties and obligations of trustees and of corporations under trust indentures, to the extent that such provisions are at the time in force and applicable to this Indenture;
 - (b) “Business Day” means a day which is not Saturday or Sunday or a legal holiday in the City of Calgary, Alberta;
 - (c) “CDS” means CDS Clearing and Depository Services Inc.;
 - (d) “Clearing Agency” means CDS or DTC, its nominees or any successors thereto, or any other organization registered as a “clearing agency” pursuant to the securities legislation of any jurisdiction of Canada, as in effect from time to time, and any additional qualified clearing agency that carries on business within or outside Canada for Warranholders resident in the relevant jurisdiction, or any of the foregoing, as the context may require, all as may be designated by the Corporation from time to time;
 - (e) “Closing Date” means November 23, 2009 or at such later date as the Corporation and the Underwriters may agree;
 - (f) “Common Shares” means, subject to Section 4.1, fully paid and non-assessable common shares of the Corporation as presently constituted;
 - (g) “Corporation’s Auditors” means a firm of chartered accountants duly appointed as auditors of the Corporation;
 - (h) “Counsel” means a barrister or solicitor or a firm of barristers and solicitors retained by the Trustee or retained by the Corporation and acceptable to the Trustee;
 - (i) “Current Market Price” of the Common Shares at any date means the volume weighted average trading price per share for such shares for the last ten Trading Days ending three trading days prior to such date on the Toronto Stock Exchange or, if on such date the Common Shares are not listed on the Toronto Stock Exchange, on such stock exchange upon which such shares are listed and as selected by the directors, or, if such shares are not listed on any stock exchange, then on such over-the-counter market or otherwise as may be determined by the directors, acting reasonably;
 - (j) “Determination Date” has the meaning set forth in Section 3.9(d);
 - (k) “director” means a director of the Corporation for the time being and, unless otherwise specified herein, reference without more to action “by the directors” means action by the directors of the Corporation as a board or, whenever duly empowered, action by any committee of such board;
 - (l) “DTC” means The Depository Trust Company;
 - (m) “Effective Date” means the Closing Date;
 - (n) “Exercise Date” means, with respect to any Warrant, the date on which the Warrant
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Certificate representing such Warrant is duly surrendered for exercise along with full payment of the Exercise Price, all in accordance with the terms hereof;

- (o) "Exercise Price" means U.S.\$3.50 per share;
 - (p) "Expiry Date" means November 23, 2014, or if on any date (the "Accelerated Exercise Date") prior to November 23, 2014 the 10-day volume-weighted average trading price of the Common Shares on the Toronto Stock Exchange exceeds the Canadian dollar equivalent (based on the Bank of Canada noon spot rate on the final day of the 10-day period) of U.S.\$6.50 per Common Share, then, at the Corporation's sole discretion and upon the Corporation sending the holder written notice of such Accelerated Exercise Date and issuing a news release announcing such Accelerated Exercise Date, the day that is 30 days following the later of: (i) the date on which such written notice is sent to the holder; and (ii) the date on which such announcement is made by news release;
 - (q) "Extraordinary Resolution" has the meaning set forth in Section 7.11;
 - (r) "Final Exercise Notice" has the meaning set forth in Section 3.9(b);
 - (s) "Officer's Certificate" has the meaning set forth in Section 3.9(a);
 - (t) "Over-Allotment Option" means the option granted to the Underwriters in connection with the offering to purchase up to an additional 637,500 Common Shares at a price of U.S.\$2.95 and up to 255,000 Warrants at a price of U.S.\$0.05 per 0.4 of one Warrant exercisable in whole or in part at any time from the date of the closing of the Unit offering until and including 30 days thereafter;
 - (u) "Participant" means a broker, dealer, bank or other financial institution or other person who maintains an account for clearing and holding securities, including Warrants, with a Clearing Agency or its nominee and on whose behalf a Clearing Agency or its nominee holds Warrants;
 - (v) "person" means an individual, body corporate, partnership, trust, trustee, executor, administrator, legal representative or any unincorporated organization;
 - (w) "SEC" means the United States Securities and Exchange Commission;
 - (x) "Shareholder" means a holder of record of one or more Common Shares;
 - (y) "Subsidiary of the Corporation" or "Subsidiary" means any corporation of which more than fifty (50%) percent of the outstanding Voting Shares are owned, directly or indirectly, by or for the Corporation, provided that the ownership of such shares confers the right to elect at least a majority of the board of directors of such corporation and includes any corporation in like relation to a Subsidiary;
 - (z) "Time of Expiry" means 4:30 p.m. (Calgary time) on the Expiry Date;
 - (aa) "Total Share Number" has the meaning set forth in Section 3.9(c);
 - (bb) "Trading Day" means, with respect to a stock exchange, a day on which such exchange is open for the transaction of business and with respect to the over-the-counter market
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means a day on which the Toronto Stock Exchange is open for the transaction of business;

- (cc) "Trustee" means Computershare Trust Company of Canada or its successors from time to time in the trust hereby created;
 - (dd) "Underwriters" means Oppenheimer & Co. Inc. and Canaccord Capital Corporation;
 - (ee) "Units" means the units offered by the Corporation pursuant to a prospectus supplement dated November 18, 2009 to a short form base shelf prospectus dated June 16, 2008, each such unit consisting of one Common Share and one Warrant;
 - (ff) "U.S. Person" means a "U.S. person" as defined in Rule 902 (k) of Regulation S under the U.S. Securities Act;
 - (gg) "U.S. Registration Statement" means a registration statement under the U.S. Securities Act, including any amendments or supplements thereto, registering the Common Shares issuable upon the exercise of the Warrants;
 - (hh) "U.S. Securities Act" means the United States *Securities Act of 1933*, as amended;
 - (ii) "Voting Shares" means shares of the capital stock of any class of any corporation carrying voting rights under all circumstances, provided that, for the purposes of such definition, shares which only carry the right to vote conditionally on the happening of an event shall not be considered Voting Shares, whether or not such event shall have occurred, nor shall any shares be deemed to cease to be Voting Shares solely by reason of a right to vote accruing to shares of another class or classes by reason of the happening of any such event;
 - (jj) "Warrant" means the Common Share purchase warrants of the Corporation to be issued pursuant to and in accordance with this Indenture entitling holders thereof to acquire one Common Share at the Exercise Price until the Time of Expiry for each whole common share purchase warrant held, subject to the terms and conditions herein;
 - (kk) "Warrant Agency" means the principal office of the Trustee in the City of Calgary, Alberta or such other place as may be designated in accordance with Section 3.3;
 - (ll) "Warrant Certificate" means a certificate, substantially in the form set forth in Schedule "A", issued on or after the Effective Date to evidence Warrants;
 - (mm) "this Warrant Indenture" "this Indenture", "herein", "hereby", "hereof" and similar expressions mean and refer to this Indenture and any indenture, deed or instrument supplemental hereto; and the expressions "Article", "Section", "subsection" and "paragraph" followed by a number, letter or both mean and refer to the specified article, section, subsection or paragraph of this Indenture;
 - (nn) "Warranholders", or "holders" means the persons who are registered owners of Warrants;
 - (oo) "Warranholders' Request" means an instrument signed in one or more counterparts by Warranholders entitled to acquire in the aggregate not less than 25% of the aggregate
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number of Common Shares which could be acquired pursuant to all Warrants then unexercised and outstanding, requesting the Trustee to take some action or proceeding specified therein; and

- (pp) “written request of the Corporation” and “certificate of the Corporation” mean, respectively, a written request and certificate signed in the name of the Corporation by its Chairman, President or Chief Financial Officer and may consist of one or more instruments so executed.

1.2 Gender and Number

Unless herein otherwise expressly provided or unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.3 Interpretation not Affected by Headings, etc.

The division of this Indenture into Articles and Sections, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Indenture.

1.4 Day not a Business Day

In the event that any day on or before which any action is required to be taken hereunder is not a Business Day, then such action shall be required to be taken at or before the requisite time on the next succeeding day that is a Business Day.

1.5 Time of the Essence

Time shall be of the essence of this Indenture.

1.6 Currency

Except as otherwise stated, all dollar amounts herein are expressed in Canadian dollars.

1.7 Applicable Law

This Indenture and the Warrant Certificates shall be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws applicable therein and shall be treated in all respects as Alberta contracts. Each of the parties irrevocably attorns to the exclusive jurisdiction of the courts of the Province of Alberta with respect to all matters arising out of this Indenture and the transactions contemplated herein.

ARTICLE II

ISSUE OF WARRANTS

2.1 Issue of Warrants

Up to 1,955,000 Warrants (including those Warrants issuable pursuant to the exercise of the Over-Allotment Option), on the terms and subject to the conditions herein provided, are hereby created and authorized to be issued at any time on or after the Effective Date and prior to the Time of Expiry. The Warrants hereby created shall be issued by the Trustee, in the form set forth in Section 2.5 hereof, in accordance with the written direction of the Corporation.

2.2 Terms of Warrants

- (a) Each whole Warrant shall entitle the holder thereof, upon the exercise thereof prior to the Time of Expiry, to acquire one (1) Common Share on payment of the Exercise Price.
- (b) No fractional Warrants shall be issued or otherwise provided for hereunder.
- (c) The number of Common Shares which may be acquired pursuant to the exercise of Warrants shall be adjusted in the circumstances and in the manner specified in Article 4.

2.3 Warrantholder not a Shareholder

Nothing in this Indenture or in the holding of a Warrant or Warrant Certificate or otherwise, shall, in itself, confer or be construed as conferring upon a Warrantholder any right or interest whatsoever as a Shareholder or as any other shareholder of the Corporation, including, but not limited to, the right to vote at, to receive notice of, or to attend, meetings of shareholders or any other proceedings of the Corporation, or the right to receive dividends and other distributions.

2.4 Warrants to Rank Pari Passu

All Warrants shall rank *pari passu*, whatever may be the actual date of issue thereof.

2.5 Form of Warrants

The Warrant Certificates (including all replacements issued in accordance with this Indenture) shall be substantially in the form set out in Schedule "A" hereto, shall be dated as of the Effective Date regardless of the date of issuance, shall bear such legends and distinguishing letters and numbers as the Corporation may, with the approval of the Trustee and subject to applicable securities laws, prescribe, and shall be issuable in any denomination excluding fractions

2.6 Signing of Warrant Certificates

The Warrant Certificates shall be signed (with or without the seal of the Corporation) by any one or more directors or officers of the Corporation. The signatures of any such director or officer may be mechanically reproduced in facsimile and Warrant Certificates bearing such facsimile signatures shall be binding upon the Corporation as if they had been manually signed by such director or officer. Notwithstanding that any person whose manual or facsimile signature appears on any Warrant Certificate as a director or officer may no longer hold office at the date of such Warrant Certificate or at the date of certification or delivery thereof, any Warrant Certificate signed as aforesaid shall, subject to Section 2.7, be valid and binding upon the Corporation and the holder thereof shall be entitled to the benefits of this Indenture.

2.7 Certification by the Trustee

- (a) No Warrant Certificate shall be issued or, if issued, shall be valid for any purpose or entitle the holder to the benefit of this Indenture hereof until it has been certified by manual signature by or on behalf of the Trustee by its authorized signing officers located in the City of Calgary, Alberta and such certification by the Trustee upon any Warrant Certificate shall be conclusive evidence as against the Corporation that the Warrant Certificate so certified has been duly issued hereunder and that the holder is entitled to the benefits hereof.
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- (b) The certification of the Trustee on Warrant Certificates issued hereunder shall not be construed as a representation or warranty by the Trustee as to the validity of this Indenture or the Warrant Certificates (except the due certification thereof) and the Trustee shall in no respect be liable or answerable for the use made of the Warrant Certificates or any of them or of the consideration therefor except as otherwise specified herein.

2.8 Issue in Substitution for Warrant Certificates Lost, etc.

- (a) If any Warrant Certificate becomes mutilated or is lost, destroyed or stolen, the Corporation, subject to applicable law and to subsection 2.8(b), shall issue and thereupon the Trustee shall certify and deliver, a new Warrant Certificate of like tenor as the one mutilated, lost, destroyed or stolen in exchange for and in place of and upon cancellation of such mutilated Warrant Certificate, or in lieu of and in substitution for such lost, destroyed or stolen Warrant Certificate, and the substituted Warrant Certificate shall be in a form pursuant to the provisions of this Warrant Indenture and approved by the Trustee and the Warrants evidenced thereby shall be entitled to the benefits hereof and shall rank equally in accordance with its terms with all other Warrants issued or to be issued hereunder.
- (b) The applicant for the issue of a new Warrant Certificate pursuant to this Section 2.8 shall bear the cost of the issue thereof and in case of loss, destruction or theft shall, as a condition precedent to the issue thereof, furnish to the Corporation and to the Trustee such evidence of ownership and of the loss, destruction or theft of the Warrant Certificate so lost, destroyed or stolen as shall be satisfactory to the Corporation and to the Trustee, in their sole discretion, and such applicant may also be required to furnish an indemnity and surety bond in amount and form satisfactory to the Corporation and the Trustee, in their sole discretion, and shall pay the reasonable charges of the Corporation and the Trustee in connection therewith.

2.9 Exchange of Warrant Certificates

- (a) Any one or more Warrant Certificates representing any number of Warrants may, upon compliance with the reasonable requirements of the Trustee, be exchanged for one or more other Warrant Certificates representing the same aggregate number of Warrants as represented by the Warrant Certificate or Warrant Certificates tendered for exchange.
- (b) Warrant Certificates may be exchanged only at the Warrant Agency or at any other place that is designated by the Corporation with the approval of the Trustee. Any Warrant Certificate tendered for exchange shall be cancelled by the Trustee.
- (c) Warrant Certificates issued pursuant to this Section 2.9 shall be in same form and shall bear the same legends as those Warrant Certificates they are exchanged for.

2.10 Transfer and Ownership of Warrants

- (a) The Trustee will cause to be kept (i) by and at the Warrant Agency, a register (or registers) of holders in which shall be entered in alphabetical order the names and addresses of the holders of Warrants and particulars of the Warrants held by them, respectively, and (ii) by and at the Warrant Agency, a register of transfers in which all transfers of Warrants and the date and other particulars of each transfer shall be entered.
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- (b) The Warrants may only be transferred on the register referred to in subsection (a) by the holder or its legal representatives or its attorney duly appointed by an instrument in writing in form and execution satisfactory to the Trustee only upon surrendering to the Trustee the Warrant Certificate or Warrant Certificates representing the Warrants to be transferred, together with the duly completed Transfer Form (in the form annexed to the Warrant Certificate), and upon compliance with and, upon reasonable request of the Corporation or Transfer Agent, satisfactory evidence of:
- (i) the conditions set forth in this Indenture;
 - (ii) such reasonable requirements as the Trustee may prescribe; and
 - (iii) all applicable securities legislation and requirements of regulatory authorities,

and such transfer shall be duly noted in such register by the Trustee. Upon compliance with such requirements, the Trustee shall issue to the transferee one or more Warrant Certificates representing the Warrants transferred.

- (c) The Corporation and the Trustee may deem and treat the registered owner of any Warrant as the beneficial owner thereof for all purposes and neither the Corporation nor the Trustee shall be affected by any notice or knowledge to the contrary except as required by statute or court of competent jurisdiction.
- (d) Subject to the provisions of this Indenture and Applicable Legislation, the Warranholders shall be entitled to the rights and privileges attaching to the Warrants free from all equities or rights of set off or counterclaims between the Corporation and the original and any intermediate holder of the Warrants. The issue of Common Shares by the Corporation upon the exercise or deemed exercise of Warrants in accordance with the terms and conditions herein contained shall discharge all responsibilities of the Corporation and the Trustee with respect to such Warrants and neither the Corporation nor the Trustee shall be bound to inquire into the title of any such holder.

2.11 Charges for Exchange or Transfer

Except as otherwise herein provided, a reasonable charge shall be levied to the Corporation in respect of the transfer or the exchange of any Warrant Certificate or the issue of a new Warrant Certificate(s) pursuant hereto including the reimbursement of the Trustee or the Corporation for any and all transfer, stamp or similar taxes or other governmental charges required to be paid by the holder requesting such transfer or exchange as a condition precedent to such transfer or exchange.

2.12 Global Warrant Certificates

- (a) Warrants may, upon original issuance, be issued in the form of one or more global Warrant Certificates, representing the Warrants to be delivered to the Clearing Agency by or on behalf of the Corporation in respect of such Warrants. The Warrants shall initially be registered on the Warrant register in the name of the Clearing Agency or its nominee and no Warranholder will receive definitive Warrant Certificates representing such Warranholder's interest in the Warrants, except as provided in Subsection 2.12(c) or upon due request by such Warranholder. Unless and until definitive Warrants have been issued to the applicable Warranholders pursuant to Subsection 2.12(c):
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- (i) the provisions of this Section 2.12 shall be in full force and effect;
 - (ii) the Corporation and the Trustee may deal with the Clearing Agency or its nominee for all purposes (including the making of payments and the delivery of any notice, report or other communication) as the registered holder of the Warrants and as the authorized representative of the respective Warrantheolders;
 - (iii) to the extent that the provisions of this Section 2.12 conflict with any other provisions of this Indenture, the provisions of this Section 2.12 shall prevail;
 - (iv) the rights of the respective Warrantheolders shall be exercised only through the Clearing Agency (directly or by proxy in favour of the respective Participants) and shall be limited to those established herein and by law;
 - (v) all transfers and exchanges of Warrants evidenced by a global certificate must be made through the Clearing Agency and any person transferring a Warrant in such manner shall be deemed to have transferred to the transferee all of such person's rights and obligations in respect thereof; all transferees of Warrants shall be deemed to have received and accepted such transfer and be deemed to have agreed to be bound by the provisions of this Indenture;
 - (vi) all transfers of beneficial ownership in any Warrant represented by a global Warrant Certificate will be effected only (i) with respect to the interest of a Participant, through records maintained by the Clearing Agency or its nominee for such global Warrant Certificate, and (ii) with respect to the interest of any person other than a Participant, through records maintained by Participants. Beneficial owners of Warrants who are not Participants but who desire to sell or otherwise transfer ownership of or any other interest in Warrants represented by such global Warrant Certificate may do so only through a Participant; and
 - (vii) for purposes of any provision of this Indenture requiring or permitting actions with the consent of, or at the direction of, holders of Warrants evidencing a specified percentage of the aggregate unpaid principal amount of Warrants then outstanding, the Trustee is entitled to act and rely upon the instructions of the Clearing Agency that it has received instructions, directly or indirectly through its respective Participants, to such effect from such Warrantheolders owning or representing, respectively, the requisite percentage of Warrants.
- (b) Each of the parties hereto acknowledges and agrees that such Warrantheolders, through their respective Participants, are collectively entitled, under the terms hereof, to all of the rights accorded to registered holders of Warrants and are bound by all of the obligations of such Warrantheolders.
- (c) If Warrants have been issued in the manner described by Section 2.12(a) and (i) the Corporation advises the Trustee that any Clearing Agency is no longer willing or able to discharge properly its responsibilities as the Clearing Agency with respect to such Warrants and the Clearing Agency is unable to locate a qualified successor; (ii) the Corporation, at its option, advises the Trustee that it elects to terminate the use of the global certificate procedure described in Section 2.12(a) with respect to the Warrants; then the Trustee shall notify the relevant holders of the Warrants, through the Clearing Agency, of the occurrence of any such event and of the availability of definitive Warrants
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to Warranholders requesting the same. Upon surrender by the Clearing Agency of a global certificate or certificates representing the Warrants and accompanied by registration instructions from the Clearing Agency for re-registration, and provided that the Corporation shall have provided the Trustee with sufficient blank forms of certificates representing definitive Warrants, the Trustee shall certify and deliver such definitive Warrants. Neither the Corporation nor the Trustee shall be liable to a Warranholder or any other person for any delay in delivery of such instructions and may conclusively act and rely on, and shall be protected in acting and relying on, such instructions. The Trustee shall not be liable for any delay in the delivery to it of certificates representing definitive Warrants for certification and delivery, or for any resulting delay in the delivery of such certificates to any holder. Upon the issuance of such definitive Warrants, the Corporation and the Trustee shall recognize the registered holders of such definitive Warrants as Warranholders hereunder.

- (d) If definitive Warrants have been issued and thereafter the Trustee advises the Corporation of the availability of the global certificate procedure described in Section 2.12(a) in regard to such Warrants, the Trustee and the Corporation may agree to allow for the re-registration of such definitive Warrants under such procedure and the Trustee shall forthwith deliver notice thereof to each registered holder of such Warrants. Upon surrender by any such Warranholder of its definitive Warrant accompanied by instructions for re-registration of the Warrant under such procedure, such Warrant shall thereafter be re-registered under such procedure and be subject to Subsections 2.12(a), (b) and (c), mutatis mutandis. The Corporation shall pay all expenses incurred by the Trustee and the reasonable fees of the Trustee associated with any termination of the use of such procedure and of any such re-registration of the definitive Warrants under such procedure.
- (e) Notwithstanding anything herein or in the terms of the Warrant Certificates to the contrary, neither the Corporation nor the Trustee nor any agent thereof shall have any responsibility or liability for (i) the records maintained by the Clearing Agency relating to any ownership interests or any other interests in the Warrants or the depository system maintained by the Clearing Agency, or payments made on account of any ownership interest or any other interest of any person in any Warrant represented by any global Warrant Certificate (other than the applicable Clearing Agency or its nominee), (ii) maintaining, supervising or reviewing any records of the Clearing Agency or any Participant relating to any such interest, or (iii) any advice or representation made or given by the Clearing Agency or those contained herein that relate to the rules and regulations of the Clearing Agency or any action to be taken by the Clearing Agency on its own direction or at the direction of any Participant.

2.13 Cancellation of Surrendered Warrants

All Warrant Certificates surrendered pursuant to Sections 2.8, 2.9, 2.10, 2.12, 3.1, 3.5 or 5.4 shall be returned to the Trustee for cancellation and, after the expiry of any period of retention prescribed by law, destroyed by the Trustee. Upon request by the Corporation, the Trustee shall furnish to the Corporation a destruction certificate identifying the Warrant Certificates so destroyed, the number of Warrants evidenced thereby and the number of Common Shares, if any, issued pursuant to such Warrants.

2.14 Assumption by Transferee and Release of Transferor

Upon becoming a Warrantholder in accordance with the provisions of this Indenture, the transferee thereof shall be deemed to have acknowledged and agreed to be bound by this Indenture. Upon the registration of such transferee as the Warrantholder of a Warrant, the transferor shall cease to have any further rights under this Indenture with respect to such Warrant or the Common Share in respect thereof.

ARTICLE III

EXERCISE OF WARRANTS

3.1 Exercise of Warrants by the Holder

- (a) Subject to the terms hereof, including the provisions of Section 3.1(b) and Section 3.1(d), each holder of Warrants may exercise the right conferred on such holder to purchase one Common Share for each whole Warrant held by surrendering to the Trustee at the Warrant Agency, after the Effective Date and prior to the Time of Expiry:
 - (i) the Warrant Certificate with a duly completed and executed Exercise Form in the form substantially set out in Schedule "A"; and
 - (ii) a certified cheque, bank draft or money order in lawful money of Canada payable to or to the order of the Trustee, at par in the city where such Warrant Certificate is surrendered in an amount equal to the Exercise Price multiplied by the number of Common Shares subscribed for.

A Warrant Certificate with the duly completed and executed Exercise Form referred to in subsection 3.1(a)(i), together with the payment of the Exercise Price of the Common Shares subscribed for and referred to in subsection 3.1(a)(ii), shall be deemed to be surrendered only upon personal delivery thereof or, if sent by mail or other means of transmission, upon actual receipt thereof by the Trustee at the Warrant Agency.

- (b) Notwithstanding any provision to the contrary contained in this Indenture, no person in the United States, U.S. Person or person holding a Warrant for the account of or benefit of a person in the United States or U.S. Person shall exercise any Warrant pursuant to this Section 3.1 at any time when no U.S. Registration Statement is effective, provided that at any such time, any person in the United States, U.S. Person or person holding a Warrant for the account or benefit of a person in the United States or U.S. Person shall be entitled to the rights and benefits set forth in Section 3.9 hereof. If no U.S. Registration Statement is effective at any time when a Warrant is exercised, as a condition to the exercise of any Warrant the Corporation may require that the holder of such Warrant provide such evidence as the Corporation shall reasonably request that such person is not exercising in the United States, a U.S. Person or person holding such Warrant for the account or benefit of a person in the United States or U.S. Person and certification from the holder of such Warrant that all offer and sales of the Common Shares acquired pursuant to exercise of the Warrants will be conducted in compliance with Regulation S under the U.S Securities Act, registration under the U.S. Securities Act or pursuant to an applicable exemption from such registration requirements.
 - (c) Any Exercise Form referred to in subsection 3.1(a) and any Notice of Intent to Exercise Form referred to in Section 3.9 shall be signed by the Warrantholder and shall specify:
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- (i) the number of Common Shares which the holder wishes to acquire (being not more than the number of Common Shares which the holder is entitled to acquire pursuant to the Warrant Certificate(s) surrendered);
- (ii) the person or persons in whose name or names such Common Shares are to be issued;
- (iii) the address or addresses of such person or persons; and
- (iv) the number of Common Shares to be issued to each such person if more than one is so specified.

The Warrantholder must comply with all applicable securities laws in connection with the issuance of Common Shares upon exercise of Warrants.

- (d) If Warrants have been issued in the manner described in Section 2.12, a beneficial owner of Warrants who desires to exercise Warrants should ensure that the Participant is provided with the required exercise form sufficiently in advance of the relevant notice date so as to permit the Participant to deliver notice to the Clearing Agency and to the Trustee at the Warrant Agency, after the Effective Date and prior to the Expiry. Any expense associated with the preparation and delivery of such exercise form will be for the account of the beneficial owner exercising the Warrants. The Corporation and the Trustee shall not be liable to the Warrantholder or any other person for any delay in the Trustee receiving such exercise form.

3.2 Transfer Fees and Taxes

If any of the Common Shares subscribed for are to be issued to a person or persons other than the Warrantholder, the Warrantholder shall comply with such reasonable requirements as the Trustee may prescribe and shall pay to the Corporation or the Warrant Agency on behalf of the Corporation, all applicable transfer or similar taxes and the Corporation shall not be required to issue or deliver certificates evidencing Common Shares unless or until such Warrantholder shall have paid to the Corporation, or the Warrant Agency on behalf of the Corporation, the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid or that no tax is due.

3.3 Warrant Agency

In connection with the exchange or transfer of Warrant Certificates and exercise of Warrants and compliance with such other terms and conditions hereof as may be required, the Corporation has appointed the principal office of the Trustee in the City of Calgary, Alberta as the agency at which Warrant Certificates may be surrendered for exchange or transfer or at which Warrants may be exercised and the Trustee has accepted such appointment. The Corporation may from time to time designate alternate or additional places as the Warrant Agency and shall give notice to the Trustee of any change of the Warrant Agency.

3.4 Effect of Exercise of Warrants

- (a) Upon the exercise of Warrants pursuant to Section 3.1 or upon the Determination Date (as defined below) pursuant to Section 3.9, as the case may be, and subject to Section 3.5, the Common Shares to be issued shall be deemed to have been issued and the person or persons to whom such Common Shares are to be issued shall be deemed to have become
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the holder or holders of record of such Common Shares on the Exercise Date unless the transfer registers of the Corporation shall be closed on such date, in which case the Common Shares issued upon the exercise of any Warrants shall be deemed to have been issued and such person or persons deemed to have become the holder or holders of record of such Common Shares, on the date on which such transfer registers are reopened.

- (b) Upon the exercise of Warrants pursuant to Section 3.1 and subject to Section 3.5, the Corporation or its nominee shall, upon receipt by the Trustee of the Warrant Certificate, the payment of the Exercise Price and the Exercise Form duly completed, as soon as practicable and in any event within five (5) Business Days after the Exercise Date, cause to be mailed to the person or persons in whose name or names the Warrant is registered or, if so specified in writing by the holder, cause to be delivered to such person or persons at the Warrant Agency where the Warrant Certificate was surrendered, a certificate or certificates for the appropriate number of Common Shares issued upon exercise of the Warrants evidenced by the Warrant Certificate.

3.5 Partial Exercise of Warrants; Fractions

- (a) The holder of any Warrants may exercise his right to acquire Common Shares in part and may thereby acquire a number of Common Shares less than the aggregate number which such holder is entitled to acquire pursuant to the surrendered Warrant Certificate(s). In the event of any exercise of a number of Warrants less than the number which the holder is entitled to exercise, the holder of the Warrants upon such exercise shall, in addition, be entitled to receive, without charge therefor, a new Warrant Certificate(s) in respect of the balance of the Warrants represented by the surrendered Warrant Certificate(s) and which were not then exercised.
- (b) Notwithstanding anything herein contained including any adjustment provided for in Article 4, the Corporation shall not be required, upon the exercise of any Warrants, to issue fractions of Common Shares or to distribute certificates or Warrants which evidence a fractional Common Share. In lieu of a fractional Common Share, the Corporation shall pay to the holder who would otherwise be entitled to receive a fractional Common Share upon an exercise of Warrants, within five (5) Business Days after the Exercise Date, an amount in lawful money of Canada equal to the Current Market Price of the Common Shares on the Exercise Date multiplied by an amount equal to the fractional interest such holder would otherwise be entitled to receive upon such exercise, provided that the Corporation shall make only one such payment for each beneficial holder exercising such Warrants.

3.6 Expiration of Warrants

Immediately after the Time of Expiry, all rights under any Warrant in respect of which the right of acquisition herein and therein provided for shall not have been exercised shall cease and terminate and such Warrant shall be void and of no further force or effect except to the extent that the Warrantholder has not received certificates representing the Common Shares held by it, in which instances the Warrantholder's rights hereunder shall continue until it has received that to which it is entitled hereunder.

3.7 Accounting and Recording

- (a) The Trustee shall promptly account to the Corporation with respect to Warrants exercised. Any securities or other instruments (including any property), from time to
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time received by the Trustee shall be received in trust for, and shall be segregated and kept apart by the Trustee in trust for, the Warrantholders and the Corporation, as their interests may appear.

- (b) The Trustee shall record the particulars of Warrants exercised which particulars shall include the names and addresses of the persons who become holders of Common Shares and the Exercise Date in respect thereof. The Trustee shall provide such particulars in writing to the Corporation within five Business Days of any request by the Corporation therefor.

3.8 Securities Restrictions

Notwithstanding anything herein contained, no Common Shares will be issued pursuant to the exercise of any Warrant if the issuance of such Common Shares would constitute a violation of the securities laws of any applicable jurisdiction, and without limiting the generality of the foregoing, in the event that the Warrants are exercised pursuant to Section 3.1, the certificates representing the Common Shares thereby issued will bear such legend as may, in the opinion of Counsel to the Corporation, be necessary in order to avoid a violation of any securities laws of any province in Canada or of the United States or to comply with the requirements of any stock exchange on which the Common Shares are listed, provided that if, at any time, in the opinion of Counsel to the Corporation, such legends are no longer necessary in order to avoid a violation of any such laws, or the holder of any such legended certificate, at the holder's expense, provides the Corporation with evidence satisfactory in form and substance to the Corporation (which may include an opinion of Counsel satisfactory to the Corporation) to the effect that such holder is entitled to sell or otherwise transfer such Common Shares in a transaction in which such legends are not required, such legended certificate may thereafter be surrendered to the Corporation in exchange for a certificate which does not bear such legend. For greater certainty, should no U.S. Registration Statement be effective, the Corporation shall permit the cashless exercise of Warrants held by U.S. Persons as set forth in Section 3.9 and shall not be permitted to issue legended Common Shares in lieu thereof.

3.9 Cashless Exercise by U.S. Persons

- (a) If the U.S. Registration Statement ceases to be effective, prior to the Time of Expiry and for so long as the U.S. Registration Statement is not effective, any holder of any Warrant that is a person in the United States, U.S. Person or person holding a Warrant for the account or benefit of a person in the United States or U.S. Person may provide the Corporation with a notice of intent to exercise such Warrant by surrendering the certificate representing such Warrant at any time during such period to the Trustee at the Warrant Agency, with a duly completed and executed Exercise Form, in substantially the form attached hereto upon which the holder shall indicate that he or she is exercising his or her right to exercise the Warrants on a cashless basis. Upon receipt of the Exercise Form, the Trustee at the Warrant Agency shall inform the Corporation of the Warrantholder's intent to exercise on a cashless basis. Within three business days of notice from the Trustee at the Warrant Agency of the provision of a Exercise Form on a cashless basis, the Corporation shall authorize such cashless exercise or request further evidence that the holder of the Warrants is in the United States, a U.S. Person or is holding for the account or benefit of a person in the United States or U.S. Person, as provided below. As a condition of such cashless exercise, the Corporation may require that the holder of such Warrant provide such evidence that it is a U.S. Person as the Corporation shall reasonably request, provided that if the Corporation, acting reasonably, is not satisfied in such circumstance that such Warrantholder is a U.S. Person or person

holding such Warrant for the account of a U.S. Person, such Warrantholder shall be notified forthwith by the Trustee that such Warrantholder is entitled to exercise his or her Warrant, in whole or in part, in accordance with Section 3.1. If the holder exercises the right provided for in this Section 3.9(a) in respect of a lesser number of Warrants than the aggregate number of Warrants represented by the Warrant Certificate surrendered, the Warrantholder shall be entitled to receive a further Warrant Certificate in respect of the Warrants represented by the Warrant Certificates that have not been part of a cashless exercise.

- (b) Forthwith following the election of the Corporation to permit the exercise by a Warrantholder of the cashless exercise, the Trustee shall deliver to the Corporation a notice setting out the particulars of the Warrants to be exercised and the name and address of the Warrantholder and th