

**Case 20-1c**  
**Rose Marketing Inc.**

Rose Marketing Inc. (Rose or the “Company”) is a private company that provides immersive marketing for locally sold products and handcrafts. Rose entered into a series of agreements with InVest Co. (InVest), to whom shares of preferred stock (the “Preferred Stock” or the “Shares”) and warrants were issued, in exchange for \$100 million.

**The Preferred Stock Issuance**

- *Par value* — \$0.01 per share.
- *Total shares* — 250,000.
- *Liquidation* — In the event of any voluntary or involuntary liquidation, dissolution, or winding up of the Company (a “Liquidation Event”), or any “Deemed Liquidation Event” (defined below), before any payment is made to the shareholders of Rose common stock (“Common Stock”), the shareholders of each series of Preferred Stock then outstanding should be entitled to payment out of the funds and assets available for distribution to its stockholders an amount per share equal to the greater of (1) the original issue price for such series of Preferred Stock, plus any dividends declared but unpaid, or (2) such amount per share that would have been payable had all shares of such series of Preferred Stock been converted into Common Stock immediately before such Liquidation Event or Deemed Liquidation Event.

A Deemed Liquidation Event includes any of the following events, unless the holders of at least a majority of the outstanding shares of Preferred Stock elect otherwise:

- A merger or consolidation, except for one in which the stockholders of the Company continue to represent at least a majority of voting power after the transaction (a “Merger or Consolidation”).
- The sale, lease, transfer, or other disposition, in a single transaction or a series of related transactions, by the Company, of all or substantially all the assets of the Company taken as a whole.

The amount deemed paid or distributed to the holders of capital stock of the Company upon any such merger, consolidation, sale, transfer, exclusive license, or other disposition should be the cash or the value of the property, rights, or securities paid or distributed to such holders by the Company or the acquiring person, firm, or other entity. Consent of the Company’s board of directors must be obtained before a Deemed Liquidation Event can occur.

- *Conversion option* — Each share of Preferred Stock should be convertible at any time, at the holder's option, and without the payment of additional consideration by the holder into one fully paid and nonassessable share of Common Stock (the "Conversion Rights").
- *Termination of conversion rights* — In the event of a Liquidation Event or a Deemed Liquidation Event, the Conversion Rights should terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Preferred Stock.
- *Mandatory conversion* — Each share of Preferred Stock should be mandatorily converted upon the date and time specified by vote or written consent of the holders of a majority of the then-outstanding shares of Preferred Stock, in which case (1) all outstanding shares of Preferred Stock should automatically be converted into shares of Common Stock, for no additional consideration, and (2) such shares may not be reissued by the Company.
- *Voting rights* — Holders of the Preferred Stock have the right to vote as a single class with common stockholders on an as-converted basis on any matter presented to the Company's stockholders for their action or consideration at any stockholders meeting. Holders of Preferred Stock, as a separate class, should also be entitled to elect four directors of the Company, and holders of shares of Common Stock, as a separate class, should be entitled to elect one director of the Company. Thus, the holders of the Preferred Stock control the voting power and Rose's board of directors.

### **The Warrant Agreement**

In connection with the issuance of the Preferred Stock, Rose and InVest entered into an agreement (the "Warrant Agreement") providing InVest with the right to purchase shares of the Preferred Stock (the "Warrants"). The Warrants are initially exercisable for 300,000 shares of Preferred Stock.

- *Exercise price* — \$0.01 per share.
- *Term* — The Warrants may be exercised at any time on or after issuance and will expire 10 years later or upon the occurrence of a Deemed Liquidation Event.
- *Method of exercise* — Cash payment.
- *Transfer rights* — The Warrants are transferrable with the Company's prior written consent, which should not be unreasonably withheld.
- *No stockholder rights* — Prior to exercise, holders of the Warrants are not entitled to voting rights, dividends, or any other rights of holders of Preferred Stock or Common Stock.

- *Unit of account* — If the Warrants are exercised, there would be no extinguishment of Preferred Stock.

While the Company is not currently an SEC registrant, it is contemplating a potential registration of its shares of Common Stock and therefore applies the SEC and SEC staff guidance codified in ASC 480-10-S99 of ASC 480, *Distinguishing Liabilities From Equity* (ASC 480) to determine whether the Preferred Stock should be classified outside of permanent equity.

**Required:**

1. How should Rose classify the Preferred Stock under ASC 480?
2. Determine whether the Warrants meet the definition of a freestanding financial instrument as defined in ASC 480.
3. How should Rose classify the Warrants under ASC 480?