

HEARX LTD
Form S-4/A
May 07, 2002

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As filed with the Securities and Exchange Commission on May 7, 2002.

Registration No. 333-73022

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Amendment No. 4
to
Form S-4
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

HEARx LTD.

(Exact name of the registrant as specified in its charter)

Delaware
*(State or other jurisdiction of
incorporation or organization)*

5990
*(Primary Standard Industrial
Classification Code Number)*

22-2748248
*(I.R.S. Employer
Identification No.)*

1250 Northpoint Parkway

West Palm Beach, Florida 33407
(561) 478-8770
*(Address and telephone number
of the registrant's principal executive offices)*

Dr. Paul A. Brown

Chairman and Chief Executive Officer
HEARx LTD.
1250 Northpoint Parkway
West Palm Beach, Florida 33407
(561) 478-8770
(Name, address and telephone number of agent for service)

Copies to:

LaDawn Naegle
Bryan Cave LLP
700 Thirteenth Street, NW
Washington, DC 20005
(202) 508-6046

Approximate date of commencement of proposed sale of the securities to the public: As soon as practicable after the Registration Statement becomes effective and the consummation of the transaction described herein.

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box.

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If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement offering.

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

The registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until this Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting any offer to buy these securities in any state where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED MAY 7, 2002

HEARx LTD.

HELIX HEARING CARE OF AMERICA CORP.

To the Stockholders of HEARx Ltd. and Helix Hearing Care of America Corp.:

After careful consideration, the board of directors of HEARx and Helix have approved a combination of HEARx and Helix through a plan of arrangement under Canadian law. When the arrangement is completed, Helix will become an indirect subsidiary of HEARx and HEARx will change its name to HearUSA, Inc. Each share of Helix common stock will be exchanged for 0.3537 shares of HEARx common stock or 0.3537 exchangeable shares of a Canadian subsidiary of HEARx. Each exchangeable share is exchangeable for one share of HEARx common stock. Only Helix stockholders who are Canadian residents may elect to receive exchangeable shares. Based on the number of Helix common shares currently outstanding, up to 14.61 million shares of HEARx common stock representing approximately 48% of outstanding HEARx shares will be issued to Helix stockholders other than HEARx in connection with the arrangement. HEARx common stock is listed on the American Stock Exchange under the trading symbol **EAR** and on May 3, 2002, HEARx common stock closed at \$0.91 per share.

The transaction is structured to be Canadian tax deferred to Canadian resident Helix stockholders who validly elect to receive exchangeable shares and taxable to U.S. resident Helix stockholders. Canadian resident Helix stockholders should note that amendments have been proposed to the Canadian Income Tax Act that may require holders of exchangeable shares or HEARx common stock to report as income (or loss) annual changes in the value of such shares accruing after the date fixed by law on a **mark-to-market** basis.

The accompanying joint proxy statement/prospectus provides detailed information about the arrangement and the related proposals to be voted on at your company's special meeting. Formal notices of the stockholders meetings of each company appear in the accompanying joint proxy statement/prospectus. Please give all of the information contained in the joint proxy statement/prospectus your careful attention. **You should carefully consider the discussion in the section entitled **Risk Factors** beginning on page 13 of the joint proxy statement/prospectus.**

The principal stockholders of Helix, who together hold approximately 47% of the outstanding Helix common shares, have agreed to vote in favor of the arrangement, in each case subject to the terms and conditions of a stockholders agreement described in the accompanying joint proxy statement/prospectus. In addition, HEARx holds approximately 10.5% of currently outstanding Helix common shares, which it intends to vote in favor of the arrangement.

We cannot complete the arrangement without the approval of the stockholders of HEARx and Helix. We hope you will be able to attend your company's meeting. **Your vote is very important. Whether or not you plan to attend your company's meeting, please complete, sign, date and return the accompanying proxy card in the enclosed self-addressed stamped envelope.** Returning the proxy does not deprive you of your right to attend your company's meeting and to vote your shares in person. Special instructions together with a letter of transmittal and election form for use by Helix stockholders to receive certificates for the exchangeable shares or HEARx common stock under the arrangement are enclosed. Thank you for your consideration of this matter.

Dr. Paul A. Brown
Chairman and Chief Executive Officer
HEARx Ltd.

Steve Forget
President, Chief Executive Officer and Chairman
Helix Hearing Care of America Corp.

Neither the Securities and Exchange Commission nor any state or Canadian securities commission has approved or disapproved the arrangement described in the joint proxy statement/prospectus or the shares of HEARx common stock to be issued in connection with the arrangement, or determined if the joint proxy statement/prospectus is accurate or inadequate. Any representation to the contrary is a criminal offense.

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This joint proxy statement/prospectus is dated _____, 2002, and is first being mailed to stockholders on or about _____, 2002.

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HEARx LTD.

1250 Northpoint Parkway
West Palm Beach, Florida 33407

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

To be Held on June 26, 2002

To the Stockholders of HEARx Ltd.:

NOTICE IS HEREBY GIVEN that a special meeting of the stockholders of HEARx Ltd. will be held on June 26, 2002, at _____ at _____ a.m., Florida time, to vote on:

1. approval of the issuance of HEARx common stock in connection with the plan of arrangement with Helix Hearing Care of America Corp.;
2. approval of an amendment to our restated certificate of incorporation to increase the number of shares of our common stock and preferred stock authorized for issuance;
3. approval of an amendment to our restated certificate of incorporation to change our name to HearUSA, Inc. ;
4. approval of the adoption of the HearUSA 2002 Flexible Stock Plan;
5. the adjournment of the special meeting, if necessary, to permit the solicitation of additional proxies in the event there are not sufficient votes at the time of the special meeting to approve the above proposals; and
6. such other business, if any, as may properly be brought before the meeting.

Only holders of our common stock as of May 10, 2002, our record date, are entitled to notice of and to vote at this meeting or any adjournments of the meeting. The list of stockholders entitled to vote will be available for inspection by any HEARx stockholder at the offices of HEARx, 1250 Northpoint Parkway, West Palm Beach, Florida 33407, for ten days prior to the meeting.

You are cordially invited to attend this meeting in person. You may vote in person at the HEARx special meeting even if you have returned a proxy.

BY ORDER OF THE BOARD OF DIRECTORS

Dr. Paul A. Brown
Chairman and Chief Executive Officer

West Palm Beach, Florida
, 2002

Your vote is important, regardless of the number of shares you own. Please complete, sign and date the enclosed proxy card and mail it promptly using the enclosed, pre-addressed, postage-paid envelope, so that your shares will be represented whether or not you attend the meeting. You may revoke your proxy at any time before the shares are voted at the meeting.

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HELIX HEARING CARE OF AMERICA CORP.

**7100, Jean-Talon East
Suite 610
Montreal, QC H1M 3S3**

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

To be Held on June 26, 2002

To the Stockholders of Helix Hearing Care of America Corp.:

NOTICE IS HEREBY GIVEN that a special meeting of the stockholders of Helix Hearing Care of America Corp., a Canadian corporation, will be held on June 26, 2002, at _____ at _____ a.m., Montreal time, for the following purposes:

1. for the Helix stockholders to consider and to pass, with or without variation, a special resolution, the full text of which is set forth in Annex F to the accompanying joint proxy statement/ prospectus, approving an arrangement pursuant to section 192 of the Canada Business Corporations Act, all as more particularly described in the joint proxy statement/ prospectus; and
2. such other business, if any, as may properly be brought before the meeting or any adjournment thereof.

If you are not able to be present at the meeting, please exercise your right to vote by signing and returning the enclosed form of proxy (printed on blue paper) to Computershare Trust Company of Canada in the enclosed envelope so as to arrive not later than 5:00 p.m. (Montreal time) on _____, 2002, or, if the meeting is adjourned, 48 hours (excluding Saturdays, Sundays and holidays) before the time the adjourned meeting is to be reconvened. Proxies may also be deposited with the scrutineers of the meeting, to the attention of the chairman of the meeting, immediately prior to the commencement of the meeting, or any adjournment or postponement thereof.

Pursuant to the order of the Superior Court of Québec, District of Montreal dated _____, 2002, registered holders of common shares of Helix have been granted the right to dissent in respect of the arrangement resolution. If the arrangement becomes effective, a registered holder of common shares of Helix who dissents will be entitled to be paid the fair value of such common shares if Helix shall have received from such dissenting stockholder prior to 5:00 p.m. (Montreal time) on the business day preceding the meeting a written objection to the arrangement resolution and the dissenting stockholder shall have otherwise complied with the dissent procedures (which are described in the joint proxy statement/ prospectus under the heading *Dissenters* or *Appraisal Rights* and in Annex J). A notice of dissent should be delivered to the Corporate Secretary and General Counsel, 7100 Jean-Talon East, Suite 610, Montreal, Québec, H1M 3S3. Failure to comply strictly with such dissent procedures may result in the loss or unavailability of any right of dissent.

BY ORDER OF THE BOARD OF DIRECTORS

Steve Forget
President, Chief Executive Officer and Chairman

Montreal, Québec
, 2002

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REFERENCES TO ADDITIONAL INFORMATION

This joint proxy statement/prospectus incorporates important business and financial information about HEARx and Helix from documents that are not included in or delivered with this joint proxy statement/ prospectus. This information is available to you without charge upon either written or oral request. You can obtain documents incorporated by reference in this joint proxy statement/prospectus by requesting them in writing or by telephone from the appropriate company at the following addresses and telephone numbers:

HEARx Ltd.
1250 Northpoint Parkway
West Palm Beach, Florida 33407
561-478-8770

Helix Hearing Care of American Corp.
7100, Jean-Talon East, Suite 610
Montreal, Québec, Canada H1M 3S3
514-353-0001

If you would like to request documents, please do so by _____, in order to receive them before the special meetings.

For additional sources of the documents incorporated by reference and other information about HEARx and Helix, see [Where You Can Find More Information](#) beginning on page 169.

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QUESTIONS AND ANSWERS ABOUT THE HEARx/ HELIX ARRANGEMENT

Q: What is being proposed?

A: We intend to combine the businesses of HEARx and Helix. To accomplish this, the boards of directors of HEARx and Helix are proposing an arrangement under Canadian law between Helix and HEARx, subject to final approval of the Superior Court of Québec. When the arrangement is completed, we expect to change the name of HEARx to HearUSA, Inc. and Helix will become an indirect subsidiary of HEARx.

Q: Why are Helix and HEARx combining?

A: HEARx and Helix believe that combining the two companies will result in a stronger and more competitive company capable of achieving greater financial strength, better access to capital markets and greater growth potential than either company would have on its own.

Q: As a Helix stockholder, what will I receive in the arrangement?

A: Under the arrangement, Helix stockholders, other than stockholders who exercise and perfect their dissent rights, have the option to receive as consideration for each Helix common share (a) 0.3537 shares of HEARx common stock, or (b) 0.3537 exchangeable shares of HEARx Canada Inc. Helix stockholders who are not Canadian residents for Canadian tax purposes will not be entitled to receive exchangeable shares.

The exchangeable shares will be the economic equivalent of HEARx common stock. Each exchangeable share will be exchangeable at any time at the option of the holder, for one share of HEARx common stock, subject to any anti-dilution adjustments. Until exchanged for HEARx common stock, (i) each exchangeable share outstanding will entitle the holder to one vote per share at all meetings of HEARx common stockholders; (ii) if any dividends are declared on HEARx common stock, an equivalent dividend must be declared on such exchangeable shares and (iii) in the event of the liquidation, dissolution or winding-up of HEARx Canada Inc., such exchangeable shares will be exchanged for an equivalent number of shares of HEARx common stock. See The Arrangement Description of Exchangeable Shares; The Voting and Exchange Trust Agreement; and The Support Agreement. The exchangeable shares provide an opportunity for Canadian resident stockholders of Helix to achieve a Canadian tax deferral for as long as the exchangeable shares are held. Proposed amendments to the Canadian Income Tax Act generally applicable to investments by Canadian residents in certain non-resident corporations may require the holders of exchangeable shares or HEARx common stock to report as income or loss on such shares annual changes in the value of such shares accruing after the date fixed by law on a mark-to-market basis. The exchangeable shares will be subject to mandatory exchange on and after the fifth anniversary of the effective date of the arrangement, subject to earlier mandatory exchange in certain circumstances.

Q: As a HEARx stockholder, what will I receive in the arrangement?

A: If you own HEARx common stock, your shares of HEARx common stock will remain outstanding after the arrangement.

Q: What vote is required to approve the arrangement?

A: To approve the arrangement, holders of at least two-thirds of the Helix common shares voted at the special meeting in person or by proxy must vote in favor of the arrangement. Holders of at least a majority of the shares of HEARx common stock outstanding must vote in favor of the proposed amendments of the HEARx certificate of incorporation. Holders of a majority of the HEARx shares present at the meeting in person or by proxy must vote in favor of the issuance of the HEARx common stock in connection with the arrangement, the approval of the adoption of the new HearUSA 2002 Flexible Stock Plan and the adjournment of the meeting, if necessary, to permit the solicitation of additional proxies.

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Q: Do the companies recommend voting in favor of the transaction?

A: Yes. The board of directors of HEARx and the board of directors of Helix approved the merger agreement and recommend that their respective stockholders vote in favor of the proposals to approve the transaction.

Q: Will I have dissenters or appraisal rights?

A: Under applicable law, dissenters' rights are not available to the holders of HEARx common stock. Dissenters' rights are available to the holders of Helix common shares, as described in the section entitled "The Arrangement - Dissenters' or Appraisal Rights."

Q: When do the companies expect to complete the arrangement?

A: We are working to complete the arrangement as quickly as possible. Currently, we expect to complete the arrangement before the end of the second quarter of 2002, subject to stockholder and court approval.

Q: What are the income tax consequences of the arrangement for Helix stockholders?

A: Helix stockholders should read carefully the information under "Federal Income Tax Considerations Relating to the Arrangement - Canadian Federal Income Tax Considerations for Helix Stockholders." No advance income tax rulings have been sought or obtained with respect to any of the transactions described herein.

The exchange of Helix common shares for exchangeable shares by Canadian resident Helix stockholders who hold their Helix common shares as capital property and file a joint election with HEARx Canada Inc. will allow for a full or partial deferral of any Canadian federal income tax that would otherwise become payable. An election form (printed on yellow paper) for use by Helix shareholders to make the tax election is enclosed with this joint proxy statement/prospectus. The exchange by a Canadian resident Helix stockholder of Helix common shares for HEARx common stock will be a taxable transaction to such Helix stockholder. See "Federal Income Tax Considerations Relating to the Arrangement - Canadian Federal Income Tax Considerations for Helix Stockholders."

The exchange by a U.S. resident holder of Helix common shares held as a capital asset for HEARx common stock pursuant to the arrangement will result in recognition of capital gain or loss to such holder.

The tax consequences of the arrangement to you will depend on your own situation. Stockholders should consult their tax advisors for a full understanding of these tax consequences.

Q: What are the income tax consequences of the arrangement for HEARx stockholders?

A: HEARx stockholders will not recognize any gain or loss for U.S. federal income tax purposes as a result of the arrangement.

Q: When and where are the stockholders' meetings?

A: The HEARx special meeting will be held at _____, on June 26, 2002, at _____ a.m., Florida time.

The Helix special meeting will be held at _____, on June 26, 2002, at _____ a.m., Montreal time.

Q: Who can vote?

A: All record holders of HEARx common stock at the close of business on May 10, 2002, can vote at the HEARx special meeting.

All record holders of Helix common shares at the close of business on May 20, 2002, can vote at the Helix special meeting.

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Q: What do I do to vote?

A: After reading this joint proxy statement/prospectus, you should cast your vote by mail, by proxy or in person at your company's meeting. To cast your vote by mail, complete, date, sign and mail the enclosed proxy card in the enclosed, postage pre-paid envelope. Votes cast by mail must be received prior to the vote at the meeting in order to be counted. When you cast your vote using the proxy card, you also appoint certain members of your company's management as your representatives, or proxies, at the meeting. They will vote your shares at the meeting in accordance with your instructions on the proxy card. You also may vote in person at the meeting. If you hold your shares in street name, then you must contact your broker or other nominee and request a legal proxy to vote in person at the meeting.

Q: What happens if I do not indicate my preference for or against a particular proposal?

A: If you submit a proxy without specifying the manner in which you would like your shares to be voted on a particular proposal, your shares will be voted FOR that proposal.

Q: If my shares are held in street name by my broker, will my broker vote my shares for me?

A: If you do not provide your broker with instructions on how to vote your street name shares on a particular proposal, your broker may not be permitted to vote those shares on that proposal. Therefore, you should be sure to provide your broker with specific instructions as to how to vote your shares on each proposal presented.

Q: What does it mean if I receive more than one proxy card?

A: It means that you have multiple accounts with the transfer agent and/or with stockbrokers. Please sign and return all proxy cards that you receive in order to ensure that all of your shares are voted.

Q: What if I vote by proxy and then change my mind?

A: You can revoke your proxy by attending your company's meeting and casting your vote in person, by submitting a new proxy with a later date by mail in time so that the new proxy card is received before your company's meeting, or by writing to your company. Your last vote will be the vote that is counted.

Q: How will my shares be listed for trading?

A: The HEARx common stock is currently listed on the American Stock Exchange. In addition, we intend to apply to list the HEARx common stock and the exchangeable shares on The Toronto Stock Exchange.

Q: What do I do to receive my exchangeable shares or HEARx common stock?

A: Enclosed with this joint proxy statement/prospectus is a letter of transmittal and election form which are being delivered only to Helix stockholders. The letter of transmittal and election form, when properly completed and signed and returned together with the certificate or certificates for Helix common shares and all other required documents to Computershare Trust Company of Canada, at one of the addresses set out on the last page of the letter of transmittal and election form no later than _____, 2002, will enable each holder of Helix common shares to obtain a certificate for that number of exchangeable shares or HEARx common stock, or a combination thereof, equal to the number of Helix common shares previously held by such holder multiplied by the exchange ratio. A Canadian resident holder of Helix common shares will automatically receive exchangeable shares in exchange for its Helix common shares unless the holder elects to receive HEARx common stock.

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Q: Who can help answer other questions?

A: If you have additional questions about the arrangement, you should contact:

HEARx stockholders:

HEARx Ltd.
1250 Northpoint Parkway
West Palm Beach, Florida 33407
Attn: Bryan Burgett
Telephone: (561) 478-8770

Helix stockholders:

Helix Hearing Care of America Corp.
7100, Jean-Talon East, Suite 610
Montreal, Québec, Canada H1M 3S3
Attn: François Tellier
Telephone: (514) 353-0001

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SUMMARY

The following summary highlights selected information from this joint proxy statement/prospectus and may not contain all of the information that is important to you. You should read this entire joint proxy statement/prospectus and attachments carefully, especially the Risk Factors beginning on page 13 and the merger agreement.

The Companies

HEARx Ltd.

HEARx Ltd. operates a network of company-owned and operated hearing care centers that provide a full range of audiological products and services for the hearing impaired. HEARx serves three geographic markets: Florida (including Miami, Fort Lauderdale, West Palm Beach, Tampa and Orlando), the Northeast (including the New York metropolitan area and New Jersey) and California through its joint venture HEARx West LLC (including Los Angeles and San Diego). HEARx's strategy for increasing market penetration includes advertising to the non-insured self-pay patient market and positioning HEARx as the leading provider of hearing care to the managed care marketplace in its geographic markets. HEARx believes it is well positioned to successfully address the concerns of access, quality and cost for the patients of managed care and other health insurance companies, diagnostic needs of referring physicians and, ultimately, the hearing health needs of consumers. HEARx believes that such success results from its ability to offer convenient distribution points, a quality assurance program and centers with standardized credentializing, procedures, policies, testing, formats, products, prices and ancillary services.

HEARx and its subsidiary HEARx West LLC, a joint venture with Kaiser Permanente, currently receive a per-member-per-month fee for more than 1.3 million managed care members. In total, HEARx services over 170 benefit programs for hearing care with various health maintenance organizations (HMOs), preferred provider organizations (PPOs), insurers, benefit administrators, and healthcare providers. In recent years, HEARx has increased its attention to the self-pay market, focusing on advertising and marketing programs directed to the uninsured patient. HEARx intends to increase its sales to these patients, introducing competitive price points to the public through advertising and marketing programs that include newspaper ads, direct mail, and telemarketing.

HEARx currently operates a total of 80 full service centers and two part-time centers in Florida, New York, New Jersey and through HEARx West, in California.

HEARx was incorporated in Delaware on April 11, 1986. HEARx formed its joint venture, HEARx West LLC, with Kaiser Permanente in 1998. HEARx's principal corporate office is located at 1250 Northpoint Parkway, West Palm Beach, Florida 33407 and its telephone number is (561) 478-8770.

HEARx Canada Inc. is an indirect subsidiary of HEARx. HEARx Canada Inc. was incorporated under the laws of Canada on November 7, 2001, for the sole purpose of participating in the arrangement. HEARx Canada Inc. currently has nominal assets and activities. After the arrangement is completed, HEARx Canada Inc. will be a holding company that holds all of the outstanding Helix common shares other than those held by HEARx or HEARx Acquisition ULC.

HEARx Acquisition ULC is a wholly owned subsidiary of HEARx. HEARx Acquisition ULC is an unlimited liability company formed under the laws of the Province of Nova Scotia on October 3, 2001, for the sole purpose of participating in the arrangement. HEARx Acquisition ULC holds all of the outstanding common shares of HEARx Canada Inc. HEARx Acquisition ULC will deliver HEARx common stock in exchange for Helix common shares to those holders of Helix common shares electing to receive HEARx common stock under the arrangement and will hold the call rights related to the exchangeable shares.

Helix Hearing Care of America Corp.

Helix, through its primary operating subsidiaries, manages and provides supply services to a large network of hearing health care clinics in the Province of Québec, Canada and owns and operates hearing health care

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clinics in the Province of Ontario, Canada and in nine states in the United States. Helix offers a variety of services in the hearing health care field including the provision of facilities, management, administrative and technical support, supply services and marketing support, to hearing health care professionals. In general, clinics managed by Helix offer hearing impaired people a broad range of products and services, including sophisticated hearing instruments and assistive listening devices designed to improve the quality of life. Helix currently manages a total of 128 clinics in the United States and Canada.

Helix offers services related to the management of hearing care professional offices including:

inventory purchasing and management;

office service support;

new products and services introduction and marketing;

general administration;

training and seminars for staff; and

providing patient management software and related training.

Helix was formed on August 26, 1996 by Articles of Incorporation issued pursuant to the provisions of the *Business Corporations Act* (Alberta). On July 9, 1999, the articles were amended to allow the continuance of Helix under the Canada Business Corporations Act. The articles of Helix were again modified on November 30, 2000, to allow for the amalgamation of Helix and its subsidiary, Regional Hearing Consultants, Inc. Helix's principal corporate office is located at 7100, Jean-Talon East, Suite 610, Montreal, Québec, Canada H1M 3S3 and its telephone number is (514) 353-0001.

Helix has established a U.S. holding company, Helix Hearing Care of America (U.S.A.) Corp., to facilitate its acquisition of hearing clinics located in the United States through wholly owned subsidiaries of Helix U.S.A. For example, Helix has established wholly owned indirect subsidiaries to acquire and operate clinics in Massachusetts, Minnesota, Michigan, Missouri, New York, Ohio, Pennsylvania, Washington and Wisconsin.

The Arrangement

This joint proxy statement/prospectus describes the proposed business combination of HEARx and Helix through an arrangement under Canadian law between Helix and HEARx pursuant to the merger agreement discussed below. The arrangement is subject to approval of the stockholders of HEARx and Helix and final approval by the Superior Court of Québec. When the arrangement is completed, Helix will become an indirect subsidiary of HEARx. The merger agreement is the primary legal document that governs the arrangement. The merger agreement is attached as Annex A to this joint proxy statement/prospectus and is incorporated herein by this reference. We encourage you to read the merger agreement in its entirety.

Recommendations of the Boards and Reasons for the Arrangement

The board of directors of HEARx believes that the arrangement is advisable, fair to and in the best interests of HEARx stockholders and recommends that HEARx stockholders vote FOR approval of the issuance of the HEARx common stock under the arrangement and FOR approval of the related proposals to amend the HEARx certificate of incorporation and to adopt the new flexible stock plan for employees. See The Arrangement Recommendations of the HEARx Board of Directors and Reasons for the Arrangement.

The board of directors of Helix believes that the arrangement is advisable, fair to and in the best interests of Helix stockholders and recommends that Helix stockholders vote FOR approval of the arrangement. See The Arrangement Recommendations of the Helix Board of Directors and Reasons for the Arrangement.

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In the course of evaluating the arrangement, HEARx and Helix identified several business benefits that they believe will contribute to the success of the combined company. These potential benefits include the following:

The arrangement provides HEARx and Helix with an opportunity to add an established store base in certain markets where the other is not operating currently, thus facilitating both companies' nationwide expansion plans.

Helix's HearUSA network business strategy is consistent with HEARx's network strategy in its proposed business venture with Siemens and, through the arrangement, allows both companies to launch a national network business on an accelerated timeframe.

The arrangement is expected to permit a reduction in corporate overhead expenses and the achievement of operating efficiencies and economies of scale.

Although the issuance of HEARx common stock may have a short term dilutive effect on earnings per share, the arrangement is expected to contribute to earnings per share over the long term.

The strong corporate management of HEARx and Helix is complementary in that HEARx is an experienced hearing center operator while Helix has experience in hearing center acquisition and integration. The combined company will benefit through a larger pool of skilled and experienced managers.

The similar industry consolidator format and operating philosophy of the two companies will help facilitate a combination of the businesses.

The fact that Canadian resident holders of Helix common shares who hold their Helix common shares as capital property and file a joint election with HEARx Canada Inc. will be able to exchange their Helix common shares for exchangeable shares under the arrangement on a tax-deferred basis under Canadian federal income tax legislation.

Helix stockholders will be entitled to receive or acquire exchangeable shares and HEARx common stock such that they will continue to participate in the hearing aid industry through HEARx, a widely held US public company with a strong market position, better geographic diversity of operations and greater liquidity than Helix.

In considering the transaction, HEARx and Helix also recognized potentially negative risks to the transaction, including that the potential benefits may not be realized, the uncertainties of operating a network business, that key management personnel might not remain employed by the combined corporations, fluctuations in the price of HEARx common stock prior to the closing of the arrangement and the fact that Helix stockholders may realize taxable gain on exchange of their Helix shares or the exchangeable shares for HEARx common stock.

See *The Arrangement Recommendations of the HEARx Board of Directors and Reasons for the Arrangement* and *The Arrangement Recommendations of the Helix Board of Directors and Reasons for the Arrangement*.

Share Ownership of Management and Voting Intent

On the HEARx record date, HEARx directors and executive officers owned _____ outstanding shares of HEARx common stock representing approximately _____ % of the outstanding shares. These directors and executive officers have indicated that they intend to vote FOR all of the HEARx proposals.

On the Helix record date, Helix directors and executive officers beneficially owned or had voting control or direction over _____ outstanding Helix common shares representing approximately _____ % of the outstanding shares. These directors and executive officers have indicated that they intend to vote FOR the arrangement proposal.

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The principal stockholders of Helix, including some of Helix's directors and executive officers, who together hold approximately 47% of the outstanding Helix common shares, have entered into a stockholders agreement with HEARx pursuant to which they each have irrevocably agreed to vote their Helix common shares in favor of the arrangement, against any acquisition proposal from a party other than HEARx and, with the exception of certain permitted transfers, not to sell or otherwise transfer any of their Helix common shares prior to the effective time of the arrangement. In addition, HEARx holds approximately 10.5% of currently outstanding Helix common shares, which it intends to vote in favor of the arrangement.

Fairness Opinions

Raymond James & Associates, Inc. (Raymond James) has delivered to the board of directors of HEARx a written opinion that, as of July 27, 2001, the exchange ratio provided for in the arrangement was fair, from a financial point of view, to the stockholders of HEARx. See The Arrangement Opinion of Raymond James.

The full text of the written opinion of Raymond James is attached as Annex G. The fairness opinion describes important exceptions, assumptions and limitations and should be read carefully and in its entirety. Raymond James's opinion is directed to the board of directors of HEARx and does not constitute a recommendation to any stockholder with respect to any matter relating to the arrangement.

The board of directors of Helix has received two written opinions regarding the fairness of the consideration to be received by the stockholders of Helix.

The board of directors of Helix received the first written opinion on July 11, 2001, from Ernst & Young Corporate Finance Inc. (EYCF). The opinion provides that, as of July 11, 2001, except in certain circumstances, the consideration to be received by the stockholders of Helix pursuant to the merger agreement was fair to the stockholders of Helix from a financial point of view. The opinion provides that for Helix shareholders who want to dispose of a small block of their shares, the arrangement may not be fair from a financial point of view, if the market value of the HEARx common stock following the arrangement does not recover. See The Arrangement Opinion of Ernst & Young Corporate Finance Inc.

The second opinion was rendered by Yorkton Securities Inc. (Yorkton) to the board of directors of Helix on February 1, 2002. The Yorkton opinion provides that, as of February 1, 2002, the exchange ratio is fair, from a financial point of view, to the stockholders of Helix. See The Arrangement Opinion of Yorkton Securities Inc.

The full text of the written opinions of EYCF and Yorkton are attached as Annex H and Annex I. The fairness opinions describe important exceptions, assumptions and limitations and should be read carefully and in their entirety. The opinions are directed to the board of directors of Helix and do not constitute a recommendation to any stockholder with respect to any matter relating to the arrangement.

We encourage you to read these opinions carefully.

No Change in HEARx Shares

After the arrangement, each certificate representing shares of HEARx common stock will, without any action on the part of HEARx stockholders, continue to represent HEARx common stock. HEARx stockholders do not need to exchange their stock certificates after the arrangement.

Eligibility for Investment

Provided that the exchangeable shares are listed on The Toronto Stock Exchange or another prescribed stock exchange in Canada, the exchangeable shares and exchangeable share rights will be qualified investments under the Canadian Income Tax Act for trusts governed by registered retirement savings plans, registered retirement income funds, deferred profit sharing plans and registered education savings plans. Further, if HEARx Canada Inc. maintains a substantial Canadian presence within the meaning of the Canadian Income Tax Act and if the exchangeable shares are listed on a prescribed stock exchange in Canada (which currently includes The Toronto Stock Exchange), the exchangeable shares and exchangeable share

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rights will not be foreign property under the Canadian Income Tax Act for trusts governed by registered retirement savings plans, registered retirement income funds, deferred profit sharing plans and for certain other persons to whom such rule is applicable. HEARx common stock will be a qualified investment for such plans provided the stock remains listed on the American Stock Exchange or another prescribed stock exchange. The ancillary rights and the preferred share purchase rights related to the HEARx common stock will not be qualified investments for such plans. The ancillary rights, the HEARx common stock and the related preferred share purchase rights will be deemed to be foreign property. See Federal Income Tax Considerations Relating to the Arrangement Canadian Federal Income Tax Considerations for Helix Stockholders Eligibility for Investment in Canada.

Interests of Certain Persons in the Arrangement

Some of the directors and executive officers of HEARx and Helix have interests in the arrangement that are different from, or are in addition to, the interests of their respective stockholders. These interests include the potential for positions as directors or executive officers of HEARx and the exchange of options to purchase Helix's common shares for options to purchase shares of HEARx common stock. See The Arrangement Interests of Certain Persons in the Arrangement.

Ownership And Board Composition of HEARx after the Arrangement

From and after the effective time of the arrangement, it is expected that the board of directors of HEARx shall be composed of Paul A. Brown (Chairman), Steve Forget (Vice Chairman), Stephen J. Hansbrough, Thomas W. Archibald, Joseph L. Gitterman III, David J. McLachlan, Michel Labadie, Mark Wayne and Pierre Bourgie. See Proposed Management of HEARx after the Arrangement.

Immediately following the arrangement, the executive officers and directors of HEARx will own approximately 33% of the outstanding HEARx common stock and exchangeable shares.

Comparative Rights of Stockholders

The rights of Helix stockholders are currently governed by Canadian corporate law and by Helix's articles and bylaws. The rights of HEARx stockholders are currently governed by Delaware corporate law and HEARx's certificate of incorporation and bylaws. If the arrangement is completed, the rights of Helix stockholders will change and their rights as HEARx stockholders will be governed by Delaware corporate law and HEARx's certificate of incorporation and bylaws. While the rights and privileges of a stockholder of a Delaware corporation are, in many instances, comparable to those of stockholders of a Canadian corporation, there are differences. These differences include the following:

The Canada Business Corporations Act requires that corporate transactions such as amalgamations, continuances, sales, leases or exchanges of all or substantially all the property of the corporation, other than in the ordinary course of business, be approved by a special resolution approved by not less than two-thirds of the votes cast by the stockholders who voted in respect of the resolution, while Delaware General Corporation Law requires only the affirmative vote of a majority of the outstanding stock entitled to vote on such transactions.

Under the Canada Business Corporations Act, a special meeting of the stockholders may be called upon a request to the board of directors by the holders of not less than five percent of shares entitled to vote at the meeting. Under the bylaws of HEARx, stockholders are not permitted to call (or to require the board of directors to call) a special meeting of the stockholders.

The Canada Business Corporations Act provides that stockholders of a corporation who are entitled to vote on some matters are entitled to dissent rights with respect to those matters and to be paid the fair value of their shares when they exercise those rights. These matters include any amalgamation with another corporation, an amendment to the corporation's articles to add, change or remove any provisions restricting the issue, transfer or transfer of ownership of shares, an amendment to the corporation's articles to add, change or remove any restrictions upon the business or businesses that the

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corporation may carry on, and others. Under the Delaware General Corporation law, holders of shares of any class or series have the right to dissent from a merger or consolidation by demanding payment in cash for their shares equal to the fair value of such shares as determined by a court.

The Canada Business Corporations Act requires a board of directors of a publicly-traded corporation be composed of no fewer than three directors, at least two of whom are not officers or employees of that corporation or any of its affiliates, and that at least 25% of the directors of every corporation be resident Canadians. However, if the corporation has less than four directors, at least one director must be a resident Canadian. The Delaware General Corporation Law does not contain any independence or residency requirements for directors.

These different provisions under Delaware law may be less favorable to Helix stockholders. Some of these differences may have the effect of delaying, deferring or preventing a change in control of HEARx or other transactions that might involve a premium price for HEARx shares or otherwise be in the best interests of HEARx stockholders. See *Comparison of Stockholders' Rights*.

HEARx Rights Agreement

On December 14, 1999, the board of directors of HEARx approved the adoption of a stockholder rights plan, in which a dividend of one preferred share purchase right for each outstanding share of HEARx common stock was declared and payable to the stockholders of record on December 31, 1999. The rights will be exercisable only if a person or group acquires 15% or more of the HEARx common stock or announces a tender offer that would result in ownership of 15% or more of the HEARx common stock. The rights entitle the holder to purchase one one-hundredth of a share of Series H Junior Participating Preferred Stock at an exercise price of \$28.00. The rights will expire on December 31, 2009. The HEARx board of directors has specifically excepted from operation of the rights plan the transactions contemplated by the merger agreement between HEARx and Helix and the HEARx board of directors intends to amend the rights plan to accommodate the existence of the exchangeable shares. See *Description of HEARx Common Stock and Other Securities* *HEARx Rights Agreement*.

Exchangeable Share Rights Plan

Prior to the effective time of the arrangement, HEARx Canada, Inc. will adopt an exchangeable share rights plan substantially equivalent to the HEARx stockholder rights plan. Pursuant to the exchangeable share rights plan, each exchangeable share issued in the arrangement will have an associated exchangeable share right entitling the holder of such exchangeable share right to acquire additional exchangeable shares on terms and conditions substantially the same as the terms and conditions upon which a holder of HEARx common stock is entitled to purchase HEARx Series H Junior Participating Preferred Stock. The exchangeable share rights are intended to have characteristics essentially equivalent in economic effect to the HEARx rights. See *The Arrangement* *Exchangeable Share Rights Agreement*.

Accounting Treatment

The arrangement, for accounting and financial reporting purposes, will be accounted for using the purchase method of accounting.

Conditions of the Merger Agreement

Completion of the arrangement is dependent upon the fulfillment of a number of conditions, including the following material conditions:

the arrangement and such other matters as require approval of the stockholders of HEARx and Helix to consummate the arrangement and the other transactions contemplated by the arrangement have been approved and adopted by the stockholders of HEARx and Helix;

all necessary regulatory and court approvals have been obtained;

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all necessary consents from third parties have been obtained;

HEARx has obtained financing of a principal amount of no less than \$25,000,000 with a lender on terms acceptable to HEARx and Helix;

there has not occurred any change in the business, operations, assets, or financial condition of Helix, which in the sole judgment of HEARx, is materially adverse to the business of Helix or to the value of the Helix shares;

HEARx has determined, in its sole judgment, that Helix has not taken any action that might make it inadvisable for HEARx to proceed with the arrangement, or that would be materially adverse to the business of Helix; and

Helix stockholders holding an aggregate of more than 5% of the outstanding common shares have not exercised their dissent rights.

The merger agreement permits each of the parties to waive any of these conditions that are for its benefit. If a party elects to waive any of these conditions, this joint proxy statement/prospectus will be amended or supplemented, as appropriate, and will be recirculated to the affected stockholders if the waiver occurs prior to approval of the arrangement by the stockholders. See The Arrangement Conditions to Consummation.

Termination of the Merger Agreement and Payment of Fees

The merger agreement may be terminated at any time prior to the effective date in the following circumstances:

by mutual written agreement;

by either Helix or HEARx, if the transaction has not been consummated on or prior to September 30, 2002, so long as the terminating party has not failed to fulfill any material obligation under the merger agreement that caused or resulted in the transaction failing to be consummated by that date;

by HEARx, if the board of directors of Helix has withdrawn, redefined or changed any of its recommendations or determinations concerning the arrangement in a manner adverse to HEARx or shall have resolved to do so prior to the effective time, in which case Helix shall pay a termination fee of \$1 million;

by HEARx, if the board of directors of Helix has failed to reaffirm its recommendation of the arrangement by press statement within five days after the public announcement or commencement of a proposal by another company to acquire Helix, and in a director's circular, if any, within 10 days after the mailing of any such proposal, in which case Helix shall pay a termination fee of \$1 million;

by HEARx, if Helix consummates a merger or arrangement with another company, in which case Helix shall pay a termination fee of \$1 million;

by HEARx, if Helix fails to comply with or breaches any of its representations, warranties or covenants set forth in the arrangement agreement, in which case Helix shall pay a termination fee of \$1 million;

by Helix, if the board of directors of HEARx has withdrawn, redefined or changed any of its recommendations or determinations concerning the arrangement in a manner adverse to Helix, in which case HEARx shall pay a termination fee of \$1 million;

by Helix, if HEARx fails to comply with or breaches any of its representations, warranties or covenants set forth in the merger agreement, in which case HEARx shall pay a termination fee of \$1 million; and

by HEARx if any Helix shares are issued after July 27, 2001, upon conversion of certain convertible debentures or upon exercise of certain preemptive or subscription rights.

See The Arrangement Termination of the Merger Agreement and the Payment of Fees.

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Regulatory Matters

The completion of the arrangement is subject to obtaining governmental consents and approvals, including consents and approvals from, and notices to, The Toronto Stock Exchange, the Quebec Securities Commission and the Canadian Office of the Superintendent of Financial Institutions.

HEARx has applied to and is waiting for approval from the Quebec Securities Commission to obtain relief from the prospectus and registration requirements for the issuance of the exchangeable shares to residents of Quebec. HEARx has also made application to and is waiting for approval from The Toronto Stock Exchange for the listing of the exchangeable shares and the HEARx common stock.

Court Approval and Completion of the Arrangement

An arrangement under the Canada Business Corporations Act requires court approval. Before mailing this joint proxy statement/prospectus, Helix obtained an interim order of the court, attached to this joint proxy statement/prospectus as Annex B, providing for the calling and holding of the meeting and other procedural matters.

Subject to the approval of the arrangement by the Helix stockholders at the meeting, the hearing in respect of the final order is scheduled to take place on _____, 2002 at 10:00 a.m. (Montreal time) in room 2.16 of the Superior Court of Québec, District of Montreal, at 1, Notre-Dame Street East, Montreal, Québec. Any Helix stockholder who wishes to present evidence or arguments at the hearing must file and deliver an appearance and any affidavits on which it relies, in accordance with the rules of the court and the provisions of the interim order issued by the court. The court will consider, among other things, the fairness and reasonableness of the arrangement. The court may approve the arrangement unconditionally or subject to compliance with any conditions the court deems appropriate.

Other HEARx Proposals

Stockholders of HEARx are also being asked to approve three other proposals.

To increase the number of shares of HEARx common stock authorized under its certificate of incorporation from 20,000,000 shares to 50,000,000 shares and to increase the number of shares of authorized preferred stock from 2,000,000 shares to 5,000,000 shares. The purpose of the proposed increase is to provide sufficient shares in connection with the arrangement and to ensure that additional shares will be available if and when needed for issuance from time to time after the arrangement.

To change the name of HEARx Ltd. to HearUSA, Inc. effective upon consummation of the arrangement.

To approve the adoption of the HearUSA 2002 Flexible Stock Plan to facilitate the issuance of replacement stock options to Helix employees and directors who currently hold Helix stock options.

The HEARx board of directors recommends that you vote **FOR** each of the other proposals described above.

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Organizational Structure

HEARx Before the Arrangement

Helix Before the Arrangement

Helix Subsidiaries

Les services de gestion
Hearing Care of America SGHCA Inc.
Les services d approvisionnement
Hearing Care of America SAHCA Inc.
Les services de location Hearing Care of America SLHCA Inc.
3371727 Canada Inc.
Helix Hearing Care of America (U.S.A.) Corp.
Helix Hearing Care of America (Ohio) Corp.
Helix Hearing Care of America (New York) Corp.
Helix Hearing Care of America (Missouri) Corp.
Helix Hearing Care of America (Wisconsin) Corp.
Helix Hearing Care of America (Minnesota) Corp.
Helix Hearing Care of America (Indiana) Corp.
Helix Hearing Care of America (Pennsylvania) Corp.
Helix Hearing Care of America (Arizona) Corp.
Helix Hearing Care of America (Washington) Corp.
Helix Hearing Care of America (Michigan) Corp.
American Hearing Centers, Inc.
Thomas W. Fell Co., Inc.
Auxiliary Health Benefits Corporation/NECP

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HEARx After the Arrangement

Helix Subsidiaries

Les services de gestion
Hearing Care of America SGHCA Inc.
Les services d approvisionnement
Hearing Care of America SAHCA Inc.
Les services de location Hearing Care of America SLHCA Inc.
3371727 Canada Inc.
Helix Hearing Care of America (U.S.A.) Corp.
Helix Hearing Care of America (Ohio) Corp.
Helix Hearing Care of America (New York) Corp.
Helix Hearing Care of America (Missouri) Corp.
Helix Hearing Care of America (Wisconsin) Corp.
Helix Hearing Care of America (Minnesota) Corp.
Helix Hearing Care of America (Indiana) Corp.
Helix Hearing Care of America (Pennsylvania) Corp.
Helix Hearing Care of America (Arizona) Corp.
Helix Hearing Care of America (Washington) Corp.
Helix Hearing Care of America (Michigan) Corp.
American Hearing Centers, Inc.
Thomas W. Fell Co., Inc.
Auxiliary Health Benefits Corporation/NECP

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| | Three Months Ended | | Year Ended | | | | |
|---|--------------------|-------------------|----------------------|----------------------|-------------------------|----------------------|----------------------|
| | March 30, 2002 | March 31, 2001 | December 29, 2001 | December 29, 2000 | December 31, 1999(1) | December 25, 1998 | December 26, 1997 |
| | (unaudited) | (unaudited) | | | | | |
| STATEMENT OF OPERATIONS DATA: | | | | | | | |
| Net Revenues | \$ 12,010,016 | \$ 12,488,191 | \$ 48,796,110 | \$ 56,114,832 | \$ 47,476,764 | \$ 26,891,186 | \$ 23,316,260 |
| Total operating costs and expenses | 13,075,183 | 15,436,835 | 56,995,460 | 59,696,818 | 52,010,728 | 39,159,599(2) | 33,359,436 |
| Loss from operations | (1,065,167) | (2,948,644) | (8,199,350) | (3,581,986) | (4,533,964) | (12,268,413) | (10,043,176) |
| Non-operating income (expense) | | | | | | | |
| Interest income | 22,066 | 46,574 | 222,349 | 294,132 | 210,104 | 602,663 | 897,619 |
| Interest expense | (280,230) | (9,919) | (652,530) | (28,723) | (27,713) | (62,492) | (58,444) |
| Loss before minority interest & equity in loss of joint venture & in affiliated company | (1,323,331) | (2,911,989) | (8,629,531) | (3,316,577) | (4,351,573) | (11,728,242) | (9,204,001) |
| Minority Interest Equity in loss of joint venture | | | | | 347,677 | (615,420) | |
| Equity in loss of affiliated company | (61,405) | | | | | | |
| Net Loss | (1,384,736) | (2,911,989) | (8,629,531) | (3,316,577) | (4,003,896) | (12,343,662) | (9,204,001) |
| Dividends on preferred stock | (168,069) | (201,235) | (812,205) | (1,346,872) | (821,387) | (587,893) | (1,992,123) |
| Net loss applicable to common Stockholders | \$ (1,552,805) | \$ (3,113,224) | \$ (9,441,736) | \$ (4,663,449) | \$ (4,825,283) | \$ (12,931,555) | \$ (11,196,124) |
| Loss per common share: | | | | | | | |
| Basic and diluted, including dividends on preferred stock | \$ (0.11) | \$ (0.25) | \$ (0.72) | \$ (0.39) | \$ (0.45) | \$ (1.28) | \$ (1.25) |
| Weighted average number of common shares outstanding | 14,057,243 | 12,505,430 | 13,120,137 | 11,834,388 | 10,775,006 | 10,126,979 | 8,960,503 |
| Cash dividends per common share | None | None | None | None | None | None | None |

(1) As discussed in Note 1 to the Consolidated Financial Statements, commencing in 1999 HEARx's Consolidated Financial Statements include the accounts of HEARx West, its 50% subsidiary.

(2) During December 1998, HEARx recorded a restructure charge of \$2,233,857 in connection with the closing of 12 centers in the northeast in January 1999.

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As of

| | March 30, 2002 | December 29, 2001 | December 29, 2000 | December 31, 1999 | December 25, 1998 | December 26, 1997 | December 27, 1996 |
|---|-------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
| BALANCE SHEET DATA: | | | | | | | |
| Total assets | \$ 19,821,831 | \$ 21,341,522 | \$ 21,872,123 | \$ 21,377,110 | \$ 25,208,317 | \$ 28,359,547 | \$ 26,627,484 |
| Working capital | (3,700,557) | (738,562) | 2,350,832 | 938,815 | 7,614,042 | 13,136,147 | 12,456,391 |
| Long-term debt, net of current portion | 7,720,545 | 8,750,999 | 175,887 | 322,332 | 123,316 | 177,897 | 230,258 |

Table of Contents**Selected Historical Consolidated Financial Information of Helix**

| | Three Months Ended | | Year Ended | | | | |
|--------------------------------------|----------------------|----------------------|-------------------------------------|----------------------|----------------------|-------------------------|-------------------------|
| | February 28, 2001 | February 28, 2001 | November 30, 2001 | November 30, 2000 | November 30, 1999 | November 30, 1998(1) | November 30, 1997(1) |
| | (unaudited) | (unaudited) | All amounts are in Canadian Dollars | | | | |
| STATEMENT OF OPERATIONS DATA: | | | | | | | |
| CDN GAAP(2) | | | | | | | |
| Net Revenues | \$ 10,472,732 | \$ 11,040,485 | \$ 47,198,866 | \$ 35,981,994 | \$ 24,803,824 | \$ 14,300,630 | \$ 8,138,993 |
| Total costs and expenses | 11,613,822 | 13,048,643 | 54,980,235 | 38,617,304 | 29,167,256 | 13,085,934 | 7,356,235 |
| Income (loss) before income taxes | (1,141,090) | (2,008,158) | (7,781,369) | | | | |