

# 2006 BCSECCOM 374

June 16, 2006

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 76 - Exemption from s. 61 requirement to file a prospectus in connection with a distribution - an issuer that is not a reporting issuer in Canada is seeking first trade relief for securities that it will issue or has issued to Canadian residents - the issuer meets all of the conditions of section 2.14 of National Instrument 45-102 Resale of Securities except that residents of Canada will own more than 10% of the securities of the class and will represent more than 10% of the total number of holders of the securities of the class; the issuer is listed on an exchange outside of Canada; the issuer is not seeking to create a market for its securities in Canada by offering its securities to new Canadian investors; the issuer will provide security holders who are resident in Canada with the same continuous disclosure materials that are provided to foreign shareholders

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, s. 76

In the Matter of  
the Securities Legislation of  
Alberta, British Columbia and Ontario  
(the Jurisdictions)

and

In the Matter of  
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of  
Rhinopharma Limited

MRRS Decision Document

## Background

- ¶ 1 The local securities regulatory authorities or regulator (the Decision Maker) in each of the Jurisdictions has received an application from Rhinopharma Limited (the Filer) for a decision under the securities legislation of the Jurisdictions (the Legislation) that the prospectus requirements contained in the Legislation do not apply to the first trade of the Corporation Shares (as defined below) acquired by

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the Canadian Owners (as defined below) in exchange for their Investor Shares (as defined below) (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the British Columbia Securities Commission is the principal regulator for this application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

- ¶ 2 Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

### **Representations**

- ¶ 3 This decision is based on the following facts represented by the Filer:
- 1. the Filer was incorporated under the laws of British Columbia on April 22, 2004;
  - 2. the registered office and the principal place of business of the Filer is located in Vancouver, British Columbia;
  - 3. the Filer is not a reporting issuer or its equivalent in any jurisdiction of Canada and the Filer has no present intention of becoming a reporting issuer in any jurisdiction in Canada;
  - 4. none of the Filer's securities are listed or quoted on any exchange or market in Canada;
  - 5. there are 12,250,001 common shares of the Filer issued and outstanding, of which 8,001,000 common shares were issued for nominal consideration (the Founders' Shares) and 4,250,000 common shares were issued at prices ranging from \$0.125 to \$0.275 per share (the Investor Shares); the holders of the Investor Shares acquired such shares under private placement exemptions on the basis of being an accredited investor or a close personal friend, family, or close business associate of a director or executive officer of the Filer;
  - 6. the Filer currently has six holders of Founders' Shares (the Founders) who are residents of Canada and 29 holders of Investor Shares who are residents of Canada;

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7. the Filer's shareholders have entered into a share exchange agreement (the SEA) under which all of the issued and outstanding shares of the Filer will be exchanged for ordinary shares (the Corporation Shares) of Isis Resources plc (to be renamed Verona Pharma Ltd.) (the Corporation);
8. the Corporation is an Australian company whose ordinary shares are listed on the London Stock Exchange – Alternative Investment Market (the LSE-AIM); the Corporation is not and has no present intention of becoming a reporting issuer in any jurisdiction of Canada;
9. on completion of the share exchange under the SEA and a proposed concurrent financing (the Merger Transactions), the Filer will become a wholly owned subsidiary of the Corporation; it is intended that the Filer will then be dissolved;
10. following the Merger Transactions, there will be approximately 143,200,000 Corporation Shares held by approximately 100 to 150 shareholders, the exact number being unknown until the concurrent financing is completed;
11. the concurrent financing is not being made to Canadian residents;
12. after giving effect to the Merger Transactions, 25,816,221 Corporation Shares (the Canadian Held Shares) will be owned by residents of Canada (the Canadian Owners); 12,293,390 of the Canadian Held Shares (representing approximately 8.58% of the Corporation's issued and outstanding share capital) will have been issued to Canadian Owners in exchange for their Investor Shares;
13. under the rules for companies listed on the LSE-AIM, the Corporation Shares issued in exchange for the Founders' Shares will be subject to
  - (a) a one year lock-up period following the Merger Transactions; and
  - (b) a contractual orderly marketing arrangement under which they will be subject to a second year lock-up, with trades permitted in limited circumstances;
14. any resale of Corporation Shares by the Canadian Owners is expected to be made through the facilities of the LSE-AIM as there is no market for the Corporation Shares in Canada and none is expected to develop;
15. in the absence of exemptive relief, the first trade of the Corporation Shares by the Canadian Owners will be deemed to be a distribution unless, among other

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things, the Corporation has been a reporting issuer for four months immediately preceding the trade in a jurisdiction of Canada;

16. Canadian Owners cannot rely on section 2.14 of National Instrument 45-102 *Resale of Securities* for a first trade of the Corporation Shares because, as at the date of distribution of the Corporation Shares to the Canadian Owners, residents of Canada will own, directly or indirectly, more than 10% of the Corporation Shares and will represent in number more than 10% of the total number of owners, directly or indirectly of the Corporation Shares;
17. as required by the rules of the LSE-AIM, holders of the Corporation Shares who are residents of Canada will receive copies of all materials provided to all other holders of the Corporation Shares.

### **Decision**

- ¶ 4 Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that:

- (a) neither the Filer nor the Corporation is a reporting issuer in any jurisdiction of Canada at the date of the trade; and
- (b) the trade is made through LSE-AIM or through another exchange or market outside of Canada or to a person or company outside of Canada.

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British Columbia Securities Commission