

2010 BCSECCOM 355

June 9, 2010

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Multilateral Instrument 62-104 – Take-Over Bids and Issuer Bids – Exemption from the formal issuer bid requirements in MI 62-104 – An issuer wants to complete an issuer bid that meets some, but not all, of the conditions of the exemption set out in s. 4.8 of MI 62-104 (exemption for a bid through the facilities of a recognized exchange) – The bid and/or future bids will be made through both an exchange recognized for the purposes of s. 4.8 of MI 62-104 and another exchange that is not recognized for this purpose; the bid and/or future bids will comply with the normal course issuer bid requirements of the exchange recognized for this purposes and will be permitted under the rules of the other exchange

Applicable British Columbia Provisions

Multilateral Instrument 62-104, ss.4.8 and 6.1

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

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
QLT Inc. (the Filer)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the requirements contained in the Legislation relating to issuer bids (the Issuer Bid Requirements) does not apply to purchases of the Filer's common shares (the Shares) made by the Filer through the facilities of the NASDAQ Stock Market (the NASDAQ) (the Requested Relief).

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Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a coordinated review application):

- (a) the British Columbia Securities Commission is the principal regulator for this application;
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador and Québec; and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:
- 1. the Filer is a corporation organized under the *Business Corporations Act* (British Columbia) and its head office is located in Vancouver, British Columbia;
 - 2. the Filer is a reporting issuer in each of the Jurisdictions and the Filer is not in default of any requirements of any applicable securities legislation in any of the Jurisdictions;
 - 3. the Filer is a registrant with the United States Securities and Exchange Commission and is subject to the requirements of the United States Securities Act of 1934;
 - 4. the Shares are listed for trading on the Toronto Stock Exchange (the TSX) and the NASDAQ;
 - 5. as at October 28, 2009, the Filer had 54,630,692 Shares issued and outstanding;
 - 6. on October 28, 2009, the TSX accepted the Filer's Notice of Intention to Make a Normal Course Issuer Bid, as amended May 20, 2010, permitting the Filer to make normal course issuer bid purchases of its Shares through the facilities of the TSX and NASDAQ;

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7. the rules of the TSX relating to normal course issuer bids (the TSX NCIB Rules) allow normal course issuer bid purchases of up to 10% of the public float (as defined in the TSX NCIB Rules) of the class of securities subject to such a bid to be made through the facilities of the TSX over a 12-month period;
8. issuer bid purchases made through the facilities of the TSX in accordance with the TSX NCIB Rules are exempt from the Issuer Bid Requirements under the “designated exchange exemption” contained in the Legislation (the Designated Exchange Exemption), while purchases through the facilities of the NASDAQ are not exempt pursuant to such exemption because the Decision Makers recognize the TSX as a “designated exchange” for the purpose of the Designated Exchange Exemption, but not the NASDAQ;
9. issuer bid purchases made through the facilities of the NASDAQ are exempt from the Issuer Bid Requirements under the “normal course issuer bid exemption” contained in the Legislation (the NCIB Exemption), which limits the aggregate number of securities which may be purchased during a 12-month period to 5% of the securities of that class issued and outstanding at the commencement of that period;
10. purchases of the Shares by the Filer of up to 10% of the public float through the facilities of the NASDAQ would be permitted under the rules of the NASDAQ and under United States federal securities law;
11. no other exemptions exist under the Legislation that would otherwise permit the Filer to make purchases through the NASDAQ on an exempt basis where the purchases exceed the 5% limitation in the NCIB Exemption; and
12. the Filer may from time to time in the future file a renewal or new Notice of Intention to Make a Normal Course Issuer Bid with the TSX to make purchases of Shares through the facilities of both the TSX and the NASDAQ where the purchases fall within the 10% limit under the TSX NCIB Rules but exceed the 5% limitation in the NCIB Exemption.

Decision

- ¶ 4 Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

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The decision of the Decisions Makers under the Legislation is that the Requested Relief is granted provided that the purchases of Shares made by the Filer through the facilities of the NASDAQ are part of a normal course issuer bid that complies with the TSX NCIB Rules.

Martin Eady, CA
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British Columbia Securities Commission