

## 2005 BCSECCOM 477

### Headnote

*Securities Act* s. 48, 76 Employees & Consultants -Exemption from registration and prospectus requirements for employees, consultants, past employees and similar persons - *Securities Act*, s. 171 - Trades to an issuer's consultant or advisory board - The issuer will trade its securities to members of its advisory board; board members' participation in the trades is voluntary; board members provide ongoing bona fide consulting services to the issuer as needed under a written contract; board members possess the necessary experience to help grow the issuer's business; board members are not considered consultants under MI 45-105 because they do not spend a significant amount of time and attention on the business affairs of the issuer; board members are recruited for their expertise and reputation, not for previous personal or business relationship, so do not qualify as close personal friends or close business associates under MI 45-103

### Exemption Order

#### Neuromed Technologies Inc. and Neuromed Pharmaceuticals Inc.

#### Sections 48, 76 and 171 of the *Securities Act*, R.S.B.C. 1996, c. 418

### Background

- ¶ 1 Neuromed Technologies Inc. (Neuromed Canada) and Neuromed Pharmaceuticals Inc. (Neuromed US) applied for
- a. an order revoking a previous exemption the Executive Director granted to Neuromed Canada dated August 28, 2001 (the 2001 order); and
  - b. an exemption from the requirements to be registered to trade and to file and obtain receipts for a preliminary prospectus and prospectus in sections 34(1)(a) and 61 of the Act (the registration and prospectus requirements) for certain intended trades of their securities to members of their scientific advisory board.

### Representations

- ¶ 2 Neuromed Canada and Neuromed Pharmaceuticals (collectively, Neuromed) represent that:

## 2005 BCSECCOM 477

1. Neuromed US is incorporated under the laws of Delaware, is not a reporting issuer under the Act and is not in default of any requirement of the Act or the *Securities Rules*, B.C. Reg. 194/97;
2. the shares of Neuromed US are not publicly traded;
3. the authorized capital of Neuromed US consists of common stock and preferred stock divided into series preferred stock and special voting stock;
4. Neuromed Canada is incorporated under the *Yukon Business Corporations Act*, is not a reporting issuer under the Act and is not in default of any requirement of the Act or the Rules;
5. the shares of Neuromed Canada are not publicly traded;
6. Neuromed Canada's authorized capital consists of
  - (a) ten new common shares,
  - (b) an unlimited number of common exchangeable shares,
  - (c) an unlimited number of class A/B preferred exchangeable shares issuable in series,
  - (d) an unlimited number of class C preferred exchangeable shares issuable in series,
  - (e) an unlimited number of special voting shares, and
  - (f) an unlimited non-voting preferred shares;
7. the exchangeable shares are exchangeable into corresponding shares of stock of Neuromed US in certain circumstances;
8. Neuromed is in the business of discovering, developing and commercializing biopharmaceuticals treatments for neurological disorders;
9. Neuromed Canada and Neuromed US are mirrored corporations such that their securityholders have equivalent voting rights in both corporations;
10. Neuromed has established two joint Neuromed US - Neuromed Canada stock option plans (the plans) under which:

## 2005 BCSECCOM 477

- (a) non-US persons are granted options to purchase units consisting of one common exchangeable share, one special voting share and one share of common special voting stock, or, if all of the exchangeable shares that were issued by Neuromed Canada have been redeemed or acquired by Neuromed US, one share of common stock of Neuromed US, and
  - (b) US persons are granted options to purchase units consisting of one share of common stock of Neuromed US and one special voting share, or, if all of the exchangeable shares that were issued by Neuromed Canada have been redeemed or acquired by Neuromed US, one share of common stock of Neuromed US;
- 11. Neuromed grants options to its directors, officers and employees and other persons who provide a service of value to Neuromed and contribute to its success;
- 12. Neuromed formed a joint scientific advisory board comprised of scientific advisors who
  - (a) are experienced scientists,
  - (b) are not directors, officers or employees of Neuromed and are not affiliated, associated or related in any other way to Neuromed,
  - (c) will provide ongoing consulting services to Neuromed Canada or Neuromed US under a written contract,
  - (d) will provide guidance to enable Neuromed's technology to reach its full clinical and commercial potential,
  - (e) possess medical, technical and scientific experience and expertise in therapeutic or research fields that are related to Neuromed's technology, and
  - (f) have knowledge of the business and affairs of Neuromed equivalent to that held by certain directors, officers and employees of Neuromed;
- 13. at the request of management of Neuromed, the scientific advisors review and provide Neuromed with advice regarding individual research and development projects;
- 14. the scientific advisory board meets at least once a year as a whole, and in subcommittees as needed on an ongoing basis through the year;

## 2005 BCSECCOM 477

15. the scientific advisors are not consultants as defined under Multilateral Instrument 45-105 *Trades to Employees, Senior Officers, Directors and Consultants* because they do not spend a significant amount of time and attention on the business and affairs of Neuromed Canada, Neuromed US or their affiliates, but are consulted by Neuromed as needed on an ongoing basis in areas of their expertise;
16. the scientific advisors are recruited for their particular expertise and reputation;
17. Neuromed proposes to grant incentive stock options to scientific advisors under the plans, which options
  - (a) are not repayment or partial repayment of a debt owed to the scientific advisors, and
  - (b) are non-transferable and non-assignable (except on death);
18. the scientific advisors' participation in the trade is voluntary, and they will not be induced to acquire securities on the exercise of the options by expectation of continued membership on the scientific advisory board or employment with Neuromed;
19. under the 2001 order, the Executive Director ordered under sections 48 and 76 of the Act that the intended trades of options by Neuromed Canada to its scientific advisors be exempt from the registration and prospectus requirements;
20. at the time the 2001 Order was granted, Neuromed Canada's authorized capital consisted of an unlimited number of common shares and an unlimited number of preferred shares; and
21. as a result of changed factual circumstances regarding Neuromed Canada, including its exchangeable share structure and joint scientific advisory board with Neuromed US, Neuromed cannot rely on the 2001 Order to issue securities under the plans to scientific advisors.

### **Order**

¶ 3 Because it is not prejudicial to the public interest the Executive Director orders:

1. under section 171 of the Act, that the 2001 order is revoked;

## 2005 BCSECCOM 477

2. under sections 48 and 76 of the Act, that the intended trades of options by Neuromed to the scientific advisors are exempt from the registration and prospectus requirements provided that Neuromed provides each scientific advisor with a copy of this order;
3. under section 76 of the Act, that the first trade of a security acquired under this order is deemed to be a distribution unless the conditions in section 2.6 of Multilateral Instrument 45-102 *Resale of Securities* (MI 45-102) are satisfied; and
4. under section 48 of the Act, that the registration requirement does not apply to the first trade of a security that was acquired under this order or on the exercise of an option issued relying on this order if the conditions in section 2.14 of MI 45-102 are satisfied.

¶ 4 July 20, 2005

Noreen Bent  
Manager, Corporate Finance  
British Columbia Securities Commission