

2006 BCSECCOM 526

Headnote

BC Business Corporations Act s. 91(3) -Trust Indenture Exemptions - An issuer is issuing debentures under a trust indenture and wants an exemption from the trust indenture requirements contained in sections 90 to 101 of the *Business Corporations Act* - A prospectus, securities exchange issuer circular, or take over bid circular has been filed under the *Securities Act* in respect of the debentures; the filer is not filing under MJDS; the trust indenture will be governed by the *Trust Indenture Act of 1939* of the United States, which contains provisions that are substantially similar to the requirements of the Act; the trustee has filed a Submission to Jurisdiction and Appointment of Agent of Process in the form similar to that under the MJDS rule (i.e. Form 71-101F1)

Exemption Order

Angiotech Pharmaceuticals, Inc.

Section 91 of the *Business Corporations Act*, R.S.B.C. 2002, c. 57

Background

- ¶ 1 Angiotech Pharmaceuticals, Inc. applied for an order exempting a trust indenture (the Trust Indenture) dated as of March 23, 2006, as amended or supplemented, between Angiotech, certain subsidiary guarantors of Angiotech, and Wells Fargo Bank, N.A. (the Trustee) from Sections 90 to 101 of *Business Corporations Act* (the Act).

Representations

- ¶ 2 Angiotech represents that:
1. it is a corporation existing under the Act;
 2. it is a reporting issuer under the *Securities Act* (British Columbia) (the Securities Act) and is not in default of any requirement of the Securities Act (British Columbia) or the Securities Rules, B.C. Reg. 194/97;
 3. its common shares are listed on the Toronto Stock Exchange and quoted on the NASDAQ National Market;

2006 BCSECCOM 526

4. the Trustee is a national banking association organized under the laws of the United States, is not resident nor authorized to do business in British Columbia or carry on trust business under the *Financial Institutions Act*, and it is the sole trustee under the Trust Indenture;
5. on March 23, 2006, it issued an aggregate principal amount of US\$250 million of 7.75% senior subordinated notes (the Old Notes), as provided by the Trust Indenture;
6. at the time of issuance of the Old Notes, no prospectus, securities exchange circular or take over bid circular was filed under the Securities Act as the offering of the Old Notes in Canada was completed on an exempt basis under National Instrument 45-106;
7. upon the effectiveness of the Registration Statement, the Trust Indenture will be subject to the U.S. Trust Indenture Act of 1939, as amended, (the TIA) which regulates the issue of debt securities under trust indentures in the United States in a manner substantially similar to the provisions of section 90 to 101 of the Act;
8. under the terms of the Trust Indenture and a registration rights agreement, it is required to file a registration statement (the Registration Statement) to qualify the distribution to the public of new 7.75% senior subordinated notes (the New Notes), to be issued in exchange for the Old Notes;
9. it will meet its Registration Statement filing obligations by:
 - (a) filing a combined registration statement on Forms F-10, F-4 and S-4 with the U.S. Securities and Exchange Commission (the SEC) under the United States Securities Act of 1933, as amended (the 1933 Act); and
 - (b) filing a short form prospectus with the British Columbia Securities Commission under National Instrument 44-101 in connection with the combined registration statement on Forms F-10, F-4 and S-4 being filed with the SEC (which short form prospectus will be filed solely in connection with the registration of securities under the 1933 Act and will not qualify any distribution of securities by prospectus in the Province of British Columbia or any other jurisdiction in Canada).
10. currently it expects to file a preliminary registration statement and short form prospectus by no later than September 8, 2006;

2006 BCSECCOM 526

11. upon the filing of the Registration Statement with the SEC and completion of the exchange offer contemplated by the Registration Statement, it will exchange the New Notes for the Old Notes; the New Notes are substantially identical to the Old Notes except for certain transfer restrictions and registration rights provisions relating to the Old Notes and evidence the same continuing indebtedness of the Old Notes;
12. the New Notes will not be listed on any exchange;
13. any New Notes issued to a resident of Canada will be issued in compliance with applicable securities legislation relying on an exemption under National Instrument 45-106 *Prospectus and Registration Exemptions*.

Order

- ¶ 3 Because it is not prejudicial to the public interest, the Executive Director orders under Section 91(3) of the Act, that Sections 90 to 101 of the Act do not apply to the trust indenture provided that
- (a) the Trust Indenture complies in all material respects with the provisions of the TIA that are substantially similar to the provisions of Sections 90 to 101 of the Act, and
 - (b) the Trustee, or any trustee that replaces the Trustee under the terms of the Indenture, has filed with the Commission a submission to the non-exclusive jurisdiction of the courts and administrative tribunals of British Columbia and appointment of an agent for service of process in Canada.
- ¶ 4 September 1, 2006

Martin Eady, CA
Director, Corporate Finance
British Columbia Securities Commission