

2011 BCSECCOM 56

January 27, 2011

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, sections 4.7(1)(c) and 5.1 – An issuer wants relief from the requirement that financial statements prepared in accordance with Canadian GAAP for one or more interim periods of the current financial year be restated in accordance with U.S. GAAP – The issuer became a SEC issuer in the course of its financial year; the issuer had previously prepared and filed interim financial statements for that financial year in accordance with Canadian GAAP; the issuer's interim financial statements contain a reconciliation note identifying any material differences had the interim financial statements been prepared in accordance with U.S. GAAP rather than Canadian GAAP; the issuer's annual financial statements will be prepared in accordance with U.S. GAAP and include a reconciliation note regarding the effect on the annual financial statements had they been prepared in accordance with Canadian GAAP rather than U.S. GAAP

Applicable British Columbia Provisions

National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*, sections 3.2(a) and 9.1

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
Tekmira Pharmaceuticals Corporation
(the Filer)

Decision

2011 BCSECCOM 56

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) exempting the Filer from the requirement in section 4.7(1)(c) of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (NI 52-107) to restate the Filer's interim financial statements for the fiscal year ended December 31, 2010 in accordance with United States generally accepted accounting principles (U.S. GAAP).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual 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, Québec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador, 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* and MI 11-102 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 company incorporated under the *Business Corporations Act* (British Columbia) and is a reporting issuer in all of the provinces of Canada;
 - 2. the Filer's head office is located at 100-8900 Glenlyon Parkway, Burnaby, British Columbia, Canada, V5J 5J8, and the Filer's registered and records office is located at 700 West Georgia St, 25th Floor, Vancouver, British Columbia, Canada, V7Y 1B3;
 - 3. the Filer is not in default of any of the requirements of the applicable securities legislation in any jurisdiction of Canada;

2011 BCSECCOM 56

4. the Filer has prepared its financial statements in accordance with Canadian generally accepted accounting principles (Canadian GAAP) for all annual and interim periods up to and including the three- and nine-month periods ended September 30, 2010;
5. on November 4, 2010, the Filer filed a registration statement on Form F-10 (the Registration Statement) and a Form 8-A with the United States Securities and Exchange Commission (the SEC), which became effective pursuant to the Canada-U.S. Multi Jurisdictional Disclosure System upon the issuance of a receipt from the securities administrator in each province of Canada for the Filer's short form base shelf prospectus dated November 4, 2010 (the Shelf Prospectus);
6. as of November 4, 2010, the Filer has a class of securities registered under section 12 of the *Securities Exchange Act of 1934* of the United States of America, and therefore meets the definition of a "SEC Issuer" under NI 52-107;
7. the Filer intends to rely on the short form prospectus procedures as set out in National Instrument 44-101 – *Short Form Prospectus Distributions* and incorporate by reference in any future supplement to the Shelf Prospectus the Filer's most recent annual consolidated financial statements and, if applicable, the Filer's most recent interim consolidated financial statements;
8. in connection with the filing of the Registration Statement, the Filer amended and restated its interim consolidated financial statements for the three-month period ended March 31, 2010 (Q1 2010 Statements) and for the three- and six-month periods ended June 30, 2010 (Q2 2010 Statements), which were filed on September 16, 2010 on SEDAR;
9. the amended and restated Q1 2010 Statements and Q2 2010 Statements include a note (a Canadian-U.S. GAAP Reconciliation Note) disclosing that the Q1 2010 Statements and Q2 2010 Statements are prepared in accordance with Canadian GAAP which, as applied in those financial statements, conforms in all material respects to U.S. GAAP except for the differences summarized in the Canadian-U.S. GAAP Reconciliation Note;
10. the Filer filed its interim consolidated financial statements for the three- and nine-month periods ended September 30, 2010 (Q3 2010 Statements) on November 15, 2010, which include a Canadian-U.S. GAAP Reconciliation Note;

2011 BCSECCOM 56

11. as identified in the Canadian-U.S. GAAP Reconciliation Note included in the Q1 2010 Statements, Q2 2010 Statements, and Q3 2010 Statements (together, the Interim Statements), there would be only one material difference in the Interim Statements had the Interim Statements been prepared in accordance with U.S. GAAP rather than Canadian GAAP; under Canadian GAAP, the medical technology acquired from Protiva Biotherapeutics Inc. (Protiva) on May 30, 2008 has been recorded as intangible assets and is amortized over its estimated useful life of 16 years; under U.S. GAAP, the medical technology acquired from Protiva would be classified as in-process research and development and written off immediately as it has no alternative use;
12. the Filer intends to prepare and file its consolidated financial statements in accordance with U.S. GAAP, commencing with the Filer's consolidated financial statements for the year ended December 31, 2010 (the Annual 2010 Statements);
13. the Filer intends to include a reconciliation note in its Annual 2010 Statements regarding the impact on the Annual 2010 Statements had the Annual 2010 Statements been prepared in accordance with Canadian GAAP rather than U.S. GAAP, which the Filer expects to be substantially similar to the Canadian-U.S. GAAP Reconciliation Note in the Interim Statements;
14. the Filer also intends to include narrative discussion of the significant differences between U.S. GAAP and Canadian GAAP as applied to the Annual 2010 Statements in the Filer's Management Discussion & Analysis for the year ended December 31, 2010;
15. under section 4.7(1)(c) of NI 52-107, the Filer is required to restate the Interim Statements in accordance with U.S. GAAP if its Annual 2010 Statements are prepared in accordance with U.S. GAAP; and
16. for periods relating to financial years beginning on or after January 1, 2011, the requirements in section 4.7(1) of NI 52-107 do not apply to an SEC Issuer switching from preparing its financial statements in accordance with Canadian GAAP to U.S. GAAP.

Decision

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

The decision of the Decision Makers under the Legislation is that the Filer is exempt from the obligation under section 4.7(1)(c) of NI 52-107 *Acceptable*

2011 BCSECCOM 56

Accounting Principles and Auditing Standards to restate the Interim Statements in accordance with U.S. GAAP, provided that:

- (a) the Filer prepares and files its Annual 2010 Statements in accordance with U.S. GAAP; and
- (b) the Filer includes a reconciliation note in its Annual 2010 Statements regarding the impact on the Annual 2010 Statements had the Annual 2010 Statements been prepared in accordance with Canadian GAAP rather than U.S. GAAP.

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