

2011 BCSECCOM 302

June 20, 2011

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Securities Act s. 88 - Cease to be a reporting issuer in BC - The securities of the issuer are beneficially owned by more than 50 persons and are not traded through any exchange or market - The issuer is undergoing CCAA restructuring; excluding securities held by the issuer's senior management, the issuer has a de minimus number of Canadian security holders; the issuer has no present intention of conducting a public offering of its securities to Canadian residents; the issuer is subject to the reporting requirements of the securities laws of an acceptable foreign jurisdiction and all shareholders receive the same disclosure

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 88

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New
Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador
(the Jurisdictions)

and

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

and

In the Matter of
Angiotech Pharmaceuticals, Inc.
(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 (Legislation) that the Filer is not a reporting issuer (Exemptive Relief Sought).

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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 (BCSC) is the principal regulator for this application, and
- (b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

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 incorporated under the laws of British Columbia; the Filer's head office is located in Vancouver, British Columbia;
 2. the authorized capital of the Filer consists of an unlimited number of common shares without par value; there are currently 12,500,000 issued and outstanding common shares in the capital of the Filer;
 3. pursuant to a prospectus dated December 9, 1997, the Filer completed an initial public offering (the Offering) of common shares in Canada (Old Common Shares); at that time, and up until March 3, 2011, the Filer's Old Common Shares were listed on the Toronto Stock Exchange (TSX);
 4. as a result of the Offering, the Filer is now a reporting issuer or has the equivalent status in each applicable Jurisdiction;
 5. on February 16, 2000, the Filer's Old Common Shares began trading on the NASDAQ National Market securities exchange (NASDAQ);
 6. the Filer is a reporting company under the United States *Securities Exchange Act of 1934*, as amended (1934 Act);
 7. the Filer issued an aggregate of US\$250,000,000 face principal amount of 7.75% senior subordinated notes due 2014 (Subordinated Notes) and US\$325,000,000 face principal amount of senior floating rate notes due 2013 (Existing Floating Rate Notes) pursuant to note indentures dated March 23, 2006 and December 13, 2006, respectively;

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8. the Existing Floating Rate Notes are not listed on any exchange or marketplace but are registered under U.S. securities laws; all or substantially all of the Subordinated Notes and the Existing Floating Rate Notes were initially sold to institutional U.S. investors on a private placement basis; to the Filer's knowledge, none of the Subordinated Notes or the Existing Floating Rate Notes were originally issued to Canadian residents;
9. under the terms of the indenture governing the Existing Floating Rate Notes, as currently in effect, for so long as any Existing Floating Rate Notes are outstanding, the Filer is obligated to file with the United States Securities and Exchange Commission (SEC) such reports as would be required if the Filer were subject to the reporting obligations of Section 13(a) or 15(d) of the 1934 Act, and to provide copies thereof to the holders of the Existing Floating Rate Notes; in addition, under the terms of the indenture governing the Existing Floating Rate Notes, if, at any time, the Filer is no longer subject to the periodic reporting requirements of the 1934 Act for any reason, the Filer must nevertheless continue filing the reports specified above with the SEC within the time periods specified in the SEC's rules and regulations unless the SEC will not accept such filings, in which case the Filer is required to post the reports on its website within the time periods that would apply if the Filer were required to file those reports with the SEC;
10. the Filer's Old Common Shares were de-listed from the NASDAQ on January 21, 2011 and from the TSX on March 3, 2011;
11. on January 28, 2011, the Filer and certain of its subsidiaries (collectively, Angiotech Entities) voluntarily commenced proceedings under the *Companies' Creditors Arrangement Act* (Canada) (CCAA) by obtaining an initial order from the Supreme Court of British Columbia (Court) in order to implement a Court supervised restructuring of the Angiotech Entities' businesses (CCAA Recapitalization);
12. the CCAA Recapitalization was implemented on May 12, 2011 through a second amended and restated plan of compromise or arrangement (CCAA Plan) under the CCAA, under which, among other things, the Subordinated Notes were cancelled in exchange for shares of a new class of common shares of the Filer (New Common Shares);
13. concurrently with the implementation of the CCAA Plan, the Filer (i) consummated an offer to exchange (FRN Exchange Offer) the Existing Floating Rate Notes for new floating rate notes (New Floating Rate Notes), and (ii) implemented certain amendments to the indenture governing the Existing Floating Rate Notes under a consent solicitation initiated by the Filer;

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14. the New Floating Rate Notes were issued on substantially similar terms as the Existing Floating Rate Notes, subject to certain exceptions including:

- (a) the New Floating Rate Notes accrue interest at the London Interbank Offered Rate (LIBOR) plus 3.75%, subject to a LIBOR floor of 1.25%,
- (b) subject to certain exceptions, the New Floating Rate Notes are secured by a second lien over the assets and property of the Filer and certain of its subsidiaries, and
- (c) certain amendments have been made to the provisions in the indenture governing the New Floating Rate Notes relating to use of proceeds received from certain asset sales, incurrence of additional indebtedness, permitted liens and change of control,

the reporting requirements described in paragraph 9 apply to the New Floating Rate Notes;

15. the implementation of the CCAA Plan involved, among other things, the following:

- (a) the cancellation of all options, warrants or other rights or entitlements to acquire or purchase Old Common Shares without any liability, payment or other compensation,
- (b) an amendment to the Filer's Articles and Notice of Articles (i) re-designating the class of shares from which the Old Common Shares were issued as "Old Common Shares"; (ii) creating an unlimited number of New Common Shares with the rights, privileges, restrictions and conditions set forth in the Filer's Articles,
- (c) the issuance by the Filer to holders of the Subordinated Notes of their *pro rata* share of 12,500,000 New Common Shares,
- (d) the cancellation of the Filer's Old Common Shares without any liability, payment or other compensation,
- (e) an amendment to the Filer's Notice of Articles eliminating the Old Common Shares and the Class I Preference Shares from the authorized capital of the Filer,

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- (f) the irrevocable and final cancellation of the Subordinated Notes and the indenture governing the Subordinated Notes, and
 - (g) the adoption by the Filer of a new management incentive plan (MIP) under which the following grants were made to certain members of management of the Angiotech Entities and the board of directors of the Filer (MIP Participants) on the implementation date of the CCAA Plan: (i) 520,833 restricted share units or restricted stock; and (ii) options to acquire 862,809 New Common Shares;
16. under the terms of the grant agreements with individual MIP Participants, each MIP Participant agreed, as a condition of their participation in the MIP, that the Filer may cease to be a reporting issuer in the Jurisdictions at any time;
17. all of the affected creditors of the Angiotech Entities other than the holders of the Subordinated Notes elected to receive cash in respect of their affected claims (rather than New Common Shares); accordingly, following implementation of the CCAA Plan the only holders of New Common Shares were the former holders of the Subordinated Notes;
18. the Filer has no outstanding securities other than: (i) 12,500,000 New Common Shares, (ii) 520,833 restricted share units or restricted stock, (iii) US\$25,000 of Existing Floating Rate Notes, (iv) US\$324,975,000 of New Floating Rate Notes, and (v) options to acquire 862,809 New Common Shares granted to MIP Participants. All previous holders of Existing Shares had their equity interests in the Filer cancelled in connection with the implementation of the CCAA Plan;
19. based on the diligent inquiries of the Filer:
- (a) there are an aggregate of 12,500,000 New Common Shares issued and outstanding which, to the Filer's knowledge,, are held by not less than 106 shareholders worldwide, of which, to the Filer's knowledge, nine are resident Canadians holding an aggregate of 47,500 New Common Shares, representing less than 1% of the issued and outstanding New Common Shares; of these nine resident Canadian beneficial owners, (i) two are resident in British Columbia and hold an aggregate of 10,000 New Common Shares; (ii) four are resident in Ontario and hold an aggregate of 28,750 New Common Shares; and (iii) three are resident in Québec and hold an aggregate of 8,750 New Common Shares,
 - (b) there are an aggregate of 520,833 restricted share units or restricted stock that were granted under the MIP held by 8 MIP Participants of which three

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are resident in British Columbia and hold an aggregate of 299,479 restricted share units,

- (c) there are options to acquire an aggregate of 862,809 New Common Shares issued and outstanding that were granted under the MIP held by 45 MIP Participants of which 16 are resident in British Columbia and hold options to acquire an aggregate of 367,903 New Common Shares, and
 - (d) there is an aggregate of (i)US\$25,000 face principal amount of Existing Floating Rate Notes, and (ii) US\$324,975,000 face principal amount of New Floating Rate Notes issued and outstanding, which, to the Filer's knowledge, are held by not less than 138 beneficial owners worldwide, of which, to the Filer's knowledge, there are no resident Canadian beneficial owners;
- 20. no securities of the Filer are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;
 - 21. the Filer has no current intention to distribute any securities to the public in Canada;
 - 22. the Filer does not currently intend to seek financing by way of a public offering of its securities in Canada;
 - 23. as a reporting company under the 1934 Act, the Filer will continue to comply with its reporting obligations in the U.S. and undertakes to concurrently deliver to its Canadian securityholders all disclosure the Filer is required under U.S. securities laws to deliver to U.S. resident securityholders; during such period, the Filer's U.S. filings will continue to be available through EDGAR and the Filer will continue to post its U.S. continuous disclosure documents on its website;
 - 24. on April 29, 2011 the Filer issued and filed a news release announcing that the Filer has submitted an application to the securities regulatory authorities of the Jurisdictions to cease to be a reporting issuer in the Jurisdictions and, if the Exemptive Relief Sought is granted, the Filer will no longer be a reporting issuer in any Jurisdiction in Canada; and
 - 25. the Filer is not in default of any of its obligations under the Legislation as a reporting issuer.

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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.

The decision of the Decision Makers under the Legislation is that the Exemptive Relief Sought is granted.

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