

# 2012 BCSECCOM 164

April 30, 2012

## Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 51-102, s. 13.1 – *Continuous Disclosure Obligations* – An issuer wants relief from the requirements to file and/or deliver financial statements for a particular period – A compulsory acquisition procedure pursuant to corporate legislation has been undertaken, prior to the filing deadline, in relation to the issuer and its shareholders pursuant to which all of the issuer's securities will be acquired by the offeror by a fixed date.

National Instrument 52-109, s. 8.6 - *Certification of Disclosure in Issuers' Annual and Interim Filings* – An issuer wants relief from the requirements in Parts 4 and 5 of NI 52-109 to file interim and annual certificates – The issuer has applied for and received an exemption from filing interim and annual financial statements.

## Applicable Legislative Provisions

National Instrument 51-102, s. 13.1

National Instrument 52-109, s. 8.6

In the Matter of  
the Securities Legislation of  
British Columbia  
(the Jurisdiction)

and

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

and

In the Matter of  
Synchronica plc (Synchronica)

## Decision

## Background

- ¶ 1 The principal regulator in the Jurisdiction, has received an application from Synchronica for a decision under the securities legislation of the Jurisdiction of

## 2012 BCSECCOM 164

the principal regulator (the Legislation) that Synchronica be exempt from the requirements:

- (a) under National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), to prepare, file and, where required, deliver to shareholders:
  - (i) annual financial statements and related management's discussion and analysis for the year ended December 31, 2011 (the Annual Filings); and
  - (ii) interim financial statements and related management's discussion and analysis as at and for the three-month period ended March 31, 2012 (the Interim Filings); and
- (b) under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (NI 52-109), to file:
  - (i) the prescribed annual certification forms of its Chief Executive Officer and Chief Financial Officer in respect of the year ended December 31, 2011 (the Annual Officer Certificates); and
  - (ii) the prescribed interim certification forms of its Chief Executive Officer and Chief Financial Officer in respect of the three-month period ended March 31, 2012 (the Interim Officer Certificates)

(the Exemption Sought).

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

- (a) the British Columbia Securities Commission is the principal regulator for this application;
- (b) Synchronica 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 and Quebec.

### **Interpretation**

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meanings if used in this decision, unless otherwise defined.

## 2012 BCSECCOM 164

### **Representations**

¶ 3 This decision is based on the following facts represented by Synchronica:

1. Synchronica is a company incorporated under the Companies Act 2006 of England and Wales and its registered office and principal place of business is located at Mount Pleasant House, Lonsdale Gardens, Royal Tunbridge Wells, United Kingdom; Synchronica is a technology company;
2. Synchronica is a reporting issuer in each of the Provinces of British Columbia, Alberta and Quebec, and is not in default of securities legislation in those jurisdictions;
3. the Synchronica shares are admitted for trading on AIM, a market of the London Stock Exchange, under the symbol “SYNC” and are also listed and posted for trading on the TSX Venture Exchange under the symbol “SYN”;
4. on February 28, 2012, Myriad AG (Myriad) commenced an unsolicited offer in compliance with applicable Canadian and UK laws (the Offer) to purchase all of the Synchronica shares by filing and mailing to Synchronica shareholders a securities exchange take-over bid circular (the Circular);
5. on March 14, 2012, Myriad filed and mailed a revised offer document (the Revised Offer Document) to Synchronica shareholders; the Revised Offer Document, among other things, increased the consideration under the Offer to 4.83 new Myriad shares for every 100 Synchronica shares;
6. on March 14, 2012, Synchronica filed a director’s circular unanimously recommending that Synchronica shareholders accept the Offer;
7. on April 16, 2012, Myriad took up 128,056,039 shares validly deposited under the Offer;
8. in conjunction with the April 16, 2012 acquisition of shares, Myriad extended the time for acceptance of the Offer until 1:00 p.m. London time (8:00 a.m. Toronto time) on April 30, 2012, and announced it would promptly take-up and pay for all validly deposited shares;
9. as of April 30, 2012, Myriad holds 90.4% of the issued and outstanding shares of Synchronica;

## 2012 BCSECCOM 164

10. in the Circular, Myriad disclosed that if it received acceptances or otherwise acquired 90% or more of the Synchronica shares subject to the Offer and 90% or more of the voting rights carried by the Synchronica shares to which the Offer relates, Myriad would exercise its rights pursuant to sections 979 to 991 (inclusive) of the Companies Act 2006 of England and Wales, to acquire compulsorily the remaining Synchronica shares;
11. sections 979 to 991 (inclusive) of the Companies Act 2006 of England and Wales will entitle Myriad to give compulsory acquisition notices (Acquisition Notices) to non-accepting shareholders (the Remaining Offerees, which definition includes any person who subsequently acquires any such shares); Remaining Offerees will then have a period of six weeks from the date of such notices in which to apply to a court for an order either that Myriad is not entitled to acquire their Synchronica shares or to specify terms of acquisition different from those in the Offer; a Remaining Offeree who has applied to court will need to show that the consideration payable to Synchronica shareholders under the Offer is unfair before the court will require consideration of a higher value to be paid in respect of the Synchronica shares to which the application relates; assuming no such applications are lodged within such six week period, Myriad will be obliged to acquire the remaining Synchronica shares on the same terms as those under the Offer;
12. in the Circular, Myriad further disclosed that if sufficient acceptances are received under the Offer, Myriad intends to cause Synchronica to make an application to the TSX Venture Exchange for the de-listing of the Synchronica shares, and to cause Synchronica to cease to be a reporting issuer under the laws of each of the Jurisdictions;
13. it is unnecessary under the circumstances to prepare the Annual Filings, Interim Filings, Annual Officer Certificates and Interim Officer Certificates as information about Synchronica's financial position is no longer relevant to the remaining Synchronica shareholders or other market participants who may wish to purchase Synchronica Shares held by the remaining Synchronica shareholders; and
14. absent the requested relief being granted, Synchronica will be required to:
  - (a) file the Annual Filings on or before April 30, 2012; and
  - (b) file the Interim Filings on or before May 30, 2012.

## 2012 BCSECCOM 164

### **Decision**

- ¶ 4 The Commission is satisfied that the decision meets the test set out in the Legislation for the Commission to make the decision.

The decision of the Commission under the Legislation is that the Requested Relief is granted.

Andrew S. Richardson, CA  
Acting Director, Corporate Finance  
British Columbia Securities Commission