

# 2006 BCSECCOM 131

March 3, 2006

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-102, s. 13.1 - Continuous Disclosure Obligations - Information circular - A person requires relief from the requirement to send an information circular to each securityholder whose proxy is solicited - The person would not be “soliciting” within the meaning of the term in the *Canada Business Corporations Act* or would be exempt from sending an information circular under the *Canada Business Corporations Act*; the person will limit its activities to those permitted under the *Canada Business Corporations Act*

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, s. 119

National Instrument 51-102, *Continuous Disclosure Obligations*, s. 13.1

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

and

In the Matter of  
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of  
Baker Bros. Advisors, LLC (the Filer)

## MRRS Decision Document

## Background

- ¶ 1 The local securities regulatory authority or regulator (the Decision Makers) in each of the Jurisdictions has received an application from the Filer, on its own behalf and on behalf of the Funds (defined below), for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from the requirement to send an information circular to shareholders of AnorMED Inc. (AnorMED) concurrently with or before the Filer and/or the Funds' potential solicitation of proxies for the special meeting of the shareholders scheduled for April 11, 2006 (the Meeting) (the Requested Relief).

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Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the British Columbia Securities Commission is the principal regulator for this application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

- ¶ 2 Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

In this decision,

“CBCA” means the *Canada Business Corporations Act*, and

“Funds” means Baker Bros. Investments, LP, Baker Bros. Investments II, LP, Baker Biotech Fund I, L.P., Baker Biotech Fund II, L.P., Baker Biotech Fund II (Z), L.P., Baker Biotech Fund III, L.P., Baker Biotech Fund III (Z), L.P., 14159, L.P. and Baker/Tisch Investments, LP;

### **Representations**

- ¶ 3 The Filer represents that:
- 1. AnorMED exists under the CBCA with its head office in Vancouver, British Columbia and is a reporting issuer, or the equivalent, in each of the provinces of Canada;
  - 2. AnorMED’s common shares are listed on the Toronto Stock Exchange and the American Stock Exchange;
  - 3. the Filer is an investment management firm based in New York City, USA and is the investment manager for the Funds;
  - 4. the Funds hold 9,411,500 common shares of AnorMED, representing approximately 23.26% of its outstanding common shares;
  - 5. on January 16, 2006, the Funds requisitioned the Meeting under section 143 of the CBCA for the purpose of removing the directors of AnorMED, electing in their stead individuals proposed by the Funds and conducting such other business as may properly come before the Meeting;

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6. on February 2, 2006, AnorMED called the Meeting to be held on April 11, 2006 with a record date of February 28, 2006;
7. on February 20, 2006, AnorMED issued a press release refuting certain positions put forward by the Funds in Schedule 13D filings with the SEC;
8. the Filer intends to send AnorMED's shareholders an information circular in order to solicit proxies in connection with the Meeting;
9. before sending the circular to the shareholders, and as soon as possible, the Filer and/or the Funds intend to publicly state their views and reasons for their requisition in compliance with the CBCA;
10. in particular, the Filer and/or the Funds intend to issue a press release in response to the press release issued by AnorMED on February 20, 2006 and to otherwise communicate with the shareholders
  - (a) by way of public announcement as contemplated by subparagraph (b)(v) of the definition of "solicit" or "solicitation" in section 147 of the CBCA and section 67 of the Regulations under the CBCA, or
  - (b) by way of public broadcast, speech or publication as contemplated in subsection 150(1.2) of the CBCA and section 69 of the Regulations under the CBCA; and
11. the procedures for proxy solicitation contemplated by the CBCA and its Regulations are not available under the Legislation.

### **Decision**

- ¶ 4 Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted, provided that the Filer and/or the Funds, as applicable, comply with the applicable proxy solicitation provisions of the CBCA and its Regulations.

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