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November 17, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act, ss. 48 and 76 – registration and prospectus requirements - Trades by an issuer to its shareholders in securities of another company that it owns (e.g. spin-off transactions) - The first issuer will transfer shares it holds in a second issuer (reporting) to the first issuer's shareholders as a return of capital; the return of capital will be done in compliance with corporate law requirements; the first issuer would be able to rely on the exemptions contained in section 2.31(2) of NI 45-106 (also sections 45(2)(14) and 74(2)(13) of the Act) if the transfer was being done as a dividend in kind; the transfer of the shares will result in the shareholders of the first issuer holding directly their interests in the second issuer as opposed to indirectly through their shareholdings of the first issuer

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1), 48(1), 61(1) and 76(1)

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New
Brunswick, Nova Scotia, Prince Edward Island 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
Æterna Zentaris Inc.
(the Filer)

MRRS Decision Document

Background

The local securities regulatory authority or regulator (each, a Decision Maker and collectively, the Decision Makers) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from the dealer registration requirement (the Registration Requirement) and the prospectus requirement (the

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Prospectus Requirement) of the Legislation (the Requested Relief) for a proposed distribution by the Filer to the holders of its common shares (the Æterna Shareholders), by way of reduction of capital, of 11,052,996 subordinate voting shares it holds in the capital of Atrium Biotechnologies Inc. (Atrium) (the Capital Reduction Distribution).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the *Autorité des marchés financiers* is the principal regulator for this application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker (collectively, the Decision).

Interpretation

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

Representations

This Decision is based on the following facts represented by the Filer:

1. The Filer was incorporated in September 1990 under the *Canada Business Corporations Act* (the CBCA) and commenced operations in 1991.
2. The Filer is a reporting issuer or holds equivalent status in each of the Provinces of Canada, and to the best of its knowledge, is not in default of any requirements of the Legislation applicable to it.
3. The Filer's authorized share capital consists of an unlimited number of common shares (the Common Shares) and an unlimited number of preferred shares. As at October 26, 2006, there were 53,160,970 Common Shares and no preferred shares issued and outstanding. The Common Shares are listed and posted for trading on the Toronto Stock Exchange (the TSX) under the symbol "AEZ" and quoted on the NASDAQ National Market under the symbol "AEZS".
4. Between 1992 and 2000, the Filer operated two separate and operationally distinct divisions. The "Biopharmaceutical Division" was engaged in the development of therapies for various illnesses, with a focus on therapies for cancer; and the "Cosmetics and Nutrition Division" was engaged in the development, manufacture and marketing of innovative, high-quality cosmetics ingredients and value-added nutritional products.

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5. In December 1999, the Filer incorporated Atrium as a wholly-owned subsidiary. The Filer's Cosmetics and Nutrition Division was transferred to Atrium in 2000. Since then, the Filer has only been engaged in biopharmaceutical activities, although Atrium's results of operations and balance sheet continued to be consolidated into the Filer's financial statements.
6. Atrium's authorized share capital consists of an unlimited number of multiple voting shares (the Multiple Voting Shares), subordinate voting shares (the Subordinate Voting Shares) and preferred shares, the latter of which are issuable in series. On April 6, 2005, Atrium completed an initial public offering and listed and posted for trading its subordinate voting shares on the TSX under the symbol "ATB".
7. The Multiple Voting Shares entitle the holders thereof to two (2) votes per share and the Subordinate Voting Shares entitle the holders thereof to one (1) vote per share.
8. On October 17, 2006, Atrium had 14,000,000 Multiple Voting Shares, 16,592,947 Subordinate Voting Shares and no preferred shares issued and outstanding, of which the Filer held all 14,000,000 Multiple Voting Shares as well as 537,996 Subordinate Voting Shares.
9. On October 18, 2006, the Filer voluntarily converted, in accordance with the articles of amendment of Atrium, 2,947,004 Multiple Voting Shares into 2,947,004 Subordinate Voting Shares (the Voluntary Conversion), following which the Filer held 11,052,996 Multiple Voting Shares and 3,485,000 Subordinate Voting Shares.
10. On October 18, 2006 and immediately following the Voluntary Conversion, the Filer sold all 3,485,000 Subordinate Voting Shares that it then held to a syndicate of underwriters led by RBC Dominion Securities Inc. (collectively, the Underwriters) as part of a secondary offering of 3,930,000 Subordinate Voting Shares, which Subordinate Voting Shares were then sold and distributed to the public pursuant to a final short form prospectus of Atrium dated September 28, 2006 (the Secondary Offering Prospectus). Six senior officers of Atrium also sold an aggregate of 445,000 Subordinate Voting Shares to the Underwriters as part of the secondary offering on October 18, 2006, which shares were also subsequently sold and distributed to the public pursuant to the Secondary Offering Prospectus.
11. Immediately following the closing of the secondary offering of 3,485,000 Subordinate Voting Shares by the Filer and 445,000 Subordinate Voting

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Shares by the six senior officers of Atrium, the Filer's remaining 11,052,996 Multiple Voting Shares in the capital of Atrium were automatically converted, in accordance with the articles of amendment of Atrium, into 11,052,996 Subordinate Voting Shares (the Automatic Conversion).

12. Consequently, as at October 18, 2006, Atrium had no Multiple Voting Shares, 30,592,947 Subordinate Voting Shares and no preferred shares issued and outstanding, of which the Filer owned 11,052,996 Subordinate Voting Shares, representing approximately 36.1% of all then issued and outstanding Subordinate Voting Shares.
13. On September 19, 2006, in the same press release in which the Filer initially announced that it had entered into a an agreement with RBC Dominion Securities Inc. for the sale of 3,485,000 Subordinate Voting Shares by way of secondary offering on a bought deal basis, it also announced its intention to effect the Capital Reduction Distribution by distributing its remaining 11,052,996 Subordinate Voting Shares to the Æterna Shareholders prior to the end of 2006, that it would notify them as soon as a definitive decision would be made regarding the form and timing of such distribution, and that it would seek shareholder approval at a special meeting of the Æterna Shareholders to effect the Capital Reduction Distribution if deemed necessary or advisable.
14. On October 25, 2006, the Filer announced by way of press release that it would effect the Capital Reduction Distribution on a *pro rata* basis based on the number of Common Shares held by the Æterna Shareholders and, that in connection therewith, it had convened a special meeting of the Æterna Shareholders to be held on or about December 15, 2006 (the Special Meeting). It is currently estimated by the Filer that, in the event the Capital Reduction Distribution is approved by the Æterna Shareholders at the Special Meeting, the Æterna Shareholders will receive 0.2079 Subordinate Voting Shares in the capital of Atrium for each Common Share of the Filer held by them, and no fractional Subordinate Voting Shares will be distributed to registered Æterna Shareholders.
15. The Capital Reduction Distribution will be effected in compliance with the CBCA.
16. The Filer will seek the approval of the Æterna Shareholders for the Capital Reduction Distribution at the Special Meeting.

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17. It is currently anticipated that the management proxy (or information) circular of the Filer in connection with the Special Meeting will be mailed to the Æterna Shareholders on or about November 16, 2006.
18. It is currently anticipated that the Capital Reduction Distribution will be effected on or about January 2, 2007.
19. If the Capital Reduction Distribution is approved by the requisite majority of Æterna Shareholders at the Special Meeting, Æterna Shareholders will not be required to pay for the Subordinate Voting Shares received in the Capital Reduction Distribution or to surrender or exchange Common Shares in order to receive Subordinate Voting Shares or to take any other action in connection with the Capital Reduction Distribution.
20. The initial distribution of the Subordinate Voting Shares from Atrium to the Filer, namely the issuance of Subordinate Voting Shares by Atrium to the Filer upon the occurrence of each of the Voluntary Conversion and the Automatic Conversion, was exempt from the Registration Requirement pursuant to paragraph 2.42(1)(a) of National Instrument 45-106 – *Prospectus and Registration Exemptions* (NI 45-106) as well as from the Prospectus Requirement pursuant to subsection 2.42(3) of NI 45-106. The applicable resale restriction to the Subordinate Voting Shares following the Voluntary Conversion and the Automatic Conversion is determined by the exemption under which the Multiple Voting Shares were originally acquired by the Filer. The Filer initially acquired the Multiple Voting Shares from Atrium pursuant to an exemption equivalent to the exemption set forth in section 2.4 of NI 45-106. Consequently, the first trade in such Subordinate Voting Shares following the Voluntary Conversion and the Automatic Conversion is subject to the conditions set forth in section 2.6 of National Instrument 45-102 – *Resale of Securities* (NI 45-102) in accordance with Appendix E of NI 45-102.
21. The Legislation in the Jurisdictions requires that, subject to the Requested Relief being granted, the Filer satisfy the Registration Requirement and the Prospectus Requirement with respect to the Capital Reduction Distribution.
22. Subsections 2.31(2) and 2.31(3) of NI 45-106 provide exemptions from the Registration Requirement and the Prospectus Requirement, respectively, in respect of a trade by an issuer in, or a distribution of, respectively, a security of a reporting issuer held by the issuer that is distributed by the issuer to its security holders as a dividend *in specie* or a distribution out of earnings or surplus.

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23. The Capital Reduction Distribution is neither a dividend *in specie* nor a distribution out of earnings or surplus, but is a return of capital.
24. If the Capital Reduction Distribution were instead a dividend *in specie* or a distribution out of earnings or surplus, there would be an exemption available under subsections 2.31(2) and 2.31(3) of NI-45-106 from each of the Registration Requirement and the Prospectus Requirement.
25. Sufficient information concerning Atrium is available to Æterna Shareholders on SEDAR.

Decision

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:

- (i) the Æterna Shareholders approve the Capital Reduction Distribution in compliance with the CBCA; and
- (ii) the first trade in the Subordinate Voting Shares acquired pursuant to this decision shall be deemed a distribution or a primary distribution to the public under the Legislation unless the conditions in subsection 2.6(3) of National Instrument 45-102 – *Resale of Securities* are satisfied.

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