

# 2011 BCSECCOM 498

October 28, 2011

## Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* - Securities Act, s.88 - cease to be a reporting issuer - the securities of the issuer are beneficially owned by more than 50 persons and are not traded through any exchange or market - the issuer falls within the definition of “closely held reporting issuer” contained in BC Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status* as the securities of the issuer are beneficially owned by not more than 50 persons and are not traded through any exchange or market

## 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, Ontario and Quebec  
(the Jurisdictions)

and

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

and

In the Matter of  
AIM Health Group Inc.  
(the 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 (the Legislation) the Applicant is not a reporting issuer (the Requested Relief).

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

- (a) the Ontario Securities Commission is the principal regulator for this application, and

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- (b) the decision is the decision of the principal regulator and evidences the decision of each other 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.

### **Representations**

- ¶ 3 This decision is based on the following facts represented by the Filer:
1. the Filer was originally incorporated under the name Orior Technologies Inc. on July 13, 2005 pursuant to the *Business Corporations Act* (Ontario); by articles of amendment dated August 18, 2008, the Filer changed its name from Orior Technologies Inc. to AIM Health Group Inc.; by articles of arrangement dated August 30, 2011, AIM Health Group Inc. (the pre-amalgamation entity) (Pre-Amalgamation AIM), AIM Health Group Limited and 2291094 Ontario Inc. amalgamated to form the Filer;
  2. the Filer is a reporting issuer in each of the Jurisdictions;
  3. the Filer's head office is located at 19 Allstate Parkway, Markham, Ontario, L3R 5A4;
  4. pursuant to a plan of arrangement under the *Business Corporations Act* (Ontario) (the Plan of Arrangement) completed on August 31, 2011 (the Arrangement) involving Pre-Amalgamation AIM, Imperial Capital Group Ltd. (Imperial) and 2291094 Ontario Inc. (AcquisitionCo), a corporation controlled by Imperial, AcquisitionCo acquired beneficial ownership of all of the issued and outstanding shares of the Pre-Amalgamation AIM (other than an aggregate of 20,955,500 shares of Pre-Amalgamation AIM held by insiders and other shareholders of Pre-Amalgamation AIM that were acquired in return for shares of AcquisitionCo) for \$0.25 in cash per share; all options and warrants of Pre-Amalgamation AIM outstanding immediately prior to the effective time of the Arrangement were deemed to be terminated; the Arrangement was approved by the shareholders of Pre-Amalgamation AIM at a shareholders' meeting held on August 23, 2011 (the Meeting);
  5. as part of the Arrangement and pursuant to the terms of the Plan of Arrangement, Pre-Amalgamation AIM, AIM Health Group Limited and AcquisitionCo amalgamated to form the Filer and each shareholder of AcquisitionCo was deemed to be a shareholder of the Filer as each share of

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AcquisitionCo outstanding immediately prior to the amalgamation was deemed to be exchanged for one share of the Filer (Shares);

6. in addition, under the terms of the Plan of Arrangement, the conversion provisions entitling three holders to the right to convert their shares of Accident Injury Management Clinic Inc. into shares of Pre-Amalgamation AIM (the Hamilton Interest) were deemed amended to provide, in lieu of conversion in certain circumstances into common shares of Pre-Amalgamation AIM, for conversion into Shares;
7. similarly, the conversion provisions relating to a convertible promissory note issued by the Filer in a principal amount of \$280,000 (the Phoenix Promissory Note) were deemed amended to provide, in lieu of conversion in certain circumstances into Pre-Amalgamation AIM, for conversion into Shares; the Phoenix Promissory Note was thereafter amended to eliminate the right of conversion and consequently the holder of the Phoenix Promissory Note now only retains the right to be repaid under the Phoenix Promissory Note;
8. as part of the Arrangement, Imperial agreed to arrange for the sufficient funding of and cause the Filer to redeem or repay in full all of the outstanding 3-year 10% convertible secured subordinated debentures (the Debentures) in the principal amount of \$3,500,000 in accordance with their terms immediately following the completion of the Arrangement (the Redemption); Pre-Amalgamation AIM issued an irrevocable notice of redemption dated July 22, 2011 to all holders of the Debentures and such notice was mailed out on the same day along with other meeting materials relating to the Meeting; as of October 18, 2011, the Filer has redeemed all but one of the Debentures; the Filer has deposited the required amount to redeem the outstanding Debenture with Equity Financial Trust Company (the "Indenture Trustee") and such monies are being held by the Indenture Trustee in escrow for the holder and will be paid to the holder upon surrender of the Debenture; the holder's only right is to receive payment of the monies held in escrow by the Indenture Trustee;
9. not taking into account the outstanding Debenture, securities of the Filer, including debt securities, are currently beneficially owned, directly or indirectly by: (i) 15 shareholders holding 116,693,600 Shares (one being Imperial, seven being previous shareholders of Pre-Amalgamation AIM that received shares of AcquisitionCo under the Arrangement, and seven shareholders who acquired their Shares in the Filer after the Arrangement); (ii) one holder holding the Phoenix Promissory Note; and (iii) three holders holding the Hamilton Interest. Consequently, the number of security holders in Ontario is 19 and there are no other security holders;

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10. Pre-Amalgamation AIM disclosed in the management information circular with respect to the meeting to approve the Arrangement that the Filer will seek to be deemed to cease to be a reporting issuer under securities legislation of the Jurisdictions following the effective date of the Arrangement;
11. all of the remaining security holders of the Filer have consented to the making of this Application by the Filer.
12. none of the Filer's securities including the Debentures, the Phoenix Promissory Note and the Hamilton Interest are listed on any marketplace in Canada as defined in National Instrument 21-101 *Marketplace Operation*; no securities of the Filer will be traded on a marketplace as defined in National Instrument 21-102 – *Marketplace Operation*;
13. the Filer will not be a reporting issuer or the equivalent in any jurisdiction in Canada immediately following the Director granting the Exemptive Relief Sought;
14. the Filer is currently in default of its obligations under the Legislation as a reporting issuer only with respect to its obligation to file the interim unaudited financial statements, its MD&A in respect of its interim unaudited financial statements and related certifications for the quarter ended June 30, 2011, required to be filed by on August 29, 2011 pursuant to Section 4.4(b)(i) of NI 51-102; the filing deadline for these documents was after the date on which the Arrangement was approved by the shareholders of AIM Health Inc. and the Ontario Superior Court of Justice;
15. the Filer has no plans to seek public financing by an offering of its securities in Canada.

### 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.

“Edward P. Kerwin”  
Commissioner  
Ontario Securities Commission

“Judith Robertson”  
Commissioner  
Ontario Securities Commission