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## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief from the registration and prospectus requirements for trades in securities of a parent company on the exercise of options and warrants to be issued by its amalgamated subsidiary under an arrangement

## Applicable British Columbia Provisions

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

IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA, BRITISH COLUMBIA,  
ONTARIO, SASKATCHEWAN AND QUÉBEC

AND

IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF  
APPLICATIONS

AND

IN THE MATTER OF TRANSITION THERAPEUTICS INC. AND  
WARATAH PHARMACEUTICALS INC.

## MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, British Columbia, Saskatchewan, Ontario and Québec (collectively, the "Jurisdictions") has received an application from Transition Therapeutics Inc. ("Transition"), for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the requirements contained in the Legislation to be registered to trade in a security and to file and obtain a receipt for a preliminary prospectus and prospectus (the "Registration and Prospectus Requirements") shall not apply to certain trades which may be made following the proposed arrangement (the "Arrangement") pursuant to section 192 of the Canada Business Corporations Act (the "CBCA"), involving Transition, Waratah Pharmaceuticals Inc. ("Waratah") and 3974863 Canada Inc. ("Newco");

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS Transition has represented to the Decision Makers that:

- (a) Transition is a corporation existing under the Business Corporations Act (Ontario);
- (b) Waratah is a corporation existing under the CBCA;
- (c) Transition is a biopharmaceutical company engaged in developing novel approaches and therapeutics to treat multiple sclerosis, diabetes and restenosis. Transition's head office is located at Suite 1103, 415 Yonge Street, Toronto, Ontario, M5B 2E7;
- (d) Waratah is a biopharmaceutical company focused on the clinical development and commercialization of its novel, patented therapy – Islet Neogenesis Therapy for the treatment of insulin-dependent diabetes. Waratah's head office is located at Suite 3700, 400 – 3rd Avenue, Calgary, Alberta, T2P 4H2;

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(e) Transition is and has been a reporting issuer in each of the Provinces of British Columbia, Alberta and Ontario since February 20, 2001 and is not, to its knowledge in default of the securities legislation of such jurisdictions;

(f) Transition is an electronic filer under National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR);

(g) Transition is not a qualifying issuer under Multilateral Instrument 45-102 Resale of Securities ("MI 45-102");

(h) Waratah is and has been a reporting issuer in each of the Provinces of British Columbia, Alberta, Saskatchewan and Ontario since September 11, 2000, and in the Province of Québec since April 20, 2001, and is not, to its knowledge in default of the securities legislation of such jurisdictions;

(i) the common shares of Transition ("Transition Common Shares") and the common shares of Waratah ("Waratah Common Shares") are listed on the Canadian Venture Exchange Inc. (the "CDNX"). Application has been made to the CDNX to approve the additional listing of Transition Common Shares to be issued pursuant to the Arrangement which listing will be subject to the fulfilment of all requirements of such exchange including the filing of the usual documentation;

(j) the authorized share capital of Transition consists of an unlimited number of Transition Common Shares and an unlimited number of non-voting Class B shares (the "Class B Shares") of which 20,168,750 Transition Common Shares and 4,500,000 Class B Shares were outstanding as of the close of business on December 13, 2001. Each Class B Share is convertible into one Transition Common Share without payment of additional consideration;

(k) the authorized share capital of Waratah consists of an unlimited number of Waratah Common Shares of which 25,521,384 Waratah Common Shares were outstanding as of the close of business on December 13, 2001. As of the close of business on December 13, 2001, there were also outstanding (i) 2,545,000 Waratah Options to acquire 2,545,000 Waratah Common Shares ("Waratah Options") and (ii) 4,853,616 Waratah Warrants to acquire 4,853,616 Waratah Common Shares ("Waratah Warrants");

(l) a meeting (the "Transition Meeting") of the holders of Transition Common Shares ("Transition Shareholders") and a special meeting (the "Waratah Meeting") of the holders of Waratah Common Shares ("Waratah Shareholders"), Waratah Warrants and Waratah Options (collectively, the "Waratah Securityholders") have been called for January 14, 2002. At each of the Transition Meeting and the Waratah Meeting, the Transition Shareholders and the Waratah Securityholders, as applicable, will be asked to consider, and if deemed advisable, to approve the Arrangement;

(m) pursuant to the Arrangement, the Waratah Shareholders will receive Transition Common Shares on the basis of 0.83333 of a Transition Common Share for each Waratah Common Share held (the "Exchange Ratio");

(n) Newco is a corporation incorporated under the CBCA and was incorporated for the purpose of facilitating the Arrangement;

(o) the following steps will occur in the following order as part of the Arrangement effective as of the date of the certificate giving effect to the Arrangement (the "Effective Date"):

(i) Newco and Waratah will be amalgamated in accordance with the provisions of the CBCA to form a continuing corporation ("Amalco");

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- (ii) Pursuant to the amalgamation, all Waratah Shareholders (other than dissenting shareholders) will receive Transition Common Shares on the basis of the Exchange Ratio and all outstanding Waratah Common Shares and authorized and unissued shares of Waratah shall be cancelled;
- (iii) each of the then outstanding Waratah Warrants will be cancelled and replaced with warrants of Amalco ("Amalco Warrants") on a one-for-one basis, provided, however, that on exercise of Amalco Warrants, the warrantholder will be issued Transition Common Shares. The number of Transition Common Shares shall be determined by multiplying the number of shares of Amalco subject to such Amalco Warrant by the Exchange Ratio. The Amalco Warrants issued to Waratah warrantholders will otherwise have the same terms as the Waratah Warrants cancelled pursuant to the Arrangement, including the exercise price, exercisability, expiry and all other terms and conditions of such Waratah Warrants; and
- (iv) each of the then outstanding Waratah Options will be cancelled and replaced with options of Amalco ("Amalco Options") on a one-for-one basis, provided, however, that on exercise of Amalco Options, the optionholder will be issued Transition Common Shares. The number of Transition Common Shares shall be determined by multiplying the number of shares of Amalco subject to such Amalco Option by the Exchange Ratio. The Amalco Options issued to Waratah optionholders will otherwise have the same terms as the Waratah Options cancelled pursuant to the Arrangement, including the exercise price, exercisability, expiry and all other terms and conditions of such Waratah Options.
- (p) following the Effective Date, Transition will issue such Transition Common Shares as are required to be issued pursuant to the exercise of Amalco Options and will issue such Transition Common Shares as are required to be issued pursuant to the exercise of Amalco Warrants (such issuances are referred to as the "Trades"), for which Trades exemptions from the Registration and Prospectus Requirements are not available in all of the Jurisdictions;
- (q) the foregoing structure of the Arrangement was driven in part by certain United States income tax and securities law considerations;
- (r) the Arrangement requires final approval by the Court of Queen's Bench of Alberta (the "Alberta Court");
- (s) on December 13, 2001, the Alberta Court granted an interim order providing for, among other things, the calling and holding of the Waratah Meeting;
- (t) the Arrangement is a related party transaction (as defined in Ontario Securities Commission Rule 61-501 ("Rule 61-501") and Policy Q-27 of the Commission des valeurs mobilières du Québec ("Policy Q-27")) with respect to Transition;
- (u) the Arrangement must be approved by at least two-thirds of the votes cast at the Waratah Meeting and by a majority of votes cast by Transition Shareholders other than votes cast by any Related Party in accordance with the requirements of Rule 61-501 and Policy Q-27, at the Transition Meeting;
- (v) a joint management information circular (the "Joint Circular") has been delivered to the Transition Shareholders and the Waratah Securityholders in connection with the Meeting, which contains among other things, prospectus level disclosure of the business and affairs of each of Waratah and Transition, the particulars of the Arrangement as well as formal valuations as defined in Rule 61-501 and Policy Q-27, and opinions of independent financial advisors for each

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of Transition and Waratah. The Joint Circular has been filed on SEDAR in each of the Jurisdictions;

(w) each Waratah Shareholder will be entitled to dissent from the Arrangement under section 190 of the CBCA and to be paid the fair value of such holder's Waratah Common Shares subject to certain conditions described in the Joint Circular;

(x) it is anticipated that the Arrangement will become effective on or about January 15, 2002, after the requisite court and shareholder approvals have been obtained and all other conditions to the Arrangement have been satisfied or waived;

AND WHEREAS under the System, this MRRS Decision Document evidences the decisions of each Decision Maker (collectively, the "Decision");

AND WHEREAS 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 Trades are not subject to the Registration and Prospectus Requirements of the Legislation: (i) if, in respect of each Trade, no commission or other remuneration is paid or given to others for the Trade except for administrative or professional services or for services performed by a registered dealer; (ii) provided that the first trade in Transition Common Shares acquired pursuant to this Decision will be a distribution or primary distribution to the public unless the conditions in subsections (3), (4) or (5) of section 2.6 of MI 45-102 are satisfied and; (iii) for the purposes of determining the period of time that Transition has been a reporting issuer under section 2.6 of MI 45-102, the period of time that Waratah was a reporting issuer immediately before the Arrangement may be included.

DATED January 15, 2002.

R. Stephen Paddon

H. Lorne Morphy