

2004 BCSECCOM 468

Headnote

Relief from registration and prospectus requirements for trades by an unlisted issuer to members of its scientific advisory board; first trade of securities subject to certain conditions

Exemption Order

OncoGenex Technologies Inc.

Sections 48 and 76 of the *Securities Act*, R.S.B.C. 1996, c. 418

Background

- ¶ 1 OncoGenex applied for an exemption from the requirements to be registered to trade and to file and obtain receipts for a preliminary prospectus and prospectus in sections 34(1)(a) and 61 of the Act (the registration and prospectus requirements) for certain intended trades of its securities to members of its scientific advisory board.

Representations

- ¶ 2 OncoGenex represents that:
1. it was incorporated under the *Canada Business Corporations Act*, is not a reporting issuer under the Act and is not in default of any requirement of the Act or the *Securities Rules*, B.C. Reg. 194/97;
 2. the shares of OncoGenex are not publicly traded;
 3. OncoGenex is in the business of developing targeted therapeutics for cancer;
 4. OncoGenex grants options to its directors, officers, and employees and other persons who provide a service of value to OncoGenex and contribute to the success of OncoGenex;
 5. OncoGenex has formed a scientific advisory board comprised of consultants (the Scientific Advisors), who:
 - (a) are not directors, officers or employees of OncoGenex and are not affiliated, associated or related in any other way to OncoGenex;

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- (b) will provide ongoing consulting services to OncoGenex under a written contract;
 - (c) will provide guidance to enable OncoGenex's technology to reach its full clinical and commercial potential;
 - (d) possess medical, technical and scientific experience and expertise in therapeutic or research fields that are related to OncoGenex's technology; and
 - (e) have knowledge of the business and affairs of OncoGenex equivalent to that held by certain directors, officers and employees of OncoGenex;
6. the scientific advisory board meets a minimum of two times each year as a whole, and in subcommittees as needed on an ongoing basis through the year;
 7. the Scientific Advisors are not consultants as defined under Multilateral Instrument 45-105 *Trades to Employees, Senior Officers, Directors and Consultants* because they do not spend a significant amount of time and attention on the business and affairs of OncoGenex or an affiliate of OncoGenex, but are consulted by OncoGenex as needed on an ongoing basis in areas of their expertise;
 8. the Scientific Advisors are recruited for their particular expertise and reputation;
 9. the Scientific Advisors may not have a previous personal or business relationship with the management of OncoGenex to qualify them as close personal friends or close business associates for the purposes of Multilateral Instrument 45-103 *Capital Raising Exemptions*;
 10. OncoGenex proposes to grant incentive stock options to Scientific Advisors, which options
 - (a) are not repayment or partial repayment of a debt owed to the Scientific Advisors; and
 - (b) are non-transferable and non-assignable (except on death);
 11. the Scientific Advisors' participation in the trade is voluntary, and they will not be induced to acquire common shares on the exercise of the options by expectation of continued membership on the scientific advisory board or employment with OncoGenex.

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Order

¶ 3 Because it is not prejudicial to the public interest the Executive Director orders:

1. under sections 48 and 76 of the Act, that the intended trades of options by OncoGenex to the Scientific Advisors are exempt from the registration and prospectus requirements provided that:
 - (a) OncoGenex provides each Scientific Advisor with a copy of this order; and
 - (b) the first trade of a security acquired under this order shall be a distribution unless such first trade complies with section 2.6 of Multilateral Instrument 45-102 (MI 45-102); and
2. under section 48 of the Act, that the registration requirement does not apply to the first trade of a security that was acquired under this order or on the exercise of an option issued in reliance on this order if the conditions in section 2.14 MI 45-102 are satisfied.

¶ 4 August 9, 2004

Susan Toews
Acting Manager