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January 13, 2009

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Takeover Bids - Exemption from the proportionate take-up requirements sections 2.26 and 6.1 of MI 62-104 and section 97.2(1) of the *Securities Act* (Ontario) - Dutch auction - An issuer conducting an issuer bid under a modified Dutch auction procedure requires relief from the requirement to take up and pay for securities deposited on a pro rata basis and the associated disclosure requirement - The issuer is disclosing the maximum number of shares it will acquire under the bid, and the minimum and maximum amount it will pay for shares tendered; as a result, the potential for confusion is minimal

Applicable British Columbia Provisions

Multilateral Instrument 62-104, s.2.26 and 6.1
Form 62-102F2 – Item 2 and 8

In the Matter of
the Securities Legislation of
British Columbia and Ontario
(the Jurisdictions)

and

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

and

In the Matter of
QLT Inc.
(the Filer)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (collectively, the Decision Makers) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation)

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that, in connection with the proposed offer to purchase (the Offer) by the Filer of a portion of its issued and outstanding common shares (the Shares) under an issuer bid (the Bid), the Filer be exempt from the requirements in the Legislation:

- (a) to take up and pay for such securities proportionately according to the number of securities deposited by each security holder (the Proportionate Take Up Requirements);
- (b) to provide disclosure in the Bid circular (the Circular) of such proportionate take-up and payment; and
- (c) that the Bid not be extended by the Filer, where all of the terms and conditions of the Bid have been complied with or waived, unless the Filer first takes up all securities deposited under the Bid and not withdrawn (the Extension Take Up Requirements)

(collectively, the Exemption Sought).

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

- (a) the British Columbia Securities Commission is the principal regulator for this application;
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador; and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario pursuant to Section 104(2)(c) of the OSA.

Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:

1. the Filer is incorporated under the *Business Corporations Act* (British Columbia) with its head office in Vancouver, British Columbia;

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2. the Filer is authorized to issue 500,000,000 Shares and 5,000,000 first preference shares; as of November 28, 2008, the Filer had 74,620,328 Shares (the Outstanding Shares) and no first preference shares issued and outstanding;
3. the Shares trade on the Toronto Stock Exchange (TSX) under the trading symbol "QLT" and on NASDAQ under the traders symbol "QLTI";
4. the Filer is a reporting issuer in each of the Provinces of Canada and to its knowledge is not in default of any requirement of the securities legislation of any of the jurisdictions where it is a reporting issuer;
5. the Offer is subject to Rule 13e-4 adopted under the *United States Securities Exchange Act of 1934*, as amended (the 1934 Act) and is not exempt from the 1934 Act;
6. to the knowledge of the Filer and based on publicly available information, the only Shareholder that currently holds greater than 10% of the Shares is Mackenzie Financial Corporation, which holds approximately 12.7% of the Outstanding Shares; as of January 12, 2009, Mackenzie Financial Corporation has not advised the Filer whether it intends to tender any Shares under the Offer;
7. the Filer intends to acquire pursuant to the Bid US\$50 million of Shares (the Maximum Number of Shares) and anticipates using cash on hand to acquire Shares tendered pursuant to the Bid; the Filer has specified the price range, which is US\$2.20 to US\$2.50 (the Price Range) per Share, within which it is willing to repurchase such Shares; if the Bid is fully subscribed at the lowest price within the Price Range, 22.7 million Shares will be repurchased, representing approximately 30% of the Outstanding Shares; if the Bid is fully subscribed at the highest price within the Price Range, 20.0 million Shares will be repurchased, representing approximately 27% of the Outstanding Shares;
8. the Offer will be made pursuant to a modified "Dutch Auction" procedure as follows:
 - (a) the Circular specifies that the Filer intends to purchase \$US50 million of Shares;
 - (b) the Circular specifies the Price Range of US\$2.20 to US\$2.50;
 - (c) Shareholders wishing to tender to the Bid are able to specify the lowest price within the Price Range at which they are willing to sell all or a portion of their Shares (an Auction Tender);

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- (d) Shareholders willing to tender to the Bid, but who do not wish to make an Auction Tender may elect to tender such Shares at the Purchase Price (as defined below) determined in accordance with paragraph (e) below (a Purchase Price Tender);
- (e) the purchase price of the Shares tendered pursuant to the Bid will be the lowest price that will enable the Filer to purchase the Maximum Number of Shares (the Purchase Price), and will be determined based upon the number of Shares tendered pursuant to an Auction Tender at each price within the Price Range and tendered pursuant to a Purchase Price Tender, with each Purchase Price Tender being considered a tender at the lowest price in the Price Range for the purposes of calculating the Purchase Price;
- (f) the aggregate amount that the Filer will pay for Shares tendered pursuant to the Bid will not be determined until the Purchase Price is established, provided that the maximum aggregate amount that the Filer will pay for the Shares will not exceed US\$50 million;
- (g) all Shares tendered at or below the Purchase Price pursuant to an Auction Tender and all Shares tendered pursuant to a Purchase Price Tender will be taken up and paid for at the Purchase Price (calculated to the nearest whole Share, so as to avoid the creation of fractional Shares), subject to prorating in the event that the aggregate number of Shares tendered at or below the Purchase Price pursuant to Auction Tenders and the number of Shares tendered pursuant to Purchase Price Tenders exceeds the maximum number of Shares to be purchased as contemplated in paragraph (l) below;
- (h) all Shares tendered at prices above the Purchase Price will be returned to the appropriate Shareholders;
- (i) all Shares tendered by Shareholders who specify a tender price for such Shares that is outside the Price Range, or which are otherwise not properly deposited in accordance with the terms of the Offer, will be considered to have been improperly tendered, will be excluded from the determination of the Purchase Price, will not be purchased by the Filer and will be returned to such Shareholders;
- (j) Shareholders may also tender Shares subject to the condition that a minimum number of the Shares tendered, as specified by the Shareholder, must be purchased if any of such Shareholder's Shares are purchased (a Conditional Tender);

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- (k) as disclosed by the Filer in the Circular, the Filer made the Conditional Tender alternative available for those Shareholders seeking to take steps to have Shares sold under the Offer treated as a sale of such Shares by the Shareholder, rather than as a payment of a dividend to the Shareholder, for U.S. federal income tax purposes;
 - (l) if more than \$US50 million of Shares are properly tendered at the Purchase Price, it is the intention of the Filer that it will purchase Shares in the following order of priority: (i) Shares of Shareholders who beneficially hold fewer than 100 Shares (Odd Lots) and deposit all such Shares; (ii) all other Shares on a pro rata basis; and (iii) only if necessary to permit the purchase of the Maximum Number of Shares, Shares tendered as a Conditional Tender for which the condition was not initially satisfied; in selecting among such Conditional Tenders, the Filer's depository will select by random lot the tenders to be accepted and will limit its purchase of such Shares to the minimum number of Shares specified by the Shareholder; and
 - (m) in the event the Shares validly tendered to the Bid and not withdrawn are less than the Maximum Number of Shares, the Filer may extend the Bid;
9. if the Shares validly tendered to the Bid and not withdrawn are less than the Maximum Number of Shares and all of the terms and conditions thereof have been complied with, except those waived by the Filer, and the Filer were to subsequently extend the Bid, the Extension Take Up Requirements would require the Filer to take up and pay for all Shares properly deposited and not withdrawn under the Bid, whereas Rule 13e-4 of the 1934 Act prohibits the Filer from taking up Shares deposited and not withdrawn if the Bid is extended in such circumstances; in an issuer self tender, all shares must be taken up concurrently;
10. prior to the expiry of the Bid, all information regarding the number of Shares tendered and the prices at which such Shares are tendered will be kept confidential, and the Filer's depository for the Bid will be directed by the Filer to maintain such confidentiality until the Purchase Price has been determined;
11. the Legislation provides an exemption for Auction Tenders and Purchase Price Tenders as the Proportionate Take Up Requirements do not apply to Shares deposited under the Bid by Shareholders who:
- (a) are entitled to elect a minimum price per Share, within a range of prices, at which they are willing to sell their Shares under the Bid; and

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- (b) elect a minimum price which is higher than the Purchase Price;
- 12. the Legislation does not provide an exemption for Conditional Tenders; under a Conditional Tender a Shareholder could tender its Shares at a price which is lower than the Purchase Price and not have such Shares taken up; under the Offer, Conditional Tenders will only be considered after Auction Tenders and Purchase Price Tenders; given that such Shares would be tendered on the condition that a minimum number of such Shares be taken up, if the Filer has already purchased the Maximum Number of Shares, such Shareholder's Shares would not be taken up, despite being tendered at a price lower than the Purchase Price;
- 13. the Filer is making the Conditional Tender alternative available primarily for Shareholders in the United States seeking to have Shares sold treated as a sale of such Shares rather than as a payment of a dividend for United States federal income tax purposes;
- 14. there is a "liquid market" in the Shares, as defined in Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (MI 61-101), because:
 - (a) there is a published market for the Shares, namely the TSX and NASDAQ;
 - (b) during the 12 months before December 1, 2008:
 - (i) the number of outstanding Shares was at all times at least 5,000,000, excluding Shares beneficially owned, or over which control or direction was exercised, by related parties and Shares that were not freely tradeable;
 - (ii) the aggregate trading volume of the Shares on the NASDAQ, being the published market on which the Shares are principally traded, was at least 1,000,000 Shares;
 - (iii) there were at least 1,000 trades in the Shares on the NASDAQ; and
 - (iv) the aggregate value of the trades in the Shares on the NASDAQ was at least \$15,000,000;
- 15. the market value of the Shares on the NASDAQ, was at least \$75,000,000 for November 2008;

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16. the Filer has determined that a liquid market for its Shares exists and it is reasonable to conclude that, following the completion of the Bid, there will be a market for holders of the securities who do not tender to the Offer that is not materially less liquid than the market that existed at the time of the making of the Offer;
17. the Filer intends to rely upon the exemptions from the formal valuation requirements in MI 61-101 in connection with the Bid (the Liquid Market Exemption);
18. the Circular:
 - (a) discloses the mechanics for the take up of and payment for, or the return of, Shares as described in representation 8 above;
 - (b) explains that, by tendering the Shares at the lowest price in the Price Range, a Shareholder can reasonably expect that the Shares so tendered will be purchased at the Purchase Price, subject to proration as described in representation 8 above;
 - (c) discloses the fact that the Filer has applied for an exemption from the Proportionate Take Up Requirements and the Extension Take Up Requirements;
 - (d) discloses the facts supporting the Filer's reliance on the Liquid Market Exemption; and
 - (e) except to the extent exemptive relief is granted by this decision, contains the disclosure prescribed by the Legislation for issuer bids.

Decision

- ¶ 4 Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted provided that:

1. Shares deposited under the Offer and not withdrawn are taken up and paid for, or returned to Shareholders, in a manner described in representation 8 above;
2. the Filer can rely on the Liquid Market Exemption and complies with representation 18, inclusive; and

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3. the Filer complies with the requirements of the 1934 Act in respect of the conduct of the Offer.

Andrew S. Richardson, CA
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