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March 1, 2010

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions – Securities Act*, s. 48 - exemption from registration requirement - A lender under an equity line of credit wants relief from the requirement to register as an underwriter - The lender will not solicit any offers to purchase the securities it acquires from the issuer and will resell any securities through an exchange, using a registered dealer unaffiliated with the issuer or the lender

Securities Act, s. 84 – exemption from prospectus delivery requirement – A lender under an equity line of credit wants relief from the requirement to deliver a prospectus - The issuer will file a supplement to its base shelf prospectus describing the terms of the equity purchase agreement; the issuer will issue a news release upon entering into the equity purchase agreement and file the agreement on SEDAR; the news release will indicate that the shelf prospectus and supplement have been filed and will specify where and how purchasers may obtain a copy

National Instrument 44-101, s. 8.1 - exemption from short form prospectus form requirements - Disclosure – An issuer wants relief from the requirement to include in the prospectus a statement of purchasers’ statutory rights in the prescribed form - The issuer is distributing securities to purchasers on the TSX through a lender under an equity line of credit; the purchasers will have all statutory rights except those rights triggered by delivery of the prospectus; the issuer will provide an amended statement of rights in the prospectus so that the prospectus properly describes applicable rights and purchasers are not misled

National Instrument 44-102, s. 11.1 – exemption from shelf prospectus form requirements - An issuer wants relief from the requirement to include certain disclosure in the base shelf prospectus - The issuer is distributing securities to purchasers on the TSX through a lender under an equity line of credit; the purchasers will have all statutory rights except those rights triggered by delivery of the prospectus; the issuer will include in its base shelf prospectus all disclosure required under s. 5.5 but will eliminate or modify statements that specifically refer to delivery of the prospectus

Securities Act, s. 169 – confidentiality - An applicant wants to keep an application and order confidential for a limited amount of time after the order is granted - The record provides intimate financial, personal or other information; the disclosure of the information before a specific transaction would be detrimental to the person affected; the information will be made available after a specific date

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Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34, 48, 83, 84 and 169

NI 44-101, s. 8.1

Form 44-101F1

NI 44-102, ss. 5.5 and 11.1

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
Allon Therapeutics Inc. (Allon or the Company),
Ya Global Master Spv Ltd. (the Purchaser) and Yorkville Advisors, LLC
(the Purchaser Manager and, together with the Company and the Purchaser, the
Filers)

Decision

Background

¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (each a Decision Maker) has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the Legislation) that:

- (a) the following disclosure requirements under the Legislation (the Prospectus Disclosure Requirements) do not fully apply to the Company in connection with the Distributions (as defined below):
 - (i) the statement respecting statutory rights of withdrawal and rescission in the form prescribed by item 20 of Form 44-101F1 of National Instrument 44-101-*Short Form Prospectus Distributions* (NI 44-101),
and

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- (ii) the statements required by Subsections 5.5(2) and (3) of National Instrument 44-102-*Shelf Distributions* (NI 44-102);
- (b) the prohibition from acting as a dealer unless the person is registered as such (the Dealer Registration Requirement) does not apply to the Purchaser and the Purchaser Manager in connection with the Distributions; and
- (c) the requirement that a dealer send a copy of the prospectus to a subscriber or purchaser in the context of a distribution (the Prospectus Delivery Requirement) does not apply to the Purchaser, the Purchaser Manager or the dealer(s) through whom the Purchaser distributes the Shares (as defined below) and, as a result, rights of withdrawal or rights of rescission, price revision, or damages for non-delivery of the Prospectus do not apply in connection with the Distributions.

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 Filers have 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, 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.

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 Filers:

The Company

1. Allon is incorporated under the laws of Canada and has its head office located at Suite 506 – 1168 Hamilton Street, Vancouver, BC, V6B 2S2;
2. Allon is a clinical stage biotechnology company focused on developing the first drugs that impact the progression of neurodegenerative diseases;

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3. Allon is a reporting issuer in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador (the Provinces) and is not in default of securities legislation in the Provinces;
4. Allon's authorized share capital currently consists of an unlimited number of common shares (the Shares), without par value, and an unlimited number of preferred shares, without par value and issuable in series, of which 78,066,666 Shares and no preferred shares were outstanding as at January 11, 2010;
5. the Shares are listed for trading on the Toronto Stock Exchange (the TSX); based on the closing price of \$0.37 of the Shares on the TSX on January 12, 2010, the current market capitalization of Allon is approximately \$28,884,666 million;
6. Allon is qualified to file a short form prospectus under section 2.2 of NI 44-101 and therefore to file a base shelf prospectus under NI 44-102;
7. Allon intends to file with the securities regulators in each of the Provinces a base shelf prospectus pertaining to various securities of the Company, including the Shares (the base shelf prospectus including any amendment or renewal, is referred to as the Base Shelf Prospectus);
8. the statements in subsections 5.5(2) and (3) of NI 44-102 included in the Base Shelf Prospectus will be qualified by adding the following: “, except in cases where an exemption from such delivery requirements has been obtained.” (the Additional Disclosure);

The Purchaser

9. The Purchaser is an exempt company with limited liability incorporated in the Cayman Islands;
10. the Purchaser is managed by the Purchaser Manager, a Delaware limited liability company, having its head office at 101 Hudson Street, Suite 3700 in Jersey City, New Jersey, USA;
11. neither the Purchaser nor the Purchaser Manager is a reporting issuer or a “registered firm” as defined in National Instrument 31-103 *Registration Requirements and Exemptions* in any jurisdiction of Canada; the Purchaser and the Purchaser Manager are not in default of securities legislation in any jurisdiction of Canada;

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The Distribution Agreement

12. Allon proposes to enter into a standby equity distribution agreement with the Purchaser (the Distribution Agreement) under which the Purchaser would agree to purchase, and the Company would have the right but not the obligation to issue and sell, up to C\$10 million of Shares (the Aggregate Commitment Amount) over a period of 36 months in a series of drawdowns;
13. under the Distribution Agreement, the Company has the sole ability to determine the timing and the amount of the investment for each drawdown, subject to a maximum investment amount per drawdown and the Aggregate Commitment Amount;
14. the purchase price per Share and the number of Shares to be issued to the Purchaser for each drawdown will be calculated based on a predetermined percentage discount from the average daily price of the Shares traded on the TSX over a period of five trading days following a drawdown notice sent by the Company (the Drawdown Pricing Period); Allon may fix in such drawdown notice a minimum purchase price below which it will not issue any Shares for any given trading day;
15. on the sixth trading day following the date of the drawdown notice (the Settlement Date), the Purchaser will pay the amount of the drawdown and the Company will issue the relevant number of Shares;
16. the Distribution Agreement will provide that, at the time of each drawdown notice and at each Settlement Date, the Company will make a representation to the Purchaser that the Base Shelf Prospectus, as supplemented (the Prospectus), contains full, true and plain disclosure of all material facts relating to the Company and the Shares being distributed; the Company would therefore be unable to issue Shares when it is in possession of undisclosed information that would constitute a material fact or a material change;
17. on or after the Settlement Date for any drawdown, the Purchaser may seek to sell all or a portion of the Shares purchased under the drawdown;
18. the Purchaser, its affiliates, associates, partners or insiders, will agree not to own at any time, directly or indirectly, more than 9.9% of the issued and outstanding Shares;
19. after receipt of a drawdown notice, the Purchaser may seek to sell Shares purchased under the drawdown, or engage in hedging strategies, in order to reduce the economic risk associated with the purchase of securities of the Company; under the Distribution Agreement, the Purchaser, its affiliates,

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associates, partners, and insiders, will agree not to hold a net short position in Shares during the term of the Distribution Agreement; accordingly, the Purchaser may sell Shares to hedge their obligation to purchase Shares under a drawdown notice provided that:

- (a) the Purchaser complies with applicable TSX regulations and securities legislation; and
 - (b) the Purchaser will not during a drawdown pricing period, together with any affiliate, associate, or subsidiary, sell Shares for gross proceeds in aggregate exceeding the amount of the drawdown;
20. the Purchaser and the Purchaser Manager will also agree, in effecting any resale of Shares, not to engage in any sales, marketing or solicitation activities of the type undertaken by underwriters in the context of a public offering; more specifically, the Purchaser and the Purchaser Manager will not (a) advertise or otherwise hold itself out as a dealer, (b) purchase or sell securities as principal from or to customers, (c) carry a dealer inventory in securities, (d) quote a market in securities, (e) extend or arrange for the extension of credit in connection with securities transactions, (f) run a book of repurchase and reverse repurchase agreements, (g) use a carrying broker for securities transactions, (h) lend securities for customers, (i) guarantee contract performance or indemnify the Company for any loss or liability from the failure of the transaction to be successfully consummated, (j) participate in a selling group, or (k) during a Drawdown Pricing Period, together with any affiliate, associate, subsidiaries, partners or insiders, sell Shares for gross proceeds in the aggregate exceeding the amount of the drawdown;
21. the Purchaser will not solicit offers to purchase Shares and will complete all sales of Shares through one or more dealer(s) unaffiliated with the Purchaser, the Purchaser Manager or Allon;

The Prospectus Supplements

22. Allon intends to file with the securities regulator in each of the Provinces a prospectus supplement to the Base Shelf Prospectus (each a Prospectus Supplement) within two business days after the Settlement Date for each drawdown under the Distribution Agreement;
23. the Prospectus Supplement will include (i) the number of Shares sold, (ii) the price per Share, (iii) the disclosure required by subsection 9.1(3) of NI 44-102, (iv) other information required by NI 44-101 omitted from the Base Shelf Prospectus in accordance with NI 44-102, and (v) the following statement (the Amended Statement of Rights):

Securities legislation in certain of the provinces of Canada provides purchasers with the right to withdraw from an agreement to purchase securities. This right may be exercised within two business days after receipt or deemed receipt of a prospectus and any amendment. In several of the provinces, the securities legislation further provides a purchaser with remedies for rescission or, in some jurisdictions, revisions of the price or damages if the prospectus and any amendment are not delivered to the purchaser, provided that the remedies for rescission, revisions of the price or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province. However, such rights and remedies will not be available to purchasers of common shares distributed under this prospectus because the prospectus will not be delivered to purchasers, as permitted under a decision document issued by the British Columbia Securities Commission on ♦, 2010.

In several of the provinces, the securities legislation further provides a purchaser with remedies for rescission or, in some jurisdictions, revisions of the price or damages if the prospectus and any amendment contain a misrepresentation, provided that the remedies for rescission, revisions of the price or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province. Such remedies remain unaffected by the non-delivery of the prospectus, as permitted under the decision document referred to above.

The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province for the particulars of these rights or consult with a legal adviser.

24. the Base Shelf Prospectus, as supplemented by each Prospectus Supplement, will (a) qualify the distribution of Shares to the Purchaser on the Settlement Date of the drawdown disclosed in the relevant Prospectus Supplement, and (b) qualify the distribution of such Shares to purchasers who purchase them from the Purchaser through the dealer(s) engaged by the Purchaser through the TSX (the TSX Purchasers) during the period that commences on the date of issuance of a drawdown notice to the Purchaser and ends on the earlier of (i) the date on which the distribution of such Shares has ended or (ii) the 40th day following the Settlement Date (collectively, a Distribution);
25. the Prospectus Delivery Requirements are not workable in the context of a Distribution because the TSX Purchasers will not be readily identifiable as the dealer(s) acting on behalf of the Purchaser may combine the sell orders made

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under the Prospectus with other sell orders and the dealer(s) acting on behalf of the TSX Purchasers may combine a number of purchase orders;

26. the Prospectus Supplement will contain an underwriter's certificate in the form set out in Section 2.2 of Appendix B to NI 44-102 signed by the Purchaser;
27. at least three business days prior to the filing of any Prospectus Supplement, the Company will provide for comment to the Decision Makers a draft of such Prospectus Supplement;

News Releases /Continuous Disclosure

28. upon execution of the Distribution Agreement, the Company will promptly issue and file a news release disclosing the existence and purpose of the Distribution Agreement and the Aggregate Commitment Amount; the news release will disclose that the Base Shelf Prospectus and Prospectus Supplement have been filed on SEDAR and specify how TSX Purchasers can obtain a copy; within ten days after execution of the Distribution Agreement, the Company will file a copy of it and a material change report;
29. promptly after the delivery of each drawdown notice to the Purchaser, the Company will issue and file a news release disclosing the amount of the drawdown, the maximum number of Shares to be issued and the minimum price per Share, if any;
30. at each Settlement Date, the Company will promptly issue and file a news release stating: (i) the number of Shares sold and the price per Share in the relevant drawdown, (ii) that the Base Shelf Prospectus and the relevant Prospectus Supplement are available on SEDAR and how to obtain a copy of these documents, and (iii) the Amended Statement of Rights; the Company will file a material change report within ten days of the Settlement Date if the Distribution constitutes a material change under applicable securities legislation;
31. the Company will disclose, in its annual financial statements and MD&A filed on SEDAR, the number and price of Shares sold to the Purchaser under the Distribution Agreement;

Deliveries upon Request

32. the Company will deliver to the Decision Makers and to the TSX, upon request, a copy of each drawdown notice delivered by the Company to the Purchaser under the Distribution Agreement; and

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33. under the Distribution Agreement, the Purchaser will agree to make available to the Decision Makers, upon request, full particulars of trading and hedging activities by the Purchaser or the Purchaser Manager (and, if required, trading and hedging activities by their affiliates, associates, partners or insiders) in relation to securities of the Company during the term of the Distribution Agreement.

Decisions

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

The decision of the Decision Makers under the Legislation is that:

- (a) the Prospectus Disclosure Requirements do not apply to the Company in connection with the Distributions, so long as:
 - (i) the Additional Disclosure is included in the Base Shelf Prospectus;
 - (ii) the Company files Prospectus Supplements that (A) qualify the Distributions, (B) include the disclosure required by subsection 9.1(3) of NI 44-102, and (C) include the Amended Statement of Rights;
 - (iii) the Company issues the news releases described in paragraphs 28, 29 and 30 above;
 - (iv) the number of Shares distributed by the Company under one or more equity lines of credit, including the equity line of credit established under the Distribution Agreement, does not exceed:
 - (A) in any 12 month period, 10% of the aggregate number of Shares outstanding calculated at the beginning of such period, and
 - (B) during the term of the Distribution Agreement, 25% of the aggregate number of Shares outstanding calculated at the date of the Distribution Agreement; and
 - (v) the Company delivers to the Decision Makers and the TSX, upon request, a copy of each drawdown notice delivered by the Company to the Purchaser under the Distribution Agreement;
- (b) the Dealer Registration Requirement does not apply to the Purchaser or the Purchaser Manager in connection with the Distributions, so long as:

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- (i) the Purchaser and the Purchaser Manager do not solicit offers to purchase the Shares in Canada and effect each Distribution to the TSX Purchasers through the TSX using one or more dealer(s) unaffiliated with the Purchaser, the Purchaser Manager or the Company;
 - (ii) no extraordinary commission or consideration is paid by the Purchaser or the Purchaser Manager to a person or company in respect of the Distributions to the TSX Purchasers; and
 - (iii) the Purchaser and the Purchaser Manager make available to the Decision Makers, upon request, full particulars of trading and hedging activities by the Purchaser, the Purchaser Manager and their affiliates, associates, partners or insiders in relation to the securities of the Company during the term of the Distribution Agreement;
- (c) the Prospectus Delivery Requirement does not apply to the Purchaser, the Purchaser Manager or the dealer(s) through whom the Purchaser distributes the Shares and, as a result, rights of withdrawal or rights of rescission, price revision, or damages for non-delivery of the Prospectus do not apply in connection with the Distributions, so long as the conditions (i) through (iii) provided in paragraph (b) of the decision are met;
- (d) the Confidential Materials will be held in confidence by the Decision Makers until the earliest of the following:
- (i) the date on which the Company issues a news release disclosing the execution of the Distribution Agreement;
 - (ii) the date on which the Company advises the Decision Makers that there is no longer any need to hold the Confidential Materials in confidence; and
 - (iii) 90 days after the date of this decision;
- (e) this decision applies only to Distributions completed within 36 months after execution of the Distribution Agreement; and

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- (f) this decision will terminate 36 months after execution of the Distribution Agreement.

Martin Eady, CA
Director, Corporate Finance
British Columbia Securities Commission