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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief granted from the registration and prospectus requirements for trades in connection with an arrangement between a Canadian non-reporting issuer, and a US issuer reporting under the 1934 Act in the United States

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 BRITISH COLUMBIA AND
ONTARIO

AND

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

AND

IN THE MATTER OF BIOMARIN PHARMACEUTICAL INC.,
BIOMARIN HOLDINGS (NOVA SCOTIA) COMPANY,
BIOMARIN DELIVERY CANADA INC. AND SYNAPSE TECHNOLOGIES INC.

MRRS DECISION DOCUMENT

[para 1]

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia and Ontario (the “Jurisdictions”) has received an application from BioMarin Pharmaceutical Inc. (“BioMarin”), BioMarin Holdings (Nova Scotia) Company (“BioMarin Nova Scotia”), BioMarin Delivery Canada Inc. (“BioMarin Subco”) and Synapse Technologies Inc. (“Synapse”) (collectively, the “Filer”) for a decision under 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 a preliminary prospectus and a prospectus and receive receipts therefor prior to distributing a security (the “Registration and Prospectus Requirements”) shall not apply to certain trades of securities in connection with the proposed plan of arrangement (the “Arrangement”) whereby BioMarin Subco, an indirect wholly-owned subsidiary of BioMarin, will acquire all of the issued and outstanding securities of Synapse (the “Transaction”) pursuant to a second amended and restated agreement for plan of arrangement (the “Arrangement Agreement”) made as of February 4, 2002, between BioMarin, BioMarin Subco and Synapse;

[para 2]

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the British Columbia Securities Commission is the principal regulator for this application;

[para 3]

AND WHEREAS the Filer has represented to the Decision Makers that:

1. BioMarin’s principal executive office is in Novato, California;
2. BioMarin’s authorized capital is (i) 1,000,000 shares of preferred stock, par value \$0.001 per share, and (ii) 75,000,000 shares of common stock, US\$0.001 par value (the “BioMarin Common

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Shares"); as of February 15, 2002, there were no shares of preferred stock and 52,442,902 BioMarin Common Shares issued and outstanding;

3. the BioMarin Common Shares trade on the Nasdaq National Market and the SWX Swiss Exchange; BioMarin will apply, as required, to the Nasdaq National Market and the SWX Swiss Exchange to list the additional BioMarin Common Shares issuable in connection with the Transaction;

4. BioMarin is currently subject to the reporting requirements of the *United States Securities Exchange Act of 1934*, and is not a reporting issuer in any province or territory of Canada, will not become a reporting issuer by virtue of the Transaction and does not intend to become a reporting issuer in any province or territory of Canada after the completion of the Transaction;

5. BioMarin Nova Scotia is an indirect wholly-owned subsidiary of BioMarin which was incorporated under the laws of Nova Scotia on December 21, 2001; BioMarin Nova Scotia's only material asset upon completion of the Transaction will be the issued and outstanding common shares of BioMarin Subco;

6. BioMarin Subco is a direct subsidiary of BioMarin Nova Scotia and an indirect subsidiary of BioMarin and was incorporated under the laws of Canada on February 4, 2002;

7. BioMarin Subco was incorporated to acquire all of the common shares of Synapse (the "Synapse Common Shares") and all of the preferred shares, Series 1 of Synapse (the "Synapse Preferred Shares") under the Arrangement;

8. Synapse was formed to license technology from the University of British Columbia and has its principal executive office in Vancouver, British Columbia;

9. Synapse's authorized share capital is an unlimited number of Synapse Common Shares and an unlimited number of preferred shares issuable in series, of which 2,000,000 Synapse Preferred Shares are authorized; as at February 20, 2002, there were 10,849,222 Synapse Common Shares and 1,252,666 Synapse Preferred Shares outstanding; at the anticipated completion date of the Transaction (the "Effective Time"), there will be 11,177,859 Synapse Common Shares, 1,252,666 Synapse Preferred Shares, 1,000,324 vested Synapse options (the "Synapse Options") and 359,854 Synapse warrants (the "Synapse Warrants") outstanding;

10. Synapse is not a reporting issuer in any province or territory of Canada and the securities of Synapse do not trade on any stock exchange;

11. under the Arrangement Agreement, BioMarin Subco will acquire all of the outstanding Synapse Common Shares and Synapse Preferred Shares in exchange for BioMarin Common Shares and class A preferred shares of BioMarin Subco (the "Exchangeable Shares"); the Arrangement will take place under the *Canada Business Corporations Act*, in accordance with the provisions of the *Canada Business Corporations Act*, Synapse will make an application to the Supreme Court of British Columbia (the "Court") and all matters relating to the Arrangement will be subject to the orders of the Court;

12. on March 12, 2002, a special meeting (the "Meeting") of the holders of Synapse Common Shares and Synapse Preferred Shares (together, the "Shareholders") will be held in accordance with the interim order of the Court granted February 14, 2002; at the Meeting, the Shareholders will be asked, among other things, to pass a special resolution approving the Arrangement;

13. in connection with the Meeting, Synapse mailed to each Shareholder on February 18, 2002 (i) a notice of Meeting, (ii) a form of proxy, (iii) the text of the special resolution approving the

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Arrangement, and (iv) an information circular containing prospectus-level disclosure regarding the Transaction, BioMarin, each Shareholder's dissent rights, the Arrangement and the characteristics of the BioMarin Common Shares and the Exchangeable Shares;

14. under the terms of the Arrangement, at the Effective Time:

(a) each outstanding Synapse Common Share held by a Shareholder (other than Synapse Common Shares held by a Shareholder who exercises its dissent rights) will be transferred to BioMarin Subco in consideration for BioMarin Common Shares in accordance with the applicable exchange ratio and one Exchangeable Share;

(b) each outstanding Synapse Preferred Share held by a Shareholder (other than Synapse Preferred Shares held by a Shareholder who exercises its dissent rights) will be transferred to BioMarin Subco in consideration for BioMarin Common Shares in accordance with the applicable exchange ratios and one Exchangeable Share;

(c) each Synapse Option will be exchanged for an option (the "BioMarin Options") to purchase BioMarin Common Shares in accordance with the applicable exchange ratio;

(d) each Synapse Warrant will be exchanged for a warrant (the "BioMarin Warrants") to purchase BioMarin Common Shares in accordance with the applicable exchange ratio; and

(e) all of the issued and outstanding Synapse Common Shares and Synapse Preferred Shares held by BioMarin Subco will be transferred to BioMarin Pharmaceutical Delivery Nova Scotia Company, an unlimited liability company incorporated under the *Companies Act* (Nova Scotia) and an indirect wholly-owned subsidiary of BioMarin, in consideration for one Series A preferred share and a non-interest bearing demand promissory note in the amount of \$15,914,751;

15. each Exchangeable Share will be subject to redemption either automatically by BioMarin Subco, or upon the occurrence of certain triggering events, or by BioMarin Nova Scotia upon exercise of the Redemption Call Right (as hereinafter defined) over the Exchangeable Shares; the redemption price or redemption call price will be payable in cash or in BioMarin Common Shares, at BioMarin's sole discretion;

16. in connection with the Transaction, BioMarin will enter into a support agreement (the "Support Agreement") to enable or permit each of BioMarin Nova Scotia and BioMarin Subco to perform its obligations with respect to redemption of the Exchangeable Shares;

17. the Exchangeable Shares are non-voting and the holders of Exchangeable Shares are not entitled to receive any dividend payable by BioMarin Subco and are not entitled to participate in any distribution of the assets or property of BioMarin Subco;

18. the Exchangeable Shares are not exchangeable at the option of the holders, but will be redeemable by BioMarin Subco on the earlier of: (i) the date which is 10 years from the Effective Date, and (ii) the date on which the sum of the Redemption Prices (as hereinafter defined) paid by BioMarin Subco and the Redemption Call Purchase Prices (as hereinafter defined) paid by BioMarin Nova Scotia is not less than \$8,000,000 (the "Automatic Redemption Date") for an amount per share equal to \$0.0001 (the "Automatic Redemption Price"); subject to the Redemption Call Right of BioMarin Nova Scotia, BioMarin Subco will, on the date (the "Redemption Date") which is 30 days following the date of certain specified triggering events, redeem a certain specified portion of the then outstanding Exchangeable Shares for the amounts (in each case, a "Redemption Price") equal to the lesser of: (i) \$8,000,000 less the sum of all Redemption Prices and Redemption Call Purchase Prices payable by BioMarin Subco and

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BioMarin Nova Scotia, respectively, prior to such triggering events, and (ii) a specified amount corresponding to such triggering event;

19. payment of the Automatic Redemption Price or the Redemption Price, as the case may be, for such Exchangeable Shares will be made by (i) a cheque in the amount of such holder's proportionate part of the Automatic Redemption Price or the Redemption Price, as the case may be, or (ii) certificates representing that number of BioMarin Common Shares equal to the amount of the proportionate part of the Automatic Redemption Price or Redemption Price payable to such holder divided by the Current Market Price (as defined in the provisions attaching to the Exchangeable Shares) on the Automatic Redemption Date or the Redemption Date, as the case may be, registered in the name of the holder;

20. BioMarin Nova Scotia will have the overriding right (the "Redemption Call Right"), notwithstanding the proposed redemption of Exchangeable Shares by BioMarin Subco, to purchase from all of the holders of Exchangeable Shares (other than any holder of Exchangeable Shares which is an affiliate of BioMarin) to be redeemed on a Redemption Date, all of the Exchangeable Shares held by each such holder to be redeemed on such date on payment by BioMarin Nova Scotia to the holders of an amount equal to the Redemption Price (the "Redemption Call Purchase Price"); in the event of the exercise of the Redemption Call Right by BioMarin Nova Scotia, each holder will be obligated to sell all the Exchangeable Shares held by the holder to be redeemed to BioMarin Subco on such Redemption Date on payment by BioMarin Nova Scotia to such holder of the holder's proportionate part of the Redemption Call Purchase Price;

21. for the purposes of completing the purchase of Exchangeable Shares under the Redemption Call Right, BioMarin Nova Scotia will deposit with BioMarin Subco, on or before the Redemption Date at BioMarin Nova Scotia's sole election, either (i) a cheque in the amount of the Redemption Call Purchase Price, or (ii) certificates representing the aggregate number of BioMarin Common Shares equal to the total Redemption Call Purchase Price divided by the Current Market Price on the Redemption Date; such consideration will be delivered to the holder of Exchangeable Shares by BioMarin Subco on behalf of BioMarin Nova Scotia;

22. the steps under the Transaction and the attributes of the Exchangeable Shares involve or may involve a number of trades or possible trades of securities (collectively, the "Trades"); there may be no registration and prospectus exemptions available under the Legislation for certain of the Trades;

23. the fundamental investment decision to be made by a Shareholder is made at the time of the Meeting, when such holder votes in favour of the special resolution approving the Arrangement; as a result of this decision, a holder receives BioMarin Common Shares and Exchangeable Shares in exchange for its Synapse Common Shares and Synapse Preferred Shares, all subsequent exchanges are in furtherance of the holder's initial investment decision to acquire BioMarin Common Shares and Exchangeable Shares on the closing of the Transaction;

24. immediately after the Effective Time, approximately 53,328,176 BioMarin Common Shares will be issued and outstanding and will be held by approximately 2,069 stockholders; of such shares, 12,623,636 (23.7%) will be held by 41 (1.98%) Canadian residents; of the shares held by Canadian residents, 11,367,617 (90.05%) will be held by Glyko Biomedical Ltd. ("Glyko") and 364,000 (2.88%) will be held by IBEX Technologies Inc., current stockholders of BioMarin;

25. BioMarin has announced that it has signed a definitive agreement to acquire all of the issued and outstanding shares of Glyko in consideration for 11,367,617 BioMarin Common Shares to be delivered to the shareholders of Glyko; subsequent to the transaction with Glyko and following the

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Effective Time, 1,494,739 (1.98%) of the issued and outstanding BioMarin Common Shares will be held by 208 (8.61%) Canadian residents;

[para 4]

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

[para 5]

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;

[para 6]

THE DECISION of the Decision Makers under the Legislation is the Registration and Prospectus Requirements shall not apply to the Trades provided that the first trade in BioMarin Common Shares acquired under the Transaction shall be a distribution under the Legislation unless such trade is executed through the facilities of a stock exchange or market outside of Canada or to a person or Company outside Canada.

[para 7]

DATED March 19, 2002.

Brenda Leong
Director