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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from registration and prospectus requirements for certain trades in securities relating to a reorganization and subsequent financing for non-reporting issuers that are not private – reorganization approved by consent resolution and not a statutory procedure

Applicable British Columbia Provisions

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

Multilateral Instrument 45-102 *Resale of Securities*

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, ONTARIO AND THE YUKON TERRITORY

AND

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

AND

IN THE MATTER OF NEUROMED TECHNOLOGIES INC.

AND

NEUROMED PHARMACEUTICALS INC.

MRRS DECISION DOCUMENT

- ¶ 1 WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in British Columbia, Alberta, Ontario and the Yukon (the “Jurisdictions”) has received an application from NeuroMed Technologies Inc. (“NeuroMed Canada”) and NeuroMed Pharmaceuticals Inc. (“NeuroMed US”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirement 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”) do not apply to certain trades in securities relating to a reorganization and subsequent financing of NeuroMed Canada and NeuroMed US;
- ¶ 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;

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- ¶ 3 AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions*;
- ¶ 4 AND WHEREAS NeuroMed Canada and NeuroMed US have represented to the Decision Makers that:
1. NeuroMed US is incorporated under the laws of Delaware and is not a reporting issuer (or equivalent) in any jurisdiction in Canada;
 2. none of the shares of NeuroMed US are listed or posted for trading on any exchange, and transfer of its shares is restricted;
 3. the authorized capital of NeuroMed US consists of common stock and preferred stock divided into thirteen series, including series A-1, A-2, B-1, B-2, C-1 and C-2 preferred stock (collectively the “Series Preferred Stock”) and series A-1, A-2, B-1, B-2, C-1, C-2 and common special voting stock (collectively the “Special Voting Stock”);
 4. NeuroMed Canada is incorporated under the *Yukon Business Corporations Act*, and is not a reporting issuer (or equivalent) in any jurisdiction in Canada;
 5. none of the shares of NeuroMed Canada are listed or posted for trading on any exchange;
 6. NeuroMed Canada’s authorized capital is an unlimited number of:
 - (a) common shares (“NeuroMed Canada Common Shares”) of which 3,875,833 are issued and outstanding; and
 - (b) preferred shares (“NeuroMed Canada Preferred Shares”), issuable in series, of which 1,865,671 Series A-1, 1,404,493 Series A-2, 5,888,715 Series B-1 and 4,301,036 Series B-2 are issued and outstanding;
 7. prior to completing the reorganization, NeuroMed Canada will have 51 shareholders, of which nine will be employees or former employees of NeuroMed Canada or its affiliates;
 8. the reorganization will be effected by:
 - (a) amending the articles of NeuroMed Canada to create the following:
 - (i) ten New Common Shares (“New Common Shares”);

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- (ii) unlimited Common Exchangeable Shares (“Common Exchangeable Shares”);
- (iii) unlimited Class A/B Preferred Exchangeable Shares issuable in series (A-1, A2, B-1, B-2) (the “Class A/B Preferred Exchangeable Shares”);
- (iv) unlimited Class C Preferred Exchangeable Shares issuable in series (C-1, C-2) (“Class C Preferred Exchangeable Shares”);
- (v) unlimited Special Voting Shares (“Special Voting Shares”); and
- (vi) unlimited Non-Voting Preferred Shares (“Non-Voting Preferred Shares”),

(Class A/B Preferred Exchangeable Shares and Class C Preferred Exchangeable Shares are collectively the “Preferred Exchangeable Shares” and Common Exchangeable Shares and Preferred Exchangeable Shares are collectively the “Exchangeable Shares”);

- (b) changing all of the issued and outstanding NeuroMed Canada Common Shares into Common Exchangeable Shares and Special Voting Shares on the basis of one NeuroMed Canada Common Share being exchanged for 0.5602 of a Common Exchangeable Share and 0.5602 of a Special Voting Share;
 - (c) changing all of the issued and outstanding NeuroMed Canada Preferred Shares (per series) into Preferred Exchangeable Shares (of the corresponding series) and Special Voting Shares on the basis of one NeuroMed Canada Preferred Share being exchanged for 0.5602 of a Preferred Exchangeable Share and 0.5602 of a Special Voting Share; and
 - (d) deleting and cancelling the authorized and unissued NeuroMed Canada Common Shares and NeuroMed Canada Preferred Shares as classes of shares (including all series);
9. the NeuroMed Canada shareholders approved the reorganization by consent resolution, and the reorganization will not be completed by way of a statutory procedure;
10. each NeuroMed Canada Shareholder will be required to purchase from NeuroMed US, for nominal consideration, Special Voting Stock as follows:

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- (a) for each Common Exchangeable Share received under the exchange, one share of Common Special Voting Stock, and
 - (b) for each Preferred Exchangeable Share (per series) received under the exchange, one share of Special Voting Stock (of the corresponding series);
- 11. NeuroMed Canada has outstanding incentive stock options granted under one of two stock option plans (the “NeuroMed Canada Plan” and the “Affiliate Plan”) entitling Canadian and US holders, respectively, to purchase up to 1,507,050 NeuroMed Canada Common Shares;
- 12. NeuroMed Canada will amend the NeuroMed Canada Plan to provide for a joint NeuroMed US - NeuroMed Canada stock option plan (the “Joint NeuroMed US - NeuroMed Canada Plan”) under which optionees will be entitled to purchase units consisting of one Common Exchangeable Share, one Special Voting Share and one share of Common Special Voting Stock, or, if all of the Exchangeable Shares that have been issued have been redeemed or acquired by NeuroMed US, one share of common stock of NeuroMed US;
- 13. existing options governed by the NeuroMed Canada Plan will be replaced with options governed by the Joint NeuroMed US - NeuroMed Canada Plan;
- 14. NeuroMed Canada will amend the Affiliate Plan to provide for a joint NeuroMed US - NeuroMed Canada stock option plan (the “Joint NeuroMed US - NeuroMed Canada Affiliate Plan”) under which optionees will be entitled to purchase units consisting of one share of common stock of NeuroMed US and one Special Voting Share, or, if all of the Exchangeable Shares that have been issued have been redeemed or acquired by NeuroMed US, one share of common stock of NeuroMed US;
- 15. existing options governed by the Affiliate Plan will be replaced with options governed by the Joint NeuroMed US – NeuroMed Canada Affiliate Plan;
- 16. NeuroMed Canada and NeuroMed US are not affiliated as that term is defined in the Legislation;
- 17. certain investors (the “Series C Investors”) are proposing to provide up to approximately US\$32 million of additional financing to NeuroMed Canada and NeuroMed US in two separate tranches;
- 18. the Series C Investors may choose to receive units consisting of either:

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- (a) one Series C-1 Exchangeable Share, one Special Voting Share and one share of Series C-1 Special Voting Stock on the first tranche and units consisting of one Series C-2 Exchangeable Share, one Special Voting Share and one share of Series C-2 Special Voting Stock on the second tranche; or
 - (b) one share of Series C-1 Preferred Stock and one Special Voting Share on the first tranche and units consisting of one share of Series C-2 Preferred Stock and one Special Voting Share on the second tranche;
- 19. on completing the Series C Financing, NeuroMed US will purchase one New Common Share of NeuroMed Canada;
- 20. the holders of Common Exchangeable Shares will have voting rights which will be, as nearly as practicable, equivalent to the holders of shares of common stock of NeuroMed US;
- 21. the holders of Preferred Exchangeable Shares will have voting rights which will be, as nearly as practicable, equivalent to the holders of the corresponding series of Series Preferred Stock;
- 22. the holders of Common Exchangeable Shares will have economic rights which will be, as nearly as practicable, equivalent to the holders of shares of common stock of NeuroMed US;
- 23. the holders of Preferred Exchangeable Shares will have economic rights which will be, as nearly as practicable, equivalent to the holders of shares of the corresponding series of Series Preferred Stock of NeuroMed US;
- 24. NeuroMed US or a subsidiary (other than NeuroMed Canada), will have overriding call rights (“Overriding Call Rights”) to purchase up to all of the outstanding Common Exchangeable Shares and Preferred Exchangeable Shares in exchange for shares of common stock or the corresponding series of Series Preferred Stock of NeuroMed US, as applicable, using predetermined calculations (including amounts for any declared and unpaid dividends):
 - (a) on liquidation, dissolution or winding up of NeuroMed Canada;
 - (b) on exercise of a retraction right by a holder of Common Exchangeable Shares;
 - (c) on exercise of a retraction right by a holder of Preferred Exchangeable Shares;

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- (d) on exercise of a redemption right by NeuroMed Canada to redeem all the Common Exchangeable Shares; or
 - (e) on exercise of a redemption right by NeuroMed Canada to redeem all the Preferred Exchangeable Shares;
- 25. subject to the Overriding Call Rights, a holder of Common Exchangeable Shares will be entitled to receive shares of common stock of NeuroMed US from NeuroMed Canada and a holder of Preferred Exchangeable Shares will be entitled to receive shares of the corresponding series of Series Preferred Stock of NeuroMed US from NeuroMed Canada, using predetermined calculations (including amounts for any declared and unpaid dividends):
 - (a) on liquidation, dissolution or winding-up of NeuroMed Canada; or
 - (b) on exercise of the retraction right by the holder (the shares and other amounts received on retraction collectively being the “Retraction Consideration”);
- 26. subject to the Overriding Call Rights, NeuroMed Canada will be entitled to redeem all the Common Exchangeable Shares and Preferred Exchangeable Shares then outstanding at any time on the occurrence of particular events so that holders of Common Exchangeable Shares will receive shares of common stock of NeuroMed US from NeuroMed Canada and holders of Preferred Exchangeable Shares will receive shares of the corresponding series of Series Preferred Stock of NeuroMed US from NeuroMed Canada using predetermined calculations (including amounts for any declared and unpaid dividends);
- 27. NeuroMed Canada, NeuroMed US and the shareholders of the companies will enter into an exchange agreement (the “Exchange Agreement”), under which:
 - (a) each holder of Common Exchangeable Shares and Preferred Exchangeable Shares will have an exchange right (the “Optional Exchange Right”), exercisable on the insolvency of NeuroMed Canada or the failure of NeuroMed Canada to pay the Retraction Consideration to require NeuroMed US to purchase all or part of the holder’s:
 - (i) Common Exchangeable Shares in exchange for shares of common stock of NeuroMed US; and
 - (ii) Preferred Exchangeable Shares in exchange for shares of the corresponding series of Series Preferred Stock of NeuroMed,

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using predetermined calculations (including amounts for declared and unpaid dividends);

- (b) on the liquidation, dissolution or winding-up of NeuroMed US, NeuroMed US will be required to purchase all outstanding Common Exchangeable Shares and Preferred Exchangeable Shares and each holder of such shares will be required to sell such shares to NeuroMed US:
 - (i) in the case of Common Exchangeable Shares, in exchange for shares of common stock of NeuroMed US; and
 - (ii) in the case of Preferred Exchangeable Shares, in exchange for shares of the corresponding series of Series Preferred Stock of NeuroMed US,

using predetermined calculations (including amounts for declared and unpaid dividends)

(the “Automatic Exchange Right”);

28. NeuroMed Canada and NeuroMed US will enter into a support agreement (“Support Agreement”) whereby, among other things:

- (a) NeuroMed US will not declare dividends on shares of common stock or Series Preferred Stock unless NeuroMed Canada simultaneously declares equivalent dividends on the Common Exchangeable Shares or the corresponding series of Preferred Exchangeable Shares, as the case may be;
- (b) NeuroMed US will ensure that NeuroMed Canada is able to fulfill its obligations in respect of redemption and retraction rights and dissolution entitlements; and
- (c) except in certain circumstances, NeuroMed US will not undertake certain rights offerings or share capital alterations unless the same or an economically equivalent offering or alteration is undertaken by NeuroMed Canada, and vice versa;

29. there are exemptions from the Registration and Prospectus Requirements or exemption orders available for the trades to effect the reorganization;

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30. there may not be exemptions from the Registration and Prospectus Requirements for possible trades in securities relating to Common Exchangeable Shares, Preferred Exchangeable Shares and securities received under the following exchange rights:
- (a) issuing and delivering shares of common stock or Series Preferred Stock of NeuroMed US by NeuroMed US or, if applicable, trades of such shares by a subsidiary of NeuroMed US or NeuroMed Canada (and such required trades or transfers by NeuroMed US to a subsidiary and to NeuroMed Canada) and delivering such shares on:
 - (i) the liquidation, dissolution or winding-up of NeuroMed Canada;
 - (ii) the exercise of the Overriding Call Rights;
 - (iii) a holder's retraction of Common Exchangeable Shares or Preferred Exchangeable Shares;
 - (iv) the redemption of Common Exchangeable Shares or Preferred Exchangeable Shares by NeuroMed Canada; and
 - (v) the exercise of the Optional Exchange Right or the occurrence of the Automatic Exchange Right;
 - (b) the transfer of Common Exchangeable Shares or Preferred Exchangeable Shares to NeuroMed Canada on:
 - (i) the liquidation, dissolution or winding-up of NeuroMed Canada;
 - (ii) the holder's retraction of Common Exchangeable Shares or Preferred Exchangeable Shares; and
 - (iii) the redemption of Common Exchangeable Shares or Preferred Exchangeable Shares by NeuroMed Canada;
 - (c) the transfer of Common Exchangeable Shares or Preferred Exchangeable Shares by the holder to NeuroMed US (or a subsidiary of NeuroMed US) on exercise of the Overriding Call Rights;
 - (d) the transfer of Common Exchangeable Shares or Preferred Exchangeable Shares by the holder to NeuroMed US on exercise of the Optional Exchange Right or the occurrence of the Automatic Exchange Right; and

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- (e) the redemption of Special Voting Shares by NeuroMed Canada, and the redemption of shares of Special Voting Stock by NeuroMed US,

(collectively, the “Exchangeable Share Trades”);

31. the Exchange Agreement will also provide for the following options (the “Equivalency Options”):

- (a) options granted by each holder of Special Voting Stock to NeuroMed US to purchase Special Voting Stock from the holder for nominal consideration;
- (b) options granted by each holder of Special Voting Shares to NeuroMed Canada to purchase Special Voting Shares from the holder for nominal consideration; and
- (c) options granted by NeuroMed Canada to each holder of Special Voting Shares to purchase Special Voting Shares for nominal consideration,

in each case to align the number of shares of Special Voting Stock or Special Voting Shares held with the number of shares of common stock of NeuroMed US that the holder would hold if all of the Exchangeable Shares of NeuroMed Canada and Series Preferred Stock of NeuroMed US held by such holder were exchanged or converted into shares of common stock of NeuroMed US;

32. as a result of the exchangeable share structure, discretionary relief may be necessary for:

- (a) the granting of options under the Joint NeuroMed US - NeuroMed Canada Plan to purchase Common Special Voting Stock of NeuroMed US;
- (b) the granting of options under the Joint NeuroMed US - NeuroMed Canada Affiliate Plan to purchase Special Voting Shares of NeuroMed Canada; and
- (c) the granting of the Equivalency Options,

(the “Option Trades”);

¶ 5 AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);

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- ¶ 6 AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation provides the Decision Maker with the jurisdiction to make the Decision has been met;
- ¶ 7 THE DECISION of the Decision Maker under the Legislation is that the Registration and Prospectus Requirements do not apply to the Exchangeable Share Trades and the Option Trades, provided that the first trade of a security acquired under this Decision shall be a distribution unless:
- (a) such first trade if made by a director, senior officer, employee, consultant or scientific advisory board member of NeuroMed Canada or an affiliate of NeuroMed Canada complies with section 2.6 of Multilateral Instrument 45-102 (“MI 45-102”);
 - (b) such first trade, in any other case, complies with section 2.5 of MI 45-102; or
 - (c) if at the distribution, NeuroMed US is not a reporting issuer in any jurisdiction in Canada, the first trade is made through an exchange or a market outside Canada, or to a person or company outside of Canada, provided that at the time of such trade, holders of shares of common stock of NeuroMed US (together with holders of Exchangeable Shares and shares of Series Preferred Stock considered to be holders of shares of common stock of NeuroMed US) who are residents of Canada, do not own, directly or indirectly, more than 10% of the shares of common stock of NeuroMed US and represent in number, not more than 10% of the total number of owners, directly or indirectly, of common stock of NeuroMed US.
- ¶ 8 October 29, 2003

Brenda Leong
Director