

2007 BCSECCOM 70

Headnote

BC Business Corporations Act s. 91(3) -Trust Indenture Exemptions - An issuer is issuing debentures under a trust indenture and wants an exemption from the trust indenture requirements contained in sections 90 to 101 of the *Business Corporations Act* - A prospectus, securities exchange issuer circular, or take over bid circular has been filed under the *Securities Act* in respect of the debentures; the filer is not distributing securities under MJDS in Canada; the trust indenture will be governed by the *Trust Indenture Act of 1939* of the United States, which contains provisions that are substantially similar to the requirements of the Act; the trustee has filed a Submission to Jurisdiction and Appointment of Agent of Process in the form similar to that under the MJDS rule (i.e. Form 71-101F1)

Exemption Order

Angiotech Pharmaceuticals, Inc.

Subsection 91(3) of the *Business Corporations Act*, R.S.B.C. 2002, c. 57

Background

- ¶ 1 Angiotech Pharmaceuticals, Inc. applied for an order under subsection 91(3) of the *Business Corporations Act* (the Act) exempting the trust indenture (the Indenture) dated as of December 11, 2006, as amended or supplemented, between Angiotech, certain subsidiary guarantors of Angiotech and Wells Fargo Bank, N.A., as the sole trustee (the Trustee), from sections 90 to 101 of the Act.

Representations

- ¶ 2 Angiotech represents that:
1. it is a corporation existing under the Act;
 2. it is a reporting issuer under the *Securities Act* (the Securities Act) and it is not in default of any requirements of the Securities Act or the *Securities Rules*, B.C. Reg. 194/97;
 3. its common shares are listed on the Toronto Stock Exchange and quoted on the NASDAQ National Market;
 4. the Trustee is a national banking association organized under the laws of the United States and is not resident in British Columbia, authorized to do business in British Columbia or authorized to carry on trust business under the

2007 BCSECCOM 70

Financial Institutions Act (British Columbia) and it is the sole trustee under the Indenture;

5. on December 11, 2006 Angiotech issued U.S.\$325,000,000 senior floating rate notes due 2013 (the Old Notes) under the Indenture;
6. at the time of issuance of the Old Notes, no prospectus, securities exchange circular or take over bid circular was filed under the Securities Act as the offering of the Old Notes in Canada was completed on an exempt basis under National Instrument 45-106 *Prospectus and Registration Exemptions* and British Columbia Instrument 72-503 *Distributions of Securities Outside of British Columbia*;
7. under the terms of the Indenture and a registration rights agreement, it is required to file a registration statement (the Registration Statement) to qualify the distribution to the public of new senior floating rate notes due 2013 (the New Notes) to be issued in exchange for the Old Notes;
8. it will meet its Registration Statement filing obligations by:
 - (a) filing a combined registration statement on Forms F-10, F-4 and S-4 with the United States *Securities Act of 1933*, as amended (the 1933 Act); and
 - (b) filing a short form prospectus under National Instrument 44-101 *Short Form Prospectus Distributions* in British Columbia, in connection with the registration statement on Forms F-10, F-4 and S-4 being filed with the U.S. Securities Exchange Commission (which short form prospectus will be filed solely in connection with the registration of securities under the 1933 Act and will not qualify any distribution of securities by prospectus in British Columbia or any other jurisdiction in Canada);
9. upon the effectiveness of the Registration Statement, the Indenture will be subject to the U.S. *Trust Indenture Act of 1939*, as amended, (the TIA) which regulates the issue of debt securities under trust indentures in the United States in a manner substantially similar to the provisions of Sections 90 to 101 of the Act;
10. currently it expects to file a preliminary registration statement and short form prospectus by no later than February 1, 2007;
11. upon the filing of the Registration Statement with the SEC and completion of the exchange offer contemplated by the Registration Statement, it will exchange the New Notes for the Old Notes; the New Notes are substantially

2007 BCSECCOM 70

identical to the Old Notes except for certain transfer restrictions and registration rights provisions relating to the Old Notes and continue to evidence the same continuing indebtedness as the Old Notes;

12. the New Notes will not be listed on any exchange;
13. any New Notes issued to a resident of Canada will be issued in compliance with applicable securities legislation relying on prospectus and registration exemptions; and
14. because the New Notes will not be distributed in any jurisdiction in Canada under National Instrument 71-101 *The Multijurisdictional Disclosure System* (NI 71-101), the exemption from sections 90 to 101 of the Act set out in Part 19 of NI 71-101 is not available to Angiotech.

Order

- ¶ 3 Because it considers that to do so is not prejudicial to the public interest, the Executive Director orders under subsection 91(3) of the Act that sections 90 to 101 of the Act do not apply to the Indenture provided that:
- (a) the Indenture complies in all material respects with the provisions of the TIA that are substantially similar to the provisions of sections 90 to 101 of the Act; and
 - (b) the Trustee, or any trustee that replaces the Trustee under the terms of the Indenture, has filed with the Commission, a submission to the non-exclusive jurisdiction of the courts and administrative tribunals of British Columbia and appointment of an agent for service of process in Canada.

¶ 4 January 29, 2007

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