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Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 48, 76 Other - Exemption from s. 34(1)(a) requirement to be registered as a dealer for a trade and s. 61 requirement to file a prospectus for a distribution other than in connection with a corporate acquisition or reorganization; business associates; debt settlements; or employee investment plans and consultants - An issuer's securities are converted into or redeemed for securities of another issuer - The investor could have acquired the underlying securities directly from the other issuer in compliance with the registration and prospectus requirements of the Securities Act at the time the investor acquired the convertible securities from the issuer

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, Alberta, Manitoba and Ontario
(the Jurisdictions)

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of
NeuroMed Technologies Inc. (NeuroMed Canada)
and NeuroMed Pharmaceuticals Inc. (NeuroMed US)
(collectively, the Filers)

MRRS Decision Document

Background

- ¶ 1 The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from the dealer registration requirement and the prospectus

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requirements of the Legislation relating to trades of certain exchangeable shares and the granting of certain related options (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications

- (a) the British Columbia Securities Commission is the principal regulator for this application, and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

- ¶ 2 Defined terms contained in National Instrument 14-101 *Definitions* have the same meanings in this decision unless they are defined in this decision.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:
- 1. NeuroMed US is incorporated under the laws of Delaware and is not a reporting issuer (or equivalent) in any jurisdiction in Canada;
 - 2. the shares of NeuroMed US are not publicly traded;
 - 3. the authorized and outstanding capital of NeuroMed US consists of common stock and preferred stock divided into thirteen series, including
 - (a) series A-1, A-2, B-1, B-2, C-1 and C-2 preferred stock (the Series Preferred Stock), and
 - (b) series A-1, A-2, B-1, B-2, C-1, C-2 and common 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. the shares of NeuroMed Canada are not publicly traded;
 - 6. NeuroMed Canada's authorized and outstanding capital consists of
 - (a) new common shares,
 - (b) common exchangeable shares,

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- (c) class A/B exchangeable preferred shares issuable in series (A-1, A-2, B-1, B-2),
 - (d) class C exchangeable preferred shares issuable in series (C-1, C-2) (with the common exchangeable shares and class A/B exchangeable preferred shares, the Exchangeable Shares)
 - (e) special voting shares, and
 - (f) non-voting preferred shares;
- 7. the Exchangeable Shares are exchangeable into corresponding shares of stock of NeuroMed US in certain circumstances;
 - 8. NeuroMed Canada and NeuroMed US are mirrored corporations such that their securityholders have equivalent voting rights in both corporations;
 - 9. NeuroMed Canada and NeuroMed US are now proposing to conduct a series D financing;
 - 10. before completing the series D financing,
 - (a) NeuroMed Canada will amend its constating documents to modify the existing share rights and to create an unlimited number of class D preferred exchangeable shares (D Exchangeable Shares), and
 - (b) NeuroMed US will amend its constating documents to modify the existing share rights and to create
 - (i) series D preferred stock, and
 - (ii) series D special voting stock;
 - 11. investors in the series D financing will have the choice of purchasing
 - (a) units consisting of one D Exchangeable Share and one special voting share from NeuroMed Canada and one share of series D special voting stock from NeuroMed US; or
 - (b) units consisting of one share of series D preferred stock from NeuroMed US and one special voting share from NeuroMed Canada;
 - 12. all of the series D investors will be accredited investors;

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13. the rights of the holders of the D Exchangeable Shares will parallel the rights of the holders of the existing Exchangeable Shares;
14. the holders of D Exchangeable Shares will have voting and economic rights which will be, as nearly as practicable, equivalent to the holders of the series D preferred stock;
15. NeuroMed US or a subsidiary (other than NeuroMed Canada), will have overriding call rights to purchase D Exchangeable Shares from the holders in exchange for series D preferred stock of NeuroMed US
 - (a) on liquidation, dissolution or winding-up of NeuroMed Canada,
 - (b) on exercise of a retraction right by a holder of D Exchangeable Shares, or
 - (c) on exercise of a redemption right by NeuroMed Canada to redeem all the D Exchangeable Shares;
16. subject to the overriding call rights of NeuroMed US or its subsidiary, a holder of D Exchangeable Shares will be entitled to receive shares of series D preferred stock of NeuroMed US from NeuroMed Canada
 - (a) on liquidation, dissolution or winding-up of NeuroMed Canada, or
 - (b) on exercise of the retraction right by the holder;
17. subject to the overriding call rights of NeuroMed US or its subsidiary, NeuroMed Canada will be entitled to redeem all of the D Exchangeable Shares then outstanding at any time on the occurrence of particular events so that holders of D Exchangeable Shares will receive series D preferred stock of NeuroMed US from NeuroMed Canada;
18. NeuroMed Canada, NeuroMed US and the shareholders of the companies will amend the existing exchange agreement among them to cover the D Exchangeable Shares as well as the existing Exchangeable Shares to provide that
 - (a) each holder of D Exchangeable Shares will have an exchange right, exercisable on the insolvency of NeuroMed Canada or the failure of NeuroMed Canada to deliver the securities and pay the amounts payable on retraction of the D Exchangeable Shares, to require NeuroMed US to purchase all or part of the holder's D Exchangeable Shares in exchange for

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series D preferred stock of NeuroMed US (the Optional Exchange Right), and

- (b) on the liquidation, dissolution or winding-up of NeuroMed US, NeuroMed US will be required to purchase all outstanding D Exchangeable Shares and each holder of D Exchangeable Shares will be required to sell their shares to NeuroMed US in exchange for Series D preferred stock of NeuroMed US (the Automatic Exchange Right);

19. NeuroMed Canada and NeuroMed US will amend the existing support agreement between them to cover the D Exchangeable Shares as well as the existing Exchangeable Shares, to provide that, among other things,

- (a) NeuroMed US will not declare dividends on series D preferred stock unless NeuroMed Canada simultaneously declares equivalent dividends on the D Exchangeable Shares,
- (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;

20. there are no exemptions from the dealer registration requirement and prospectus requirements of the Legislation for possible trades in securities relating to the D Exchangeable Shares and securities received under the following exchange rights:

- (a) trades of shares of series D preferred stock of NeuroMed US on
 - (i) the liquidation, dissolution or winding-up of NeuroMed Canada,
 - (ii) the exercise of the overriding call rights by NeuroMed US or its subsidiary,
 - (iii) a holder's retraction of D Exchangeable Shares,
 - (iv) the redemption of D Exchangeable Shares by NeuroMed Canada, and

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- (v) the exercise of the Optional Exchange Right or the occurrence of the Automatic Exchange Right,
 - (b) the transfer of D Exchangeable Shares by the holder to NeuroMed US (or a subsidiary of NeuroMed US) on exercise of the overriding call rights by NeuroMed US or its subsidiary, and
 - (c) the transfer of D Exchangeable Shares by the holder to NeuroMed US on exercise of the Optional Exchange Right or the occurrence of the Automatic Exchange Right;
21. the Exchange Agreement, as amended will also provide for the following options:
- (a) options granted by each holder of series D special voting stock to NeuroMed US to purchase series D 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 series D special voting stock of NeuroMed US or special voting shares of NeuroMed Canada held with the number of shares of common stock of NeuroMed US that the holder would hold if all of the D Exchangeable Shares of NeuroMed Canada and series D preferred stock of NeuroMed US held by the holder were exchanged or converted into common stock of NeuroMed US;
22. as a result of the exchangeable share structure, discretionary relief is necessary for the granting of the options described in representation 21(c).

Decision

- ¶ 4 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.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted in respect of the trades described in representations 20 and 21(c) provided that the first trade of a security acquired under this decision is a

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distribution or a primary distribution to the public unless the first trade complies with section 2.5 of National Instrument 45-102 (NI 45-102), subject to section 2.7 of NI 45-102, if applicable.

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