

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions – Securities Act*, s. 88 – Cease to be a reporting issuer in BC – The securities of the issuer are beneficially owned by not more than 50 persons and are not traded through any exchange or market - The issuer is not an OTC reporting issuer; the securities of the issuer are beneficially owned by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders worldwide; no securities of the issuer are traded on a market in Canada or another country; the issuer is not in default of securities legislation except it has not filed certain continuous disclosure documents

Applicable Legislative Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 88

March 7, 2025

In the Matter of
the Securities Legislation
of British Columbia and Ontario
(the Jurisdictions)

and

In the Matter of
the Process for Cease to be a Reporting Issuer Applications

and

In the Matter of
VBI Vaccines Inc.
(the Filer)

Order

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for an order under the securities legislation of the Jurisdictions (the Legislation) that the Filer has ceased to be a reporting issuer in all jurisdictions of Canada in which it is a reporting issuer (the Order Sought).

Under the Process for Cease to be a Reporting Issuer Applications (for a dual application):

- (a) the British Columbia Securities Commission is the principal regulator for this application,
- (b) the Filer has provided notice that subsection 4C.5(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) this order is the order 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 order, unless otherwise defined.

Representations

- ¶ 3 This order is based on the following facts represented by the Filer:

1. the Filer's registered and records office is located in British Columbia, Canada;
2. the Filer is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador;
3. the Filer is an issuer existing under the *Business Corporations Act* (British Columbia);
4. on July 30, 2024, the Filer initiated proceedings under the *Companies' Creditors Arrangement Act* (Canada) (the CCAA and such proceedings being the CCAA Proceedings) in the Ontario Superior Court of Justice (Commercial List) (the Court); pursuant to the CCAA Proceedings, Ernst & Young Inc. was appointed monitor of the Filer and its subsidiaries;
5. on August 20, 2024, the British Columbia Securities Commission issued a failure-to-file cease trade order (the FFCTO) as a result of the Filer's failure to file the following continuous disclosure for the interim period ended June 30, 2024 (the Required Records):
 - (a) interim financial statements;
 - (b) the related management's discussion and analysis; and
 - (c) certification of interim filings;
6. the Filer's failure to file the Required Records was a result of the financial distress that led to the Filer initiating the CCAA Proceedings;
7. on October 31, 2024, the Court granted an order under the CCAA (the Sale Approval and Vesting Order) pursuant to which, *inter alia*, the Court approved the amended and restated acquisition agreement dated effective October 24, 2024, as amended from time to time (the Acquisition Agreement) and the transactions contemplated by the Acquisition Agreement (collectively, the Transactions), including the cancellation of all existing securities in the Filer without consideration and the issuance of new equity interests in the Filer in consideration for the release by the prospective purchaser, K2 VBI Equity Trust LLC, (the Purchaser) of certain secured debt of the Filer;
8. on December 9, 2024, the British Columbia Securities Commission granted a partial revocation of the FFCTO to permit the Filer to complete the Transactions;
9. the common shares of the Filer were delisted from the Nasdaq Capital Markets on August 8, 2024 and also removed from the OTC Pink Market in the United States on January 6, 2025;

10. on January 3, 2025, the Filer completed the Transactions, which were effected in accordance with their terms and pursuant to the provisions of the Sale Approval and Vesting Order granted by the Court;
11. as a result of the Transactions, among other things, all outstanding equity interests, including shares, convertible securities, or any other rights or interests to purchase the same, of the Filer were deemed cancelled for no consideration;
12. the Purchaser was issued 1,000 shares of a new class of common shares denominated "Class A common shares" pursuant to the Transactions to become the sole securityholder of the Filer, and the Filer does not have any other securities issued and outstanding (including debt securities);
13. no securities of the Filer, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;
14. the Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*;
15. the outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;
16. the Filer is applying for an order that the Filer has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer;
17. the Filer is not in default of securities legislation in any jurisdiction, other than the defaults that led to the issuance of the FFCTO and its obligations to file on or before November 14, 2024 its interim financial statements and related management's discussion and analysis for the nine months ended September 30, 2024 as required under National Instrument 51-102 *Continuous Disclosure Obligations* and the related certificates as required under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (the Subsequent Records);
18. the Filer's failure to file the Subsequent Records was a result of financial distress;
19. the Filer has requested a full revocation of the FFCTO;
20. the Filer is not eligible to use the simplified procedure under National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications* as it is in default for failure to file the Required Records and the Subsequent Records;
21. the Filer has no current intention to seek public financing by way of an offering of securities in Canada or elsewhere or to make or maintain a market in securities of the Filer; and
22. upon the granting of the Order Sought, the Filer will no longer be a reporting issuer or the equivalent in any jurisdiction in Canada.

Order

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

The decision of the Decision Makers under the Legislation is that the Order Sought is granted.

Noreen Bent
Chief, Legal Services, Corporate Finance
British Columbia Securities Commission