

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 51-102 *Continuous Disclosure Obligations*, s. 13.1 - National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*, s. 9.2 – An issuer wants relief to send proxy-related materials to its registered and beneficial securityholders using a delivery method permitted under U.S. securities laws – The issuer is an SEC issuer; the issuer has a limited Canadian presence but does not qualify for exemptions that permit delivery methods under U.S. securities laws; the issuer will comply with notice-and-access procedures under U.S. securities laws; the issuer will provide securityholders additional information relating to the upcoming meeting and delivery and voting processes

Applicable Legislative Provisions

National Instrument 51-102 *Continuous Disclosure Obligations*, s. 13.1

National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*, s. 9.2

March 13, 2025

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

and

In the Matter of
the Process for Exemptive Relief Applications
in Multiple Jurisdictions

and

In the Matter of
Xenon Pharmaceuticals Inc.
(the Filer)

Decision

Background

¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for relief from the requirements in National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) and National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* (NI 54-101) to permit the Filer to:

- (a) send proxy-related materials to registered holders (Registered Holders) of the Filer's common shares (the Common Shares) using a notice-and-access delivery method

permitted under U.S. federal securities laws (the Registered Holder Notice-and-Access Relief); and

- (b) send proxy-related materials to beneficial holders (Beneficial Holders) of Common Shares using a notice-and-access delivery method permitted under U.S. federal securities laws (the Beneficial Holder Notice-and-Access Relief, and together with the Registered Holder Notice-and-Access Relief, the Exemption Sought).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (a) the British Columbia Securities Commission is the principal regulator for this application,
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, and
- (c) this decision is the decision 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*, MI 11-102, NI 51-102 and NI 54-101 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. the Filer is a corporation governed under the *Canada Business Corporations Act*;
2. the Filer's head office is located in British Columbia;
3. the Filer is a neuroscience-focused biopharmaceutical company;
4. the Filer is a reporting issuer in British Columbia, Alberta and Ontario and is not in default of securities legislation in any jurisdiction of Canada;
5. as at December 31, 2024, the Filer had 76,416,086 Common Shares issued and outstanding;
6. the Common Shares are listed for trading on the NASDAQ under the symbol "XENE", and the Common Shares are not listed for trading on any marketplace in Canada;
7. the Filer is an "SEC issuer" as defined in NI 51-102 and is required to comply with applicable U.S. securities laws in all respects;
8. the Filer has determined that it currently does not qualify as a "foreign private issuer" under Rule 3b-4 of the 1934 Act and is required to comply with the U.S. proxy rules applicable to U.S. domestic registrants;
9. NI 51-102 requires the Filer to deliver proxy-related materials to Registered Holders entitled to vote at a meeting of securityholders of the Filer and NI 54-101 requires the Filer to deliver proxy-related materials to intermediaries for delivery to Beneficial Holders entitled to vote at

a meeting of securityholders of the Filer that have requested materials for the meetings of the Filer;

10. the Filer is unable to use the Canadian notice-and-access procedures in section 9.1.1 of NI 51-102 and section 2.7.1 of NI 54-101 because the Canadian notice-and-access procedures and U.S. proxy rules relating to notice-and-access applicable to the Filer have irreconcilable requirements regarding proxy-related materials to be provided to securityholders;
11. section 9.1.5 of NI 51-102 and section 9.1.1(1) of NI 54-101 allow an issuer that is an SEC issuer, if certain applicable requirements are met, to send proxy-related materials to registered holders and beneficial holders of securities, respectively, using a delivery method permitted under U.S. federal securities law;
12. in accordance with section 9.1.5 of NI 51-102, a reporting issuer that is an SEC issuer can send proxy-related materials to registered holders under section 9.1 of NI 51-102 using a delivery method permitted under U.S. federal securities law, if both of the following apply:
 - (a) the SEC issuer is subject to, and complies with Rule 14a-16 (the U.S. Notice-and-Access Rules) under the 1934 Act; and
 - (b) residents of Canada do not own, directly or indirectly, outstanding voting securities carrying more than 50% of the votes for the election of directors, and none of the following apply:
 - (i) the majority of the executive officers or directors of the issuer are residents of Canada;
 - (ii) more than 50% of the consolidated assets of the issuer are located in Canada; and
 - (iii) the business of the issuer is administered principally in Canada(the Automatic Registered Holder Exemption);
13. in accordance with section 9.1.1(1) of NI 54-101, a reporting issuer that is an SEC issuer can send proxy-related materials to beneficial holders using a delivery method permitted under U.S. federal securities law if all of the following apply:
 - (a) the SEC issuer is subject to and complies with the U.S. Notice-and-Access Rules;
 - (b) the SEC issuer has arranged with each intermediary through whom the beneficial holder holds its interest in the reporting issuer's securities to have each intermediary send the proxy-related materials to the beneficial owner by implementing the procedures under Rule 14b-1 or Rule 14b-2 under the 1934 Act that relate to the procedures in the U.S. Notice-and-Access Rules; and
 - (c) residents of Canada do not own, directly or indirectly, outstanding voting securities of the issuer carrying more than 50% of the votes for the election of directors, and none of the following apply:
 - (i) the majority of the executive officers or directors of the issuer are residents of Canada;

- (ii) more than 50% of the consolidated assets of the issuer are located in Canada; and
- (iii) the business of the issuer is administered principally in Canada

(the Automatic Beneficial Holder Exemption and, together with the Automatic Registered Holder Exemption, the Automatic Exemptions);

14. the Filer is unable to rely on the Automatic Exemptions as its business is administered principally in Canada, but despite this:

- (a) approximately 98.8 % of the Filer's outstanding voting securities carrying the right to vote for the election of the Filer's directors are beneficially held, directly or indirectly, by persons that are not residents of Canada;
- (b) the Filer does not have a majority of executive officers and directors who are residents of Canada – five out of eight directors and two out of four executive officers are not residents of Canada;
- (c) approximately 91% of the Filer's assets are located outside of Canada; and
- (d) the Common Shares are listed for trading on a marketplace in the U.S. only;

15. for any meeting of holders of the Common Shares for which the Filer elects to deliver proxy-related materials by using notice-and-access (each, a Notice-and-Access Meeting), the Filer will send proxy-related materials to holders of Common Shares in compliance with the U.S. Notice-and-Access Rules;

16. the U.S. Notice-and-Access Rules allow the Filer to furnish proxy-related materials by sending Registered Holders a notice of internet availability of proxy materials (the Notice) 40 calendar days or more prior to the date of the applicable Notice-and-Access Meeting and sending the record holder, broker or respondent bank the Notice in sufficient time for the record holder, broker or respondent bank to prepare, print and send the Notice to Beneficial Holders at least 40 calendar days before the date of the Notice-and-Access Meeting, and making all proxy-related materials identified in the Notice, including the management proxy circular (the Circular), publicly accessible, free of charge, at a website address specified in the Notice;

17. the Notice will comply with the requirements of the U.S. Notice-and-Access Rules and include instructions regarding how a securityholder entitled to vote at the applicable Notice-and-Access Meeting may request a paper or e-mail copy of the proxy-related materials at no charge; the U.S. Notice-and-Access Rules permit the Filer and, in turn, the record holder, broker, or respondent bank, to send only the Notice to Beneficial Holders, provided that all applicable requirements of the U.S. Notice-and-Access Rules have been satisfied;

18. in lieu of delivering to each Registered Holder the proxy-related materials required under NI 51-102, for each Notice-and-Access Meeting the Filer will deliver by mail or electronically (if permitted by applicable law) the Notice to each Registered Holder;

19. in lieu of delivering to each Beneficial Holder the proxy-related materials required under NI 54-101, for each Notice-and-Access Meeting the Filer will deliver to Broadridge Financial

Solutions, Inc., its affiliates, successor or an equivalent provider of proxy services (collectively, Broadridge), the Notice for delivery to each Beneficial Holder; Broadridge will deliver the English only Notice to all Beneficial Holders by postage-paid mail or electronically (if permitted by applicable law); Broadridge will act as the Filer's agent for delivery purposes and the Filer will pay all of the expenses involved in printing and delivering the Notice to all requesting Beneficial Holders;

20. the Notice sent by the Filer to securityholders entitled to vote at a Notice-and-Access Meeting will include the following information:
 - (a) the date, time and location of the Notice-and-Access Meeting as well as information on how to obtain directions to be able to attend the Notice-and-Access Meeting and vote in person or to designate another person to attend, vote and act on the securityholder's behalf;
 - (b) a description of each matter to be voted on at the Notice-and-Access Meeting, including the recommendations of the board of directors of the Filer regarding those matters;
 - (c) a plain language explanation of the U.S. Notice-and-Access Rules, including that the Circular, form of proxy and voting instruction form for the Notice-and-Access Meeting have been made available online and that securityholders may request a physical copy at no charge;
 - (d) an explanation of how to obtain a physical copy of the Circular, form of proxy and voting instruction form for the Notice-and-Access Meeting;
 - (e) the website addresses for SEDAR+, EDGAR and the Filer's website where the proxy-related materials are posted;
 - (f) a reminder to review the Circular for the Notice-and-Access Meeting before voting;
 - (g) an explanation of the methods available for securityholders to vote at the Notice-and-Access Meeting; and
 - (h) the date by which a validly completed form of proxy or voting instruction form must be deposited in order for the securities represented by the form of proxy or voting instruction form to be voted at the Notice-and-Access Meeting or any adjournment;
21. Registered Holders and Beneficial Holders requesting the proxy-related materials will receive the same materials required to be sent to securityholders under the U.S. Notice-and-Access Rules;
22. in accordance with the U.S. proxy rules applicable to the Filer, a Beneficial Holder who wants to attend a Notice-and-Access Meeting in person will be required to obtain a proxy from their applicable intermediary;
23. for each Notice-and-Access Meeting, Broadridge will notify all Canadian intermediaries on whose behalf it or a related company acts as agent under NI 54-101 to advise them of the Filer's reliance on the U.S. Notice-and-Access Rules and this decision;

24. for each Notice-and-Access Meeting, the Filer will retain Broadridge to respond to requests for the proxy-related materials from all Beneficial Holders and retain its registrar and transfer agent (Transfer Agent, and together with Broadridge, the Agents) to respond to requests for proxy-related materials from all Registered Holders; the Notice from the Filer will direct Registered Holders and Beneficial Holders to contact the applicable Agent at a specified toll-free telephone number, by e-mail or via the internet to request a printed copy of the proxy-related materials for the Notice-and-Access Meeting; the Agents will give notice to the Filer of the receipt of requests for printed copies and the Filer will provide English-only materials to the Agents in compliance with the requirements of the U.S. Notice-and-Access Rules;
25. to comply with the U.S. Notice-and-Access Rules, the Filer will not receive any information about the Registered Holders and Beneficial Holders that contact the Agents other than the aggregate number of proxy-related material packages requested by the Registered Holders and Beneficial Holders and will reimburse the Agents for delivery requests; and
26. the Filer has consulted with the Agents in developing the mailing and voting procedures for Registered Holders and Beneficial Holders described in this decision.

Decision

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted, provided that, in respect of a Notice-and-Access Meeting, at the time the Filer sends the notification of meeting and record dates for such meeting in accordance with section 2.2 of NI 54-101, the Filer meets all of the applicable requirements of the Automatic Exemptions other than those set out in:

- (a) section 9.1.5(b)(iii) of NI 51-102, in the case of the Automatic Registered Holder Exemption, and
- (b) section 9.1.1(1)(c)(iii) of NI 54-101, in the case of the Automatic Beneficial Holder Exemption.

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