

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions –

National Instrument 51-102 Continuous Disclosure Obligations, s. 13.1 – General - A reporting issuer wants relief from all the requirements of NI 51-102 - A reporting issuer is a wholly owned subsidiary of a parent reporting issuer; the subsidiary's only outstanding securities entitle the holder to acquire cash consideration or share consideration; the outstanding securities do not qualify as "designated exchangeable securities" under section 13.3 of NI 51-102; the requested relief is on terms substantially similar to section 13.3 of NI 51-102.

National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, s. 8.6 – An issuer wants relief from the requirements in Parts 4 and 5 of NI 52-109 to file annual and interim certificates - The issuer has applied for and received an exemption from filing interim and annual financial statements.

National Instrument 55-102 System for Electronic Disclosure by Insiders (SEDI), ss. 2.1 and 6.1 – An issuer wants relief from the requirement to file an insider profile for its insiders - The issuer is an exchangeable security issuer that cannot rely on the exemption in National Instrument 51-102 Continuous Disclosure Obligations because it does not comply with all of the conditions for continuous disclosure relief in NI 51-102; as a result, its insiders cannot rely on the insider reporting exemptions in NI 51-102; the issuer has received discretionary relief from NI 51-102 requirements.

National Instrument 55-104 Insider Reporting Requirements and Exemptions, s. 10.1 -insider reporting obligations - An issuer wants relief from the requirement to file insider reports for its insiders - The issuer is an exchangeable security issuer that cannot rely on the exemption in National Instrument 51-102 Continuous Disclosure Obligations because it does not comply with all of the conditions for continuous disclosure relief in NI 51-102; as a result, its insiders cannot rely on the insider reporting exemptions in NI 51-102; the issuer has received discretionary relief from NI 51-102 requirements.

Applicable Legislative Provisions

National Instrument 51-102 *Continuous Disclosure Obligations*, s. 13.1 – all continuous disclosure requirements

National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*, s. 8.6 – certification requirements

National Instrument 55-104 *Insider Reporting Requirements and Exemptions*, s. 10.1 – insider reporting obligations

National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)*, ss. 2.1 and 6.1 – obligation to file insider profile

May 28, 2021

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
HEXO Corp.
(HEXO)

and

Zenabis Global Inc.
(Zenabis, and together with HEXO, the Filers)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the Legislation) that:
- (a) the continuous disclosure requirements under the Legislation and the requirements of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) (together, the Continuous Disclosure Requirements) do not apply to Zenabis;
 - (b) the requirements of National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (NI 52-109) (the Certification Requirements) do not apply to Zenabis; and
 - (c) the insider reporting requirements under the Legislation, the requirements of National Instrument 55-104 *Insider Reporting Requirements and Exemptions* and the requirement to file an insider profile under National Instrument 55-102 *System for Electronic Disclosure by Insiders* (together, the Insider Reporting Requirements) do not apply to any insider of Zenabis.

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 Filers have 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, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador; and
- (c) the 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* and MI 11-102 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 Filers:

Zenabis

1. Zenabis is a corporation existing under the Business Corporations Act (British Columbia) (BCBCA);
2. the authorized capital of Zenabis consists of an unlimited number of common shares of Zenabis (Zenabis Shares) and an unlimited number of Class A preferred shares of Zenabis;
3. as of April 30, 2021, there were 965,427,822 Zenabis Shares outstanding, such Zenabis Shares listed on the Toronto Stock Exchange (the TSX) under the trading symbol “ZENA”;
4. as of April 30, 2021, Zenabis had outstanding 12,777,777 warrants to purchase Zenabis Shares at an exercise price of \$2.75 with an expiry date of April 17, 2022 (the Listed Zenabis Warrants) issued pursuant to a warrant indenture between Zenabis and Computershare Trust Company of Canada (Computershare) dated April 17, 2019 (the Listed Zenabis Warrant Indenture); each Listed Zenabis Warrant is exercisable for 1.3888 Zenabis Shares; the Listed Zenabis Warrants are listed on the TSX under the trading symbol “ZENA.WT”;
5. as of April 30, 2021, Zenabis also had: (A) unlisted warrants outstanding to purchase an aggregate of 328,706,740 Zenabis Shares issued pursuant to (x) a warrant indenture between Zenabis and Computershare dated June 25, 2020 (the June 2020 Zenabis Warrant Indenture), (y) a warrant indenture between Zenabis and Computershare dated September 23, 2020 (the September 2020 Zenabis Warrant Indenture and, together with the June 2020 Zenabis Warrant Indenture, the Unlisted Zenabis Warrant Indentures), and (z) various warrant certificates issued by Zenabis to the holders thereof (collectively, the Unlisted Zenabis

Warrants and, together with the Listed Zenabis Warrants, the Zenabis Warrants); (B) options outstanding to purchase an aggregate of 51,233,765 Zenabis Shares (the Zenabis Options); (C) restricted share units (the Zenabis RSUs) and deferred share units (the Zenabis DSUs) to acquire an aggregate of 12,175,169 and 1,125,000 Zenabis Shares, respectively; and

6. as of April 30, 2021, Zenabis was a reporting issuer in each of the provinces of Canada;

HEXO

7. HEXO is a corporation existing under the Business Corporations Act (Ontario);
8. the authorized capital of HEXO consists of an unlimited number of common shares (HEXO Shares) and an unlimited number of special shares issuable in series;
9. as of April 30, 2021, there were issued and outstanding: (A) 122,465,538 HEXO Shares; (B) options to purchase an aggregate of 8,401,079 HEXO Shares; (C) warrants to purchase an aggregate of 31,754,894 HEXO Shares; and (D) restricted share units to acquire an aggregate of 533,985 HEXO Shares;
10. HEXO is a reporting issuer in each of the provinces and territories of Canada; and
11. the HEXO Shares are listed on the TSX and the New York Stock Exchange under the symbol “HEXO”;

The Plan of Arrangement

12. HEXO and Zenabis entered into a definitive agreement (the Arrangement Agreement) on February 16, 2021, which provided the terms and conditions under which HEXO would acquire all of the issued and outstanding Zenabis Shares;
13. the acquisition is being carried out by way of a court-approved plan of arrangement under the BCBCA (the Arrangement); under the Arrangement, in exchange for each Zenabis Share, HEXO will issue to shareholders of Zenabis (Zenabis Shareholders) 0.01772 of a HEXO Share (the Share Consideration), subject to the terms of the Arrangement;
14. as a result of the Arrangement, Zenabis will become a wholly-owned subsidiary of HEXO;
15. on April 7, 2021, Zenabis obtained an interim order from the Supreme Court of British Columbia (the Court) specifying certain requirements and procedures for a special meeting of the Zenabis Shareholders for the purpose of approving the Arrangement (Zenabis Meeting);
16. in connection with the Arrangement and the Zenabis Meeting and in accordance with the interim order of the Supreme Court of British Columbia, Zenabis mailed to the holders of Zenabis Shares, Zenabis Options, Zenabis RSUs and Zenabis DSUs a management information circular containing prospectus-level disclosure of the business and affairs of each

of Zenabis and HEXO and information on the Arrangement, a copy of which has been filed on SEDAR under Zenabis' profile;

17. approval of the Plan of Arrangement required at least 66 $\frac{2}{3}$ % of the votes cast by Zenabis Shareholders present in person or represented by proxy at the Zenabis Meeting having voted in favour of the Arrangement;
18. Zenabis Shareholders approved the Arrangement at the Zenabis Meeting held on May 13, 2021 as 99.7% of Zenabis Shareholders present in person or represented by proxy at the Zenabis Meeting voted in favour the Arrangement;
19. on May 18, 2021, Zenabis obtained a final court order from the Court approving the Arrangement;
20. the Arrangement is expected to be completed on or about June 1, 2021;
21. the Arrangement contemplates the occurrence of the following:
 - (a) all Zenabis Shares, other than Zenabis Shares held by Dissenting Shareholders (as defined in the Arrangement), being exchanged by the holders thereof, without any further act or formality, for the Share Consideration;
 - (b) Zenabis Shares held by Dissenting Shareholders in respect of which Dissent Rights (as defined in the Arrangement) that have been validly exercised shall be deemed to have been transferred by such Dissenting Shareholders to HEXO;
 - (c) each Zenabis Option will be deemed to be exchanged for an option (each a HEXO Replacement Option) to acquire the number of HEXO Shares equal to: (A) the number of Zenabis Shares that were issuable upon exercise of such Zenabis Options immediately prior to the Effective Time, multiplied by (B) 0.01772, rounded down to the nearest whole number of HEXO Shares, at an exercise price per HEXO Share equal to the greater of (i) the quotient determined by dividing: (X) the exercise price per Zenabis Share at which such Zenabis Option was exercisable immediately prior to the Effective Time (as defined in the Arrangement), by (Y) 0.01772, rounded up to the nearest whole cent, and (ii) such minimum amount that meets the requirements of paragraph 7(1.4)(c) of the Income Tax Act (Canada); all terms and conditions of a HEXO Replacement Option, including the term to expiry, vesting, conditions to and manner of exercising, shall be the same as the Zenabis Option for which it was exchanged, and any certificate or option agreement previously evidencing the Zenabis Option shall thereafter evidence and be deemed to evidence such HEXO Replacement Option;
 - (d) each Zenabis RSU (whether vested or unvested) will be deemed to be exchanged for a restricted share unit (each a HEXO Replacement RSU) to acquire the number of HEXO Shares equal to the product of: (A) that number of Zenabis Shares that were subject to such Zenabis RSU immediately prior to the Effective Time, multiplied by (B) 0.01772, rounded down to the nearest whole number of HEXO Shares;

- (e) each Zenabis DSU (whether vested or unvested) will be deemed to be exchanged for a deferred share unit (each a HEXO Replacement DSU) to acquire the number of HEXO Shares equal to the product of: (A) that number of Zenabis Shares that were subject to such Zenabis DSU immediately prior to the Effective Time, multiplied by (B) 0.01772, rounded down to the nearest whole number of HEXO Shares; and
 - (f) all terms and conditions of a HEXO Replacement RSU or HEXO Replacement DSU, including the term to expiry, vesting, conditions to and manner of exercising, shall be the same as the Zenabis RSU or Zenabis DSU for which it was exchanged, and any certificate or agreement previously evidencing the applicable Zenabis RSU or Zenabis DSU will thereafter evidence and be deemed to evidence such HEXO Replacement RSU or HEXO Replacement DSU; or such alternative treatment with respect thereto provided such alternative treatment (i) shall be agreed to in writing by Zenabis and HEXO and (ii) shall not be, in the aggregate and viewed as a whole, economically prejudicial to the holders of such Zenabis RSUs and/or Zenabis DSUs; and
22. upon completion of the Arrangement, the Zenabis Warrants will remain, with the exception of any Zenabis Warrants that are exercised before the Effective Time, outstanding as warrants of Zenabis that upon exercise entitle the holder thereof to receive in lieu of the number of Zenabis Shares to which such holder was theretofore entitled upon exercise of such Zenabis Warrants, the kind and aggregate number of HEXO Shares that such holder would have been entitled to be issued and receive if, immediately prior to the Effective Time, such holder had been the registered holder of the number of Zenabis Shares to which such holder was theretofore entitled upon exercise of such Zenabis Warrants;

Listing Matters

23. the TSX has conditionally approved the listing of the HEXO Shares to be issued as a result of the Arrangement and any HEXO Shares issuable upon exercise of Zenabis Warrants, HEXO Replacement Options, HEXO Replacement RSUs and HEXO Replacement DSUs, as well as Zenabis unsecured convertible debentures and unsecured convertible notes that remain outstanding at the Effective Time; the TSX has also conditionally approved the continued listing of the Listed Zenabis Warrants following the Effective Time, however, the TSX has advised that it will require that the Listed Zenabis Warrants be re-designated as “HEXO Share purchase warrants”;
24. following the Effective Time, the Zenabis Shares will be delisted from the TSX;
25. the Listed Zenabis Warrants will, after the Effective Time, remain warrants issued by Zenabis and will remain listed on TSX but be re-designated as “HEXO Share purchase warrants” under the symbol “HEXO.WT” despite such warrants remaining issued by Zenabis;
26. upon completion of the Arrangement, the only securities of Zenabis that will be held by persons other than HEXO are the outstanding Zenabis Warrants, which are exercisable for

the Share Consideration. In addition, a limited number of Zenabis unsecured convertible debentures and unsecured convertible notes may remain outstanding following completion of the Arrangement (and will, following the Effective Time, become convertible into HEXO Shares);

27. upon completion of the Arrangement, the only securities of Zenabis that are traded on a marketplace (as defined in National Instrument 21-101 *Marketplace Operation*) are the Listed Zenabis Warrants;
28. pursuant to the terms of the Listed Zenabis Warrant Indenture and the Unlisted Zenabis Warrant Indentures, HEXO and Zenabis will enter into supplemental warrant indentures with Computershare with respect to the Listed Zenabis Warrants and the Unlisted Zenabis Warrants, respectively;
29. pursuant to the terms of the Listed Zenabis Warrant Indenture, the Unlisted Zenabis Warrant Indentures, any supplemental indentures applicable thereto and/or any certificates representing the Unlisted Zenabis Warrants, as applicable, HEXO will be bound by the terms and covenants of the Zenabis Warrants and upon exercise of such Zenabis Warrants, holders will be entitled to receive the Share Consideration such holder would have been entitled to be issued and receive if, immediately prior to the Effective Time, such holder had been the registered holder of the number of Zenabis Shares to which such holder was theretofore entitled upon exercise of such Zenabis Warrants;
30. Zenabis has provided notice to Computershare and to the holders of the Zenabis Warrants, as applicable, with respect to the Arrangement containing details of the consideration to be received upon the exercise of the applicable Zenabis Warrants following the Effective Time;
31. the Listed Zenabis Warrant Indenture includes a covenant that Zenabis will make all requisite filings under applicable Canadian securities legislation including those necessary to remain a reporting issuer not in default in each of the provinces and other Canadian jurisdictions where it is or becomes a reporting issuer, while certain certificates representing Unlisted Zenabis Warrants include a covenant that Zenabis will use commercially reasonable efforts to maintain its status as a reporting issuer not in default;
32. none of the warrant indentures nor any of the warrant certificates governing the Zenabis Warrants requires Zenabis to deliver to holders of Zenabis Warrants any continuous disclosure materials of Zenabis;
33. neither of the Filers is in default of any of its respective obligations under securities legislation in the jurisdictions in which it is a reporting issuer;
34. Zenabis cannot rely on the exemption available in Section 13.3 of NI 51-102 for issuers of exchangeable securities because the Listed Zenabis Warrants will not be “designated exchangeable securities” as defined in NI 51-102 as none of the holders of the Zenabis Warrants will have voting rights in respect of HEXO in their capacity as warrant holders;

35. assuming the completion of the Plan of Arrangement and following the Effective Time, Zenabis has no intention of accessing the capital markets by issuing any further securities to the public and has no intention of issuing securities to the public;
36. following completion of the Plan of Arrangement, it is information relating to HEXO, and not to Zenabis, that will be of primary importance to holders of Zenabis Warrants as the Zenabis Warrants will be exercisable for/convertible into only the Share Consideration;
37. following completion of the Plan of Arrangement, as Zenabis will be a wholly-owned subsidiary of HEXO, HEXO will consolidate Zenabis with HEXO for the purposes of financial statement reporting; and
38. as such, the disclosure required by the Continuous Disclosure Requirements and the Insider Reporting Requirements applicable to Zenabis would not be meaningful or of any significant benefit to the holders of the Zenabis Warrants and would impose a significant cost on Zenabis.

Decision

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

1. The decision of the Decision Makers under the Legislation is that, following the Effective Time and the completion of the Plan of Arrangement, the Continuous Disclosure Requirements do not apply to Zenabis provided that:
 - (a) HEXO is the direct or indirect beneficial owner of all of the issued and outstanding voting securities of Zenabis;
 - (b) HEXO is a reporting issuer in a designated Canadian jurisdiction (as defined in NI 51-102) and has filed all documents it is required to file under NI 51-102;
 - (c) Zenabis will not issue any securities, and will not have any securities outstanding other than:
 - (i) the Zenabis Warrants;
 - (ii) a limited number of Zenabis unsecured convertible debentures and unsecured convertible notes (convertible into HEXO Shares);
 - (iii) securities issued to and held by HEXO or an affiliate of HEXO;
 - (iv) debt securities issued to and held by banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches, savings or credit unions, financial services cooperatives, insurance companies or other financial institutions; or

- (v) securities issued under exemptions from the registration requirement and prospectus requirement in National Instrument 45-106 Prospectus Exemptions (NI 45-106);
- (d) Zenabis files in electronic format:
- (i) if HEXO is a reporting issuer in the local jurisdiction, a notice indicating that it is relying on the continuous disclosure documents filed by HEXO and setting out where those documents can be found in electronic format; or
 - (ii) copies of all documents HEXO is required to file under securities legislation, other than in connection with a distribution, at the same time as the filing by HEXO of those documents with a securities regulatory authority or regulator;
- (e) HEXO concurrently sends to all holders of any Zenabis Warrants all disclosure materials that would be required to be sent to holders of similar warrants of HEXO in the manner and at the time required by securities legislation;
- (f) HEXO complies with securities legislation in respect of making public disclosure of material information on a timely basis;
- (g) HEXO immediately issues in Canada and files any news release that discloses a material change in its affairs; and
- (h) Zenabis issues in Canada a news release and files a material change report in accordance with Part 7 of NI 51-102 for all material changes in respect of the affairs of Zenabis that are not also material changes in the affairs of HEXO.
2. The further decision of the Decision Makers under the Legislation is that the Certification Requirements do not, following the Effective Time and the completion of the Plan of Arrangement, apply to Zenabis provided that:
- (a) Zenabis is not required to, and does not, file its own Interim Filings and Annual Filings (as those terms are defined under NI 52-109);
 - (b) Zenabis files in electronic format under its SEDAR profile either: (i) copies of HEXO's annual certificates and interim certificates at the same time as HEXO is required under NI 52-109 to file such documents; or (ii) a notice indicating that it is relying on HEXO's annual certificates and interim certificates and setting out where those documents can be found for viewing on SEDAR; and
 - (c) Zenabis is exempt from or otherwise not subject to the Continuous Disclosure Requirements and Zenabis and HEXO are in compliance with the conditions set out in paragraph 1 above.
3. The further decision of the Decision Makers under the Legislation is that the Insider Reporting Requirements not apply, following the Effective Time and the completion of the

Plan of Arrangement, to any insider of Zenabis in respect of securities of Zenabis provided that:

- (a) if the insider is not HEXO:
 - (i) the insider does not receive, in the ordinary course, information as to material facts or material changes concerning Zenabis before the material facts or material changes are generally disclosed; and
 - (ii) the insider is not an insider of HEXO in any capacity other than by virtue of being an insider of Zenabis;
- (b) HEXO is the beneficial owner of all of the issued and outstanding voting securities of Zenabis;
- (c) if the insider is HEXO, the insider does not beneficially own any Zenabis Warrants other than securities acquired through the exercise of the Zenabis Warrants and not subsequently traded by the insider;
- (d) HEXO is a reporting issuer in a designated Canadian jurisdiction;
- (e) Zenabis has not issued any securities, and does not have any securities outstanding, other than:
 - (i) the Zenabis Warrants;
 - (ii) a limited number of Zenabis unsecured convertible debentures and unsecured convertible notes (convertible into HEXO Shares);
 - (iii) securities issued to and held by HEXO or an affiliate of HEXO;
 - (iv) debt securities issued to and held by banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches, savings or credit unions, financial services cooperatives, insurance companies or other financial institutions; or
 - (v) securities issued under exemptions from the registration requirement and prospectus requirement in National Instrument 45-106 *Prospectus Exemptions* (NI 45-106); and

- (f) Zenabis is exempt from or otherwise not subject to the Continuous Disclosure Requirements and Zenabis and HEXO are in compliance with the conditions set out in paragraph 1 above.

John Hinze
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British Columbia Securities Commission