

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – *Securities Act*, s. 88 – the securities of the issuer are beneficially owned by more than 50 persons and are not traded through any exchange or market - the issuer is in the process of winding up; the issuer has distributed almost all of its assets to shareholders; the issuer has ceased all commercial activity and will be dissolved after the liquidation process is complete; shareholders voted to approve the liquidation plan and were notified of the issuer’s intention to file an application to cease to report; the issuer has undertaken to provide shareholders with alternative disclosure and to notify the securities regulator if they commence an active business and no longer intend to dissolve

Applicable Legislative Provisions

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

June 30, 2020

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
Novelion Therapeutics 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, Quebec, 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 is a company existing under the *Business Corporations Act* (British Columbia) (BCBCA) with its registered and records office located in British Columbia;
2. the Filer is a reporting issuer in the provinces of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador;
3. as of January 16, 2020, the Filer had approximately 19,671,365 common shares issued and outstanding (the Shares); the Shares are the only outstanding securities of the Filer;
4. the Shares were listed on the Toronto Stock Exchange until May 3, 2017 as a result of the Filer's request to voluntarily delist, and were listed on Nasdaq Stock Market LLC (NASDAQ) until October 9, 2019 when the Shares were delisted from NASDAQ for failing to meet NASDAQ's continued listing requirements; the Shares no longer trade on any exchange, but were quoted on the OTCQX, OTCBB or "Pink" markets since October 9, 2019 through no action of its own; FINRA subsequently confirmed that the trading symbol belonging to the Filer has been eliminated on January 17, 2020;
5. as of the record date for its Shareholder Meeting (defined below), the Filer had approximately 1,080 registered and over 8,400 beneficial holders of Shares;
6. on May 20, 2019, the Filer and its wholly owned subsidiary and certain other parties entered into a restructuring support agreement under which a third party acquired the Filer's reorganized subsidiary (the Recapitalization Transaction);
7. as disclosed in the Filer's press release of August 12, 2019, due to the need to deconsolidate the Filer's financial statements from those of its subsidiary as a result of the Recapitalization Transaction, the Filer was not able to complete the preparation of its Quarterly Report on Form 10-Q for the quarter ended June 30, 2019 or in respect of subsequent quarters in a timely manner (collectively, the Deconsolidated Quarterly Reports);

8. as a result of the delay in filing the first Deconsolidated Quarterly Report, the British Columbia Securities Commission issued a general “failure to file” cease trade order (CTO) on August 20, 2019 prohibiting the trading by any person of any securities of the Filer, subject to certain exceptions;
9. the Filer has been unable to complete the preparation of the Deconsolidated Quarterly Reports, and does not expect to be able to complete such filings due to a number of factors;
10. on September 11, 2019, September 25, 2019, October 3, 2019 and November 5, 2019, the Filer issued news releases announcing and describing the intention to wind-up the Filer under a court approved liquidation process and to distribute the remaining assets of the Filer;
11. at a meeting of its shareholders held on November 5, 2019 (the Shareholder Meeting), 85% of the votes cast at the Shareholder Meeting approved:
 - (a) the voluntary liquidation and dissolution of the Filer under the BCBCA (the Liquidation);
 - (b) the liquidation plan to effect the Liquidation (the Liquidation Plan);
 - (c) one or more distributions to shareholders of any remaining property of the Filer under the Liquidation; and
 - (d) the appointment of Alvarez & Marsal Canada Inc. as the liquidator (the Liquidator);
12. the management information circular for the Shareholder Meeting that was prepared and mailed to shareholders disclosed the Filer’s expectations that, as part of the applications to be made to the BC Supreme Court in connection with the Liquidation, the Filer would make an application to cease to be a reporting issuer; in its news release dated November 21, 2019, the Filer provided notice to Canadian resident shareholders that it anticipated seeking relief from its Canadian and U.S. continuous disclosure requirements and would seek to cease to be a reporting issuer;
13. on January 9, 2020, the Filer filed a statement of intent to liquidate with the British Columbia Registrar of Companies, with the effective date for the Liquidation of January 16, 2020 (the Effective Date);
14. On January 9, 2020, the Supreme Court of British Columbia granted an order to direct that the Liquidation be carried out in accordance with the Liquidation Plan; the order (among other things):
 - (a) affirms the appointment of the Liquidator;
 - (b) exempts the Filer from preparing and mailing any further financial statements or reports to its shareholders;
 - (c) relieves the Filer of any obligation to hold meetings of its shareholders;

15. on January 9, 2020, the court also granted an order establishing a process for the solicitation, determination and barring of claims against the Filer and its directors or officers;
16. the claims process that forms part of the Liquidation Plan has commenced and includes the provision of written notice of the commencement of the Liquidation and the claims process to all known creditors of the Filer; such notice has been published in major newspapers in Canada and the U.S. and has been sent by the Liquidator to known and potential creditors based on the Filer's books and records and notifications received from potential creditors, informing them of the Liquidation and stating that any liquidation claims must be filed with the Liquidator so that they were received by May 29, 2020 at 5:00 p.m. (Vancouver time), consistent with the time periods required under section 331 of the BCBCA;
17. concurrently with the Liquidator's appointment on the Effective Date, the sole remaining executive officer and employee of the Filer resigned from his positions, and the remaining 3 directors of the Filer resigned; the Filer does not currently have any directors or employees;
18. the Filer currently maintains no active business or operations in Canada or elsewhere; its assets consist primarily of American depository receipts representing approximately 12.49 million ordinary shares of Amryt Pharma plc.; in addition, the Filer holds certain limited royalty interests and equity interests in subsidiaries that carry on no active business and, aside from cash in an amount not exceeding US\$5,000, are not known to hold any material assets; as of May 29, 2020, the Liquidator, on behalf of the Filer, holds cash in its trust accounts of \$60,750.87 and US\$861,861.05;
19. subsequent to the Recapitalization Transaction and the approval of the Liquidation Plan by the Filer's shareholders at the Shareholder Meeting, the Filer's activities have been and will continue to be limited to the implementation of the Liquidation Plan;
20. as of the Effective Date and in accordance with the liquidation order, the Filer's transfer agent for the Shares closed the Filer's stock transfer books and has discontinued recording transfers without the explicit sanction of the Liquidator; the Liquidator does not foresee any circumstance in which it would permit the transfer of Shares of the Filer by the registered holders unless required to do so by court order;
21. only registered shareholders on the Filer's stock transfer books as of the Effective Date will be entitled to a pro-rata share of any distribution to shareholders in the Liquidation; notice of the foregoing was provided to the market in various press releases issued by the Filer in the weeks leading up to the Effective Date;
22. the BCBCA provides that when the Filer is dissolved, it ceases to exist for any purpose; shareholders' interests in the Shares will also accordingly cease to exist when the Filer is dissolved;
23. the Liquidator has posted and will continue to post information relating to the Liquidation on its website and to meet the obligations imposed on it under the BCBCA;

24. information that would have been disclosed in the Deconsolidated Quarterly Reports would not provide shareholders with any meaningful or material information; the information disclosed in the management information circular for the Shareholder Meeting and in the Filer's press releases have provided the Filer's shareholders with important and more pertinent information than what would be contained in the Deconsolidated Quarterly Reports or any subsequent interim or annual financial reports;
25. the Filer will satisfy all of its liabilities and distribute all of its assets, and intends to dissolve in accordance with the provisions of the BCBCA as approved by the shareholders of the Filer;
26. the Filer must complete a number of steps required by the Liquidation Plan, the BCBCA and the court orders that have been granted in respect of the Filer before it can dissolve, including completion of the court-approved claims process, the payment of claims of creditors and distribution to shareholders; the Filer anticipates that any liquidation distributions will be completed in the fourth quarter of 2020, subject to the resolution of claims and other ongoing administrative matters, including finalization of tax returns and related matters in Canada and the U.S.; the amount and timing of any distribution has not been determined;
27. the Filer has no intention to seek public financing by way of offering of securities;
28. the Filer has undertaken that:
 - (a) it will, as soon as practicable following the receipt of the Order Sought, issue a news release advising shareholders:
 - (i) that it has ceased to be a reporting issuer; and
 - (ii) of the anticipated date of its dissolution and final distribution to shareholders;
 - (b) if the Filer has not dissolved on or before September 30, 2020, it will, on or about that date, issue a news release regarding the status of its liquidation and anticipated timing of its dissolution;
 - (c) if it has not dissolved by December 31, 2020, it will, on or about that date and thereafter on a quarterly basis until it dissolves, issue a news release regarding the status of its liquidation and anticipated timing of its dissolution;
 - (d) it will immediately notify the securities regulator of each of the Jurisdictions if at any time before its dissolution it proposes to:
 - (i) commence an active business or any commercial operations;
 - (ii) undertake a public or private offering of securities in any jurisdiction; or

- (iii) file a Notice of Withdrawal under section 323 of the BCBCA; and
- (e) as soon as practicable after the time of dissolution, the Filer will issue a news release confirming the dissolution.
29. the Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*;
30. 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;
31. the Filer is not in default of securities legislation in any jurisdiction, other than (a) an obligation to file, on or before August 12, 2019, November 14, 2019 and May 15, 2020, its interim financial statements and its management discussion and analysis in respect of such statements for the period ended June 30, 2019, September 30, 2019 and March 31, 2020, respectively, as required under National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) and related certificates as required under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (NI 52-109); and (b) an obligation to file, on or before March 30, 2020, its annual information form, its annual financial statements and its management discussion and analysis in respect of such statements for the period ended December 31, 2019, as required under NI 51-102 and related certificates as required under NI 52-109 (collectively, the Filings);
32. the Filer is not eligible to use the simplified procedure in section 19 of National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications* as it has more than 51 securityholders worldwide and because the Filer is in default of filing the Filings;
33. the Filer is applying for the Order Sought from the securities regulatory authority or regulator in each of the jurisdictions in which it is a reporting issuer; and
34. the Filer, upon the grant of the Order Sought, will no longer be a reporting issuer in any jurisdiction of 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.

John Hinze
Director, Corporate Finance
British Columbia Securities Commission