

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

February 24, 2023

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
Aurinia Pharmaceuticals Inc.
(Filer)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (the 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 securities entitled to vote at any meeting of securityholders of the Filer using a 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 securities entitled to vote at any meeting of securityholders of the Filer using a 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 Requested Relief);

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

- (a) the British Columbia Securities Commission is the principal regulator for this application;
- (b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador; 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 amalgamated under the Alberta *Business Corporations Act* on December 1, 2011;
2. the Filer's head office is located at 1203 - 4464 Markham Street, Victoria, British Columbia;
3. the Filer is a commercial-stage biopharmaceutical company focused on developing and commercializing therapies to treat targeted patient populations that are suffering from serious diseases with a high unmet medical need;
4. the Filer is a reporting issuer or the equivalent under the securities legislation of each of the provinces in Canada and is currently not in default of any applicable requirements under the securities legislation thereof;
5. as of February 9, 2023, the filer had 142,576,689 common shares (the Common Shares) issued and outstanding;

6. the Common Shares are listed and posted for trading on the Nasdaq Global Market (Nasdaq) under the symbol “AUPH”; the Common Shares are not listed 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 *Securities Exchange Act of 1934 Act*, as amended (1934 Act) and is required to comply with the U.S. proxy rules applicable to U.S. domestic registrants;
9. 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;
 - (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;
 - (iii) the business of the issuer is administered principally in Canada(the Automatic Registered Holder Exemption);
10. in accordance with section 9.1.1(1) of NI 54-101, despite section 2.7 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;
 - (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;
- (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);

11. the Filer is unable to rely on the Automatic Exemptions as more than 50% of the consolidated assets of the Filer are located in Canada; despite this:
 - (a) over 85% of the Filer's outstanding voting securities carrying the right to vote for the election of the Filer's directors are held by persons that are not residents of Canada;
 - (b) the majority of the executive officers and directors of the Filer are not residents of Canada;
 - (c) the business of the Filer is principally administered outside of Canada considering the location of its executives, directors, principal business segments and operations;
 - (d) the majority of the Filer's employees are located outside of Canada and 100% of the Filer's revenues in 2022 were generated outside of Canada; and
 - (e) all of the trading volume of the Common Shares occurs on Nasdaq and the Common Shares are not listed in Canada;
12. for any meeting of securityholders of the Filer 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 voting securities in compliance with the U.S. Notice-and-Access Rules;
13. the U.S. Notice-and-Access Rules allow the Filer to furnish proxy-related materials by sending Registered Holders entitled to vote at a Notice-and-Access Meeting 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 entitled to vote at a Notice-and-Access Meeting 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, publicly accessible, free of charge, at a website address specified in the Notice;
14. 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;

15. NI 51-102 requires the Filer to deliver proxy-related materials to Registered Holders and NI 54-101 requires the Filer to deliver proxy-related materials to intermediaries for delivery to those Beneficial Holders of securities entitled to vote at a meeting of securityholders of the Filer that have requested materials for meetings of the Filer;
16. 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;
17. 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;
18. 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 clear and impartial 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 instructions on how to access the form of proxy and an explanation that the proxy-related materials for such Notice-and-Access Meeting have been made available online;
 - (d) an explanation of how to obtain a paper or e-mail copy of the proxy-related materials for such Notice- and-Access Meeting at no charge, including the date by which securityholders should make the request to facilitate timely delivery, and an indication that the securityholders will not otherwise receive a paper or e-mail copy;
 - (e) the website addresses for SEDAR and EDGAR, the Filer's website and a third-party hosting website where the proxy-related materials are posted;

- (f) a reminder that the Notice is not a form of voting and presents only an overview of the more complete proxy-related materials, which contain important information and are available online or by mail, and to review such materials for such Notice-and-Access Meeting before voting;
 - (g) any control/identification numbers that securityholders need to access their form of proxy;
 - (h) an explanation of the methods available for securityholders to vote at the Notice-and-Access Meeting; and
 - (i) 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;
19. 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;
20. 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;
21. 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;
22. 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, Computershare Trust Company of Canada (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 or e-mail copy, if available, 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 or e-mailed copies, if available, and the Filer will provide English-only materials to the Agents in compliance with the requirements of the U.S. Notice-and-Access Rules;
23. 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
24. 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 Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Requested Relief 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 requirements of the Automatic Exemptions other than those set out in:

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

Gordon Smith
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British Columbia Securities Commission