

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* -- Application for relief from the prospectus requirement -- Filer serves as a management group for the benefit of Members who are independently owned and operated retail pharmacies -- Only Members may acquire shares -- Prior to a proposed amalgamation, Filer proposes to issue common shares for the purposes of harmonizing its capital structure with the other amalgamating corporation to facilitate the amalgamation – Members will receive one (1) Class “A” common share for the subscription price of \$1.00 per share, for and in respect of each pharmacy operated by a Member, up to a maximum of five (5) class “A” common shares -- Members are not making an investment decision and will receive information about the Filer -- Relief granted subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.N.S. 1989, c. 418, sections 58 and 79

Date: June 1, 2018

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
NOVA SCOTIA AND ONTARIO
(the Jurisdictions)**

AND

**IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS IN MULTIPLE
JURISDICTIONS**

AND

**IN THE MATTER OF
PHARMACHOICE EAST LTD.
(the Filer)**

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application (the **Application**) from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) exempting the Filer from the prospectus requirements in the Legislation in connection with the issuance of Class “A” shares (the **Shares**) of the Filer to Members (as defined below) (the **Exemption Sought**).

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

- a) the Nova Scotia 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 New Brunswick, Newfoundland and Labrador and Prince Edward Island, 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

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

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

1. The Filer was incorporated under the *Companies Act* (Nova Scotia) on October 26, 1998.
2. The Filer continued its corporate existence under the *Canada Business Corporations Act* (Canada) (the **CBCA**) pursuant to articles of continuance (the **Articles**) and by-laws (the **By-laws**) dated February 21, 2018.
3. The Filer's head office is in Dartmouth, Nova Scotia.
4. The Filer is not at present, and does not intend to become, a reporting issuer in any jurisdiction.
5. The Filer is not in default of securities legislation in any jurisdiction, except that the Filer has not confirmed the availability of an exemption from the prospectus requirements of the securities laws in the Jurisdictions in respect of past distributions of Shares to the initial incorporator of the Filer in trust and to the directors of the Filer in trust.
6. There is no public market for the Shares in any jurisdiction, the Shares are not traded on any marketplace as defined in National Instrument 21-101 *Marketplace Operation*, and the Shares are issued only to or for the benefit of Members (as defined below).
7. The Filer serves as a management group for independently owned and operated pharmacies in Nova Scotia, Ontario, New Brunswick, Newfoundland and Labrador and Prince Edward Island.
8. The Filer enters into a membership agreement (**Membership Agreement**) with each of the independent retail pharmacy owners (**Members**).
9. As of the date of the Application, the Filer had 322 Members.

10. To become a Member, a person or company must be a "retail pharmacy business" which: (a) enters into the Membership Agreement, (b) receives approval from the Filer's board of directors, and (c) complies with all legal requirements governing the practice of pharmacy and the operation of pharmacies in the applicable jurisdiction.
11. The Membership Agreement provides for Members receiving certain entitlements, including: (a) using the PharmaChoice tradename, trademark and logos; (b) participating in a centralized merchandising program operated by the Filer; (c) participating in a centralized promotion and advertising program operated by the Filer; and (d) receiving professional support services from the Filer (collectively, the **Programs**).
12. The structure permits Members to benefit from the efficiencies and economies of scale that result from the centralized purchasing of pharmacy-related goods and services, while retaining the ability to independently own and operate their own retail pharmacy.
13. The Membership Agreement permits members to resign and to terminate all obligations under the Membership Agreement by providing the Filer with sixty (60) days prior written notice.
14. The Filer's authorized capital consists of an unlimited number of Class "A", Class "B", and Class "C" shares.
15. The Filer's issued capital consists of 101 Shares registered in the name of "Board of Directors of PharmaChoice East Ltd., from time to time in trust."
16. The Membership Agreement and the Articles restrict the right to transfer the Shares.
17. The Articles provide that upon termination of a Member's participation in the Filer, the Filer will purchase for cancellation the Share held by the Member for \$1.00.
18. The Articles require the directors to convene Members' meetings to vote on matters requiring shareholder approval.
19. The directors, in their capacity as the sole shareholders of the Filer, are required to cast the votes for the Shares they collectively hold in trust in accordance with the wishes of and in the same percentages as expressed by the Members at Members' meetings.
20. The Membership Agreement entitles a Member to receive one (1) vote on each matter requiring its approval for and in respect of each pharmacy owned by or associated with the Member, provided that not more than five (5) votes may be cast in respect of pharmacies owned or associated with the Member.
21. The Articles restrict the Filer from declaring or issue dividends in the ordinary course.

22. The Filer may, if authorized by its board of directors, distribute profits or other advantages earned by the Filer to the Members in the form of "patronage dividends" in proportion to each Member's participation in the Programs under the Membership Agreement.
23. Patronage dividends represent any net benefits of membership under the Membership Agreement and are not dividends on the Shares.
24. The Filer may, with shareholder approval by special resolution, declare and issue dividends in connection with a full or partial wind-up of its operations or other fundamental change in the business of the Filer.
25. Upon the Decision Makers granting the Exemption Sought and upon the Members approving the proposed amalgamation of the Filer with another corporation (the **Amalgamation**), the Filer intends to distribute one Share to each Member for and in respect of each pharmacy operated by the Member up to a maximum of five Shares for consideration of one dollar (\$1.00) per Share in order to facilitate the Amalgamation.
26. The Filer has considered whether, under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) and the Legislation, it could be considered to be engaged in or holding itself out as engaging in the business of trading in securities and therefore required to register as a dealer, rely on an exemption from the dealer registration requirement or seek exemptive relief from the dealer registration requirement. In light of the particular facts and circumstances of the Filer, including the fact that it does not hold itself out as being in the business of trading in securities, does not trade in securities frequently, does not receive any remuneration for trading in securities, does not act in an intermediary capacity, does not produce or intend to produce a distinct profit from trading in securities, and does not employ or otherwise contract with persons to perform activities on its behalf that are similar to those performed by a registrant, and having considered the guidance in section 1.3 of the Companion Policy to NI 31-103, the Filer has concluded that it should not be considered to be engaged in registrable activities and therefore does not require relief from the dealer registration requirement of the Legislation.

Decision

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 Exemption Sought is granted provided that:

- a) prior to the issuance of Shares to a Member, the Filer delivers to the Member:
 - i. copies of the Articles and By-laws, a copy of the Filer's most recent audited annual financial statements, and a copy of the most recent interim financial statements; and

- ii. a copy of this decision document;
- b) the Filer delivers to each Member a statement to the effect that, as a consequence of the decision, certain protections, rights and remedies provided by the Legislation, including statutory rights of rescission or damages, will not be available to the Member and that certain restrictions are imposed on the subsequent disposition of the Shares;
- c) the Filer prepares and sends audited financial statements to each Member on an annual basis;
- d) prior to the issuance of Shares to a Member, the Member shall have executed a copy of the Membership Agreement;
- e) the Exemption Sought shall cease to be effective if any of the provisions of the Articles or the Membership Agreement relevant to the Exemption Sought (including the provisions relating to the transferability of the Shares) are amended in any material respect without prior written notice to, and consent of, the Decision Makers; and
- f) the first trade in any Share by a Member to a person or company other than the Filer is deemed to be a distribution.

(signed) "Shirley P. Lee"

Shirley P. Lee, Q.C.,
Vice-Chair, Nova Scotia Securities
Commission