

IN THE MATTER OF
THE SECURITIES ACT, R.S.N.S. 1989, CHAPTER 418, AS AMENDED ("Act")

-and-

IN THE MATTER OF PHARMACHOICE EAST LTD.,
amalgamated as PHARMACHOICE CANADA INC. ("Respondent")

ORDER
(Sections 134, 135 and 135A)

WHEREAS on November 5, 2018, the Nova Scotia Securities Commission issued a Notice of Hearing to the Respondent pursuant to sections 134, 135, and 135A of the Act;

AND WHEREAS the Respondent entered into a Settlement Agreement with the Director of Enforcement for the Commission whereby it agreed to a proposed settlement of the proceeding, subject to the approval of the Commission;

AND WHEREAS the Director of Enforcement and the Respondent recommend approval of the Settlement Agreement;

AND WHEREAS the Commission determined that the Respondent has contravened Nova Scotia securities laws and it is in the public interest to make this order;

AND UPON reviewing the Settlement Agreement, and upon hearing submissions of counsel for the Director of Enforcement and counsel for the Respondent;

IT IS HEREBY ORDERED that:

1. The Settlement Agreement dated November 5, 2018, a copy of which is attached, is approved;
2. Pursuant to section 134(1)(a) of the Act, the Respondent shall comply with Nova Scotia securities laws;
3. Pursuant to section 135 of the Act, the Respondent shall forthwith pay an administrative penalty in the amount of eighteen thousand dollars (\$18,000.00); and
4. Pursuant to section 135A of the Act, the Respondent shall forthwith pay costs in the amount of one thousand five hundred dollars (\$1,500.00) in connection with the investigation and conduct of this proceeding.

DATED at Halifax, Nova Scotia, this 12th day of December 2018.

NOVA SCOTIA SECURITIES COMMISSION



Valerie Seager, Chair

IN THE MATTER OF
THE *SECURITIES ACT*, R.S.N.S. 1989, CHAPTER 418, AS AMENDED (“Act”)

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SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The parties to this Settlement Agreement are the Respondent and the Director of Enforcement for the Nova Scotia Securities Commission, Enforcement Branch.
2. The parties agree that the Nova Scotia Securities Commission has jurisdiction over this matter.
3. The parties agree to recommend to the Commission approval of this Agreement in accordance with the terms and process set out herein.

PART II – PROCEDURE FOR APPROVAL OF THE AGREEMENT

4. The Director of Enforcement agrees to request that a Notice of Hearing be issued setting down a hearing (“Settlement Hearing”) wherein the Commission will consider whether it is in the public interest to approve this Agreement and to issue an order in the form attached as **Schedule “A”**.
5. The parties agree that this Agreement constitutes the entirety of evidence to be submitted to the Commission at the Settlement Hearing.
6. The Director of Enforcement agrees to recommend that the allegations acknowledged and admitted by the Respondent be resolved and disposed of in accordance with this Agreement.
7. The parties acknowledge that this Agreement will become a public document upon its approval by the Commission at the Settlement Hearing.

PART III – STATEMENT OF AGREED FACTS

8. The Director of Enforcement and the Respondent agree with the facts and conclusions set out in this Agreement.
9. The Respondent was created upon the amalgamation of PharmaChoice East Ltd. and a third-party corporation on July 16, 2018 (the “Amalgamation”).

10. The Respondent is a limited liability corporation with head office located in Dartmouth, Nova Scotia.
11. Prior to the Amalgamation, the Respondent operated as a management group for various independently owned and operated retail pharmacies in Nova Scotia, New Brunswick, Newfoundland and Labrador and Prince Edward Island.
12. As a result of the Amalgamation, the Respondent currently operates as a management group for various independently owned and operated retail pharmacies in Alberta, British Columbia, Manitoba, Northwest Territories, Nunavut, Ontario, Quebec, Saskatchewan and the Yukon, in addition to the jurisdictions cited above.
13. The Respondent's corporate structure centralizes the purchasing of pharmacy-related goods and services, while allowing members to retain the ability to independently own and operate a retail pharmacy.
14. To become a member, a person or company must meet certain standards set by the Respondent.
15. Prior to the Amalgamation:
 - (a) the Respondent's issued capital consisted of 101 common shares;
 - (b) the Respondent had 322 members;
 - (c) all issued and outstanding shares in the capital of the Respondent were held by the Respondent's board of directors in trust for the benefit of the members;
 - (d) the Respondent's board of directors cast the votes for the shares they collectively held in trust in accordance with the wishes of and in the same percentages as expressed by the members at meetings convened to address such matters; and
 - (e) the members received one vote on each matter requiring their approval for and in respect of each store owned by or associated with a member and enjoyed other rights akin to traditional shareholders' rights.
16. On October 26, 1998, the Respondent issued one common share to the initial incorporator who held this share in trust for the benefit of approximately 32 to 33 members.
17. On April 13, 2000, the initial incorporator transferred that common share and the Respondent issued an additional 99 common shares, for a total of 100 common shares, to the Respondent's board of directors in trust for the benefit of over 50 members.

18. On February 8, 2018, the Respondent issued one common share, for a total of 101 common shares, to the Respondent's board of directors in trust for the benefit of 322 members.
19. On March 16, 2018, pursuant to National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions, the Respondent made application to the Commission for exemptive relief from the prospectus requirements of the Act.
20. On June 1, 2018, the Commission issued a decision granting the Respondent exemptive relief from the prospectus requirements set out in section 58(1) of the Act, with conditions.
21. Following the granting of the exemptive relief by the Commission, the Respondent distributed 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.
22. The Respondent is not a reporting issuer or a registrant in any jurisdiction.
23. The Respondent did not file a prospectus or preliminary prospectus and the Commission did not issue a receipt for the same.
24. The Respondent did not file with the Commission any reports of trades relying on exemptions in Nova Scotia securities laws to trade or distribute securities in Nova Scotia.
25. The shares issued by the Respondent between October 26, 1998 and May 31, 2018 constituted distributions of securities under Nova Scotia securities laws.
26. As a result of distributing securities to residents of Nova Scotia and elsewhere without having filed a prospectus or preliminary prospectus and without relying on exemptions in Nova Scotia securities laws, the Respondent violated section 58(1) of the Act as rep. by R.S.N.S. 2006, c. 46, s. 23 (proclaimed in force 17 March 2008) and section 58(1) of the Act.

PART IV – STATEMENT OF ALLEGATIONS ACKNOWLEDGED AND ADMITTED BY THE RESPONDENT

27. The Respondent admits the facts set forth in Part III herein and acknowledges that it violated Nova Scotia securities laws.
28. The Respondent acknowledges and admits that it violated section 58(1) of the Act as rep. by R.S.N.S. 2006, c. 46, s. 23 (proclaimed in force 17 March 2008) and section 58(1) of the Act.
29. The Respondent acknowledges that its actions undermined investor confidence in the fairness and efficiency of capital markets and were contrary to the public interest.

PART V – MITIGATING FACTORS

30. The Respondent acknowledges and accepts responsibility for its conduct which is the subject matter of this Agreement.
31. The Respondent cooperated with the investigation of this matter.
32. The Respondent has no past record of violations of Nova Scotia securities laws.

PART VI – TERMS OF SETTLEMENT

33. The terms of settlement are set forth in this Agreement and in the order contained in **Schedule “A”** to this Agreement, which is expressly incorporated herein.
34. The Respondent consents to the order contained in **Schedule “A”**.

PART VII – COMMITMENTS

35. If this Agreement is approved and the order as set out in **Schedule “A”** is granted, the parties agree to waive any right to a full hearing and judicial review and appeal of this matter.
36. If this Agreement is approved by the Commission, the parties will not in any way make any statement, public or otherwise, that is inconsistent with the terms of this Agreement.
37. If this Agreement is approved by the Commission, the Respondent agrees to abide by all terms of this Agreement.
38. If, for any reason whatsoever, this Agreement is not approved, or the order set forth in **Schedule “A”** is not granted by the Commission:
 - (a) The Director of Enforcement and the Respondent will be entitled to proceed to a hearing of the allegations which are the subject matter of this Agreement unaffected by the Agreement or the settlement negotiations;
 - (b) The negotiations, the terms of the Agreement and the Agreement will not be raised in any other proceeding or disclosed to any person except with the written consent of the Director of Enforcement and the Respondent or as may otherwise be required by law; and
 - (c) The Respondent agrees that it will not raise in any proceeding the Agreement or the negotiations or process of approval thereof as a basis of any attack or challenge of the Commission’s jurisdiction, alleged bias, appearance of bias, alleged unfairness or any other challenge that may otherwise be available.

39. The Respondent acknowledges that the Director of Enforcement has the discretion to withdraw from this Agreement if additional facts or issues are discovered that cause him to conclude that it would not be in the public interest to request approval of this Agreement. In the event of such withdrawal, notice will be provided to the Respondent in writing and the provisions of paragraphs 38(a) and 38(b) of this Agreement will apply.

PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

40. The Director of Enforcement or the Respondent may refer to any or all parts of this Agreement as required by the General Rules of Practice and Procedure and in the course of the Settlement Hearing. Otherwise, this Settlement Agreement and its terms will be treated as confidential by all parties to it until approved by the Commission, and forever if, for any reason whatsoever, this settlement is not approved by the Commission.

PART IX – EXECUTION OF SETTLEMENT AGREEMENT

41. This Agreement may be signed in one or more counterparts that together shall constitute a binding agreement and a facsimile copy of any signature shall be as effective as an original signature.

DATED at Dartmouth, NS, this 1st day of November, 2018.

SIGNED, SEALED AND DELIVERED
In the presence of:

Cathy McK

Cathy McKinnon

Witness:

(print name)

PHARMACHOICE CANADA INC.

[Signature]

Carvin LeFoux

Per:

(print name)

DATED at Halifax, Nova Scotia, this 5th day of November, 2018.

SIGNED, SEALED AND DELIVERED
In the presence of:

[Signature]

Witness ELIZABETH TRIMM
(print name)

[Signature]

Randy Gass H. Tang Anderson
Director of Enforcement Acting Executive
Nova Scotia Securities Commission Director
Enforcement Branch

SCHEDULE "A"

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DATED at Halifax, Nova Scotia, this day of , 2018.

NOVA SCOTIA SECURITIES COMMISSION

(Chair)