

Date: June 15, 2012

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
Neurodyn Inc. (the Filer)

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from the requirements of Part 2 of Multilateral Instrument 62-104, *Take-Over Bids and Issuers Bids* (the "Instrument"), Sections 93 to 99.1 of the *Securities Act* (Ontario) (the "Act") and Ontario Securities Commission Rule 62-504 *Take-Over Bids and Issuers Bids* (the "Rule") (the Act and Rule, together with the Instrument, the "Legislation") (the "Exemption Sought") in connection with a take-over bid by the Filer to acquire all of the outstanding securities of NeuroQuest Inc. (the Target).

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, Quebec, Alberta, and British Columbia; 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 is incorporated under the *Canada Business Corporations Act* (CBCA).
2. The head office of the Filer is in Charlottetown, Prince Edward Island. The Filer is not currently and has never been a reporting issuer in any jurisdiction, nor are any of its securities listed or posted for trading on any stock exchange.
3. The Target was incorporated on November 26, 2009, under the CBCA. Its authorized capital is an unlimited number of Class A common shares and an unlimited number of Class B common shares. The Class A common shares as a class are entitled to receive an aggregate sum of \$1.00 in return of capital before the holders of the Class B common shares are entitled to receive any return of capital, and thereafter the two classes are entitled to receive the remaining assets and property pro rata among the holders of the Class A and Class B shares combined.
4. The head office of the Target is located in Halifax, Nova Scotia.
5. The Target is not and has not been a reporting issuer in any jurisdiction, nor are any of its securities listed or posted for trading on any stock exchange.
6. The issued and outstanding shares in the capital of the Target consist of 9,301,096 Class A common shares and 3,782,603 Class B common shares.
7. The Target has 96 shareholders of record (the "Target Shareholders") who are resident as follows:
 - i. Nova Scotia – 51
 - ii. New Brunswick – 11
 - iii. Ontario – 11
 - iv. British Columbia – 3
 - v. Quebec - 1
 - vi. Alberta – 1
 - vii. United States – 18
8. Each of the Target Shareholders is a shareholder of Origin Biomed Inc. ("Origin"), a corporation incorporated under the CBCA and with a head office in Halifax, Nova Scotia, whose business is the development, marketing and wholesale distribution of non-prescription natural products for topical pain treatment.
9. The shareholders of the Target acquired their shares under the same exemptions as they acquired shares in Origin, namely as family, friends and business associates of the directors and founder, as employees of a related entity of the Target or as accredited investors.
10. The Filer, the Target and Origin are not in default of securities legislation in any jurisdiction.

11. In or about November 2009, the directors of Origin decided to “spinout” certain intellectual property to a separate company in order to focus on research related to such intellectual property ("Research"), and the Target was incorporated for this purpose. In December 2009, Origin and the Target completed a spin out transaction (the "Spin Out Transaction"), whereby Origin transferred the intellectual property to the Target on the terms set out in an Asset Purchase Agreement dated December 18, 2009.
12. Pursuant to the Spin Out Transaction, Origin offered the following to the shareholders of Origin: (i) to the holders of preferred shares in Origin, the opportunity to subscribe for their pro rata portion of Class A common shares of the Target at a nominal price; and (ii) to the holders of common shares in Origin, the opportunity to subscribe for Class B common shares of the Target at a nominal price.
13. The above subscriptions included a condition that each subscriber who had not already signed the Unanimous Shareholders Agreement must agree to the terms of the Unanimous Shareholders Agreement dated December 18, 2009 between Target and its shareholders (the "Unanimous Shareholders' Agreement") by signing an attached Assumption Agreement. Each of the Target Shareholders has signed either the Unanimous Shareholders Agreement or an Assumption Agreement to the Unanimous Shareholders' Agreement.
14. The Unanimous Shareholders' Agreement states that if any *bona fide* offer from a third party is made to purchase all and not less than all of the outstanding shares of the Target, and the holders of 70% of all outstanding shares are ready, willing and able to accept such offer, then the offer will be deemed to have been accepted by all shareholders of the Target, and authorizes the secretary of the Target to accept the offer on behalf of those shareholders who do not accept it (the “Drag-Along Provisions”). Shares are defined in the Unanimous Shareholders' Agreement as all shares of the Target, regardless of class.
15. The Target's Research was financed by loans to the Target from the Atlantic Innovation Fund (AIF Loan) administered by Atlantic Canada Opportunities Agency ("ACOA") and loans from Origin. The AIF Loan was guaranteed by Origin and was repayable if the research program as originally submitted ("AIF Research Program") was not completed.
16. Origin has determined that it cannot afford to continue funding the Target's AIF Research Program and the Target will not be able to afford to continue the AIF Research Program without contribution from Origin. In the event of discontinuation of the AIF Research Program, the Target and Origin would suffer financial hardship in connection with the AIF Loan which would render the Target insolvent.
17. The Filer, Target and Origin determined that if the Filer obtained approval under the AIF program to take over the funding responsibility for the AIF Research Program, then the Target could continue the AIF Research Program and Origin would be released by the Filer from its financial responsibilities relating to the AIF Loan.

18. Origin, the Filer and the Target entered into an Agreement to Purchase the Shares of NeuroQuest Inc. dated December 21, 2011 (the "Agreement") setting out a number of transfers, assignments, releases, payments and consents (collectively, the "Transaction") including the acquisition by the Filer of all outstanding Class A common and Class B common shares in the Target for a nominal aggregate price of \$10.00 and the assumption by the Filer of Origin's financial responsibility in connection with the AIF Research Program.
19. The primary purpose of the Transaction is to allow the Target's Research to continue under the ownership of the Filer, who is willing to pay the one-third of the costs of further Research, to allow Origin to be released from its liability for further costs and accrued loan guarantees in respect of the AIF Loan, and to prevent the AIF Loan and Origin loans from becoming payable by the Target in the event of discontinuance of the Research Program. Accordingly, the Transaction benefits both the Target and Origin. Since all of the Target Shareholders are also shareholders of Origin, the Transaction benefits these shareholders both in their capacity as Target Shareholders and as Origin shareholders. No other sources of financing are available to fund the Target's Research because private funding for early stage biotechnology research is very difficult to raise and government granting agencies generally require matching funding from funding applicants. Target has an urgent need to complete the Transaction in order continue to receive funding for its Research from ACOA, which has informed Target that no further funds will be advanced until Filer assumes responsibility for the AIF Loan. Accordingly, Target has an urgent financial necessity to complete the Transaction and no alternative solutions, including structuring the Transaction as a transaction other than a take-over bid, are financially viable. No other consents are required for the Transaction to occur.
20. Five Target Shareholders, holding 87.1% of the Class A common shares, 34.5% of the Class B common shares, and in total, 71.89% of all shares of the Target, agreed to sell their shares under the terms and conditions of the Agreement. As the Drag-Along Provisions were triggered by the consent of the five Target Shareholders, the other Target Shareholders have no decision to make in terms of whether to accept or reject the Transaction. Moreover, the Target Shareholders do not have any other dissent rights or appraisal rights under corporate law.
21. The board of directors of the Target (the "Board") has determined that the Target is not financially viable without the completion of the Transaction and there is no non-nominal value remaining in the Target's shares. The Board has concluded that the Transaction represents a *bona fide* offer (as such term is defined in the Unanimous Shareholders' Agreement), is fair, and is in the best interests of the Target and the Target Shareholders.
22. None of the Target Shareholders will receive any "collateral benefit" (as such term is defined in the Legislation) in connection with the Transaction.

23. The Transaction constitutes a “formal bid” for purposes of the Legislation and no exemptions from the applicable take-over bid requirements of the Legislation are available to the Filer.

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 the Transaction is completed in compliance with the terms of the Unanimous Shareholders' Agreement.



Kevin G. Redden
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