

September 28, 2018

**In the Matter of
the Securities Legislation of
Saskatchewan and Ontario
(the Jurisdictions)**

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**In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdiction**

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**In the Matter of
Pharmachoice Canada Inc.
(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 Financial and Consumer Affairs Authority (Saskatchewan) 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 the Provinces of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Quebec and the Yukon; 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 upon the amalgamation (the Amalgamation) of PharmaChoice East Ltd. (PCE) and PharmaChoice Western Inc. (PCW, together with PCE, the Amalgamating Corporations) under the *Canada Business Corporations Act* (Canada) (the CBCA) pursuant to an amalgamation agreement (the Amalgamation Agreement), articles of amalgamation (the Articles) and by-laws (the By-laws) dated July 16, 2018.
2. The Filer's head office is in Saskatoon, Saskatchewan.
3. The Filer is not at present, and does not intend to become, a reporting issuer in any jurisdiction.
4. The Filer is not in default of securities legislation in any jurisdiction, except that:
 - a) PCE has not confirmed the availability of an exemption from the prospectus requirements of the securities laws in the Provinces of New Brunswick, Nova Scotia, Ontario, and Prince Edward Island in respect of past distributions of common shares to the initial incorporator of PCE in trust and the directors of PCE in trust; and
 - b) PCW has not confirmed the availability of an exemption from the prospectus requirements of the securities laws in the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan in respect of past distributions of Class "A" common shares to its members.
5. 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).
6. The Filer serves as a management group for independently owned and operated pharmacies in Saskatchewan, Ontario, Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island.

7. The Filer enters into membership agreements (Membership Agreement(s)) with independent retail pharmacy owners (Members).
8. As of the date of the Application, the Filer has 804 Members comprising the prior shareholders of the Amalgamating Corporations who are resident in in the Provinces of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Saskatchewan, and Prince Edward Island.
9. To become a Member, a person 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.
10. 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).
11. 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.
12. The Membership Agreement permits Members to resign and to terminate all obligations under the Membership Agreement.
13. The Filer's authorized capital consists of an unlimited number of Class "A", Class "B", and Class "C" shares.
14. Upon the Amalgamation, the Filer issued one Class "A" share to each Member in exchange for each Class "A" common share of the Amalgamating Corporations pursuant to the "business combination and reorganization" exemption under Section 2.11 of National Instrument 45-106 *Prospectus Exemptions*.
15. The Filer's issued capital consists of 804 Class "A" shares registered in the name of each Member representing one class "A" share in the capital of the Filer in respect of each store owned by or associated with a Member.
16. The Membership Agreement and the Articles restrict the right to transfer the Shares.

17. The Filer's Articles provide that upon termination of a Member's participation in the Filer, the Filer will purchase for cancellation the any Share held by a Member for \$1.00.
18. The Articles restrict the Filer from declaring or issue dividends in the ordinary course.
19. The Filer may, if authorized by its board of directors, distribute profits or other advantages earned by the Filer to individual Members in the form of "patronage dividends" in proportion to each individual Member's participation in the Programs under the Membership Agreement.
20. Patronage dividends represent any net benefits of membership under the Membership Agreement and are not dividends on the Shares.
21. 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.
22. 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 another 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 registration requirement of the Legislation.
23. Upon the Decision Makers granting the Exemption Sought, the Filer intends to issue one Class "A" share to each Member for and in respect of each store operated by the Member, from time to time.

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:
 - i. the Filer delivers to such Member 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. the Filer delivers to such Member a copy of this decision document;
- b) the Filer delivers 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, such Member shall have executed a copy of the Membership Agreement;
- e) prior to the issuance of the Class "B" shares or Class "C" shares to any person in any jurisdiction in Canada, the Filer will seek exemptive relief in connection with any proposed Class "B" share or Class "C" share issuances.
- f) 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 written notice to, and consent of, the Decision Makers; and
- g) the first trade in any Share by a Member to a person or company other than the Filer is deemed to be a distribution.



Dean Murrison
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Financial and Consumer Affairs