

IN THE MATTER OF
CANNIMED THERAPEUTICS INC.

- and -

IN THE MATTER OF
AURORA CANNABIS INC.

**AMENDED CROSS-APPLICATION OF CANNIMED THERAPEUTICS INC.
TO THE APPLICATION OF AURORA CANNABIS INC.**

(In connection with a transactional proceeding under Rule 16 and under Sections 104 and 127 of the *Securities Act*, RSO 1990, c.S.5 and Sections 3.1 and 134(1)(b) of the *Securities Act*, 1998, S.S. 1988-89, c. S.-42.2)

A. ORDER SOUGHT

THE CROSS-APPLICANT, CanniMed Therapeutics Inc. (“CanniMed”) requests that the Ontario Securities Commission (the “OSC”) and/or the Financial and Consumer Affairs Authority of Saskatchewan (“FCAAS”, collectively with the OSC, the “Commissions”) make the following order:

1. that the exemption created by section 2.2(3) of National Instrument 62-104 *Take-Over Bids and Issuer Bids* (“NI 62-104”) to the restrictions on purchases during a take-over bid found in section 2.2(1) of NI 62-104 shall not apply to Aurora Cannabis Inc. (“Aurora”) ~~or to the Locked-up Shareholders (as defined below)~~ until March 9, 2018 or, if the Commissions grant the relief sought in the application brought by the Special Committee of CanniMed (the “Special Committee”) on behalf of CanniMed in connection with Aurora’s insider bid (the “CanniMed Application”), 105 days after a take-over bid circular that complies with insider bid rules, including a formal valuation, is sent to shareholders of CanniMed; and

2. such further and other relief as counsel may advise and the Commissions may consider just.

B. GROUNDS

The Cross-Applicant – CanniMed

1. CanniMed is a Canadian-based, international plant biopharmaceutical company existing under the *Canada Business Corporations Act* and a leader in the Canadian medical cannabis industry, with 16 years of pharmaceutical cannabis cultivation experience, state-of-the-art, Good Manufacturing Practices-compliant production processes and world class research and development platforms with a wide range of pharmaceutical-grade cannabis products. CanniMed is a reporting issuer in each province in Canada other than Quebec. The common shares of CanniMed (the “Common Shares”) are listed on the Toronto Stock Exchange (“TSX”).
2. Three of CanniMed’s largest shareholders are Golden Opportunities Fund Inc. (“Golden”, holding 16.28% of the Common Shares), Vantage Asset Management Inc. (“Vantage”, holding 8.19% of the Common Shares), SaskWorks Venture Fund Inc. (“SaskWorks”, holding 7.92% of the Common Shares) and Apex Investment Limited Partnership (“Apex”, holding 3.27% of the Common Shares). Doug Banzet, the Chief Financial Officer and a director of Golden is Golden’s nominee director on the CanniMed Board of Directors (the “Board”). Until November 17, 2017, when he resigned, Robert Duguid (“Duguid”), an officer of PFM Capital Inc., which is the portfolio manager of SaskWorks and of Apex, was SaskWorks’ and Apex’s nominee director on the Board.
3. As of December 1, 2017, there were 2,419 holders of Common Shares in Ontario, who collectively hold approximately 29% of the Common Shares, and 503 holders of Common Shares in Saskatchewan, who collectively hold approximately 50% of the Common Shares.

Background

4. In April, 2017, the Government of Canada announced that it would legalize marijuana for adult recreational use in Canada by July 1, 2018.

5. After the Government of Canada's announcement, CanniMed began considering options for entering the recreational cannabis market.
6. In June 2017, CanniMed's President and CEO Brent Zettl ("Zettl") was introduced to Jay Wilgar ("Wilgar"), the CEO of Newstrike Inc. ("Newstrike"). Newstrike is a publicly traded company headquartered in Brantford, Ontario, and owns Up Cannabis Inc., a licensed producer of medical cannabis that received its cultivation license on December 19, 2016.
7. Zettl and Wilgar discussed, among other things, the possibility of collaborative ventures relating to supply and storage of cannabis, and the potential for a future collaboration which would allow CanniMed strategic access to the adult-use recreational market. In order to facilitate ongoing discussions, CanniMed and Newstrike entered into a mutual non-disclosure agreement on June 29, 2017.
8. Throughout August and in early September, CanniMed and Newstrike discussed the terms of a possible storage arrangement (whereby CanniMed would provide storage for Newstrike product), a supply arrangement (whereby Newstrike would supply product to CanniMed for distribution) and the possibility of future commercial agreements. They also discussed a possible investment by CanniMed in Newstrike.
9. On September 6, 2017, John Knowles ("Knowles"), Chief Financial Officer of CanniMed, advised the Board that it would receive materials relating to certain business development initiatives being undertaken by CanniMed's management. Specifically, Knowles identified that the initiatives:
 - ...would bring exposure for CanniMed to the recreational market in Canada and, eventually, the U.S. while maintaining our primary medicinal focus and being careful to stay on the right side of U.S. legislation.
10. On September 7, 2017, Zettl sent the Board a slide deck prepared by the Board's financial advisor, AltaCorp Capital Inc. ("AltaCorp"), recommending that CanniMed pursue a merger with Newstrike to strategically enter the recreational cannabis market.

11. On September 8, 2017, the Board met to discuss, among other things, the AltaCorp slide deck and the potential transaction with Newstrike. At this meeting, Zettl advised the Board of the opportunity for CanniMed to subscribe for a convertible debenture from Newstrike, which could assist with the potential acquisition strategy. The Board directed management to immediately engage AltaCorp and legal counsel in connection with a potential transaction between CanniMed and Newstrike.
12. On September 20, 2017, the Board resolved to create a Special Committee to review potential strategies and opportunities for merger and acquisition activities by CanniMed, and to make recommendations to the Board in relation to such strategies and opportunities. It was further resolved that the Special Committee would be comprised of Donald Ching, Duguid, Richard Hoyt and Dwayne L. Lashyn. At this meeting, the Board also approved the terms of a convertible loan financing for Newstrike with a view to ensuring the continued exclusivity of discussions with Newstrike beyond September 29, 2017. This was mutually beneficial to CanniMed and Newstrike as, at the time, Newstrike had an immediate need for financing.
13. On September 27, 2017, the Board discussed due diligence with respect to the potential Newstrike deal. At the meeting, to the surprise of the other Board members, Duguid expressed concern that CanniMed's focus on the recreational cannabis market was not broad enough, and argued that CanniMed should entertain a strategic sale to a player in the recreational cannabis space. Duguid stated that the purpose of the First Committee should be to (i) determine the potential outcomes if another company approached CanniMed for acquisition; and (ii) to investigate moving into the recreation market for the benefit of shareholders.
14. The majority of the Board strongly disagreed with Duguid's assessment and clarified, by way of a board resolution, that the Special Committee's mandate did not extend to the initiation by CanniMed of a strategic sale process, including a potential change of control transaction.

15. The Board further resolved to approve the execution of an engagement letter with AltaCorp to ensure that AltaCorp analyzed all significant opportunities for CanniMed to gain exposure to the recreational cannabis market.
16. Continuing into November 2017, the Board, with assistance from AltaCorp, engaged in discussions with Newstrike relating to a potential acquisition by CanniMed of all of the outstanding common shares of Newstrike. In October 2017, CanniMed and Newstrike commenced negotiating an arrangement agreement (the “Arrangement Agreement”) to govern the acquisition of all of the outstanding common shares of Newstrike by CanniMed pursuant to a court approved plan of arrangement (the “Arrangement”).
17. On October 5 and 23, and November 2, 2017, Vantage wrote three letters to the Board insisting that the Board should seek to sell CanniMed, with the final letter stating that CanniMed should not enter into any transaction in which it would be the acquiror. The Board, based on advice from AltaCorp and other factors it considered relevant, determined that it was not an appropriate time to seek a change of control transaction of CanniMed as had been suggested by Vantage.
18. In November 2017, the Special Committee retained Cormark Securities Inc. (“Cormark”) to provide a second, and independent fairness opinion in respect of the Arrangement.
19. CanniMed and Newstrike continued to negotiate the terms of the Arrangement Agreement through to November 12, 2017. On November 12, 2017, CanniMed and Newstrike agreed, in principle, on an exchange ratio for the purposes of the share exchange consideration.
20. On November 13, 2017, a draft Arrangement Agreement was presented to the Board. At that meeting, both AltaCorp and Cormark delivered oral fairness opinions to the Board in which they stated, based on assumptions made in their opinions, that the consideration proposed to be paid by CanniMed to Newstrike shareholders in the Arrangement was fair, from a financial point of view, to CanniMed.
21. On November 13, 2017, Golden told the Chair of the Board that it had entered into an agreement in respect of a prospective acquisition of CanniMed by Aurora. On the same day, Aurora proposed in a letter to the Board that it would purchase all of the issued and

outstanding Common Shares on the basis of a share exchange ratio of 4.52586207 Aurora shares for each Common Share, subject to a maximum value of \$24.00 per Common Share (the “Aurora Proposal”).

22. The day before, on November 12, 2017, Aurora entered into Lock-Up Agreements with Golden, Vantage, SaskWorks, and Apex (collectively with Golden, Vantage, and SaskWorks, the “Locked-Up Shareholders”). Pursuant to these Lock-Up Agreements, the Locked-Up Shareholders agreed to tender their Common Shares to any take-over bid by Aurora for Common Shares, should the bid meet certain criteria. Further, pursuant to the Lock-Up Agreements, the Locked-Up Shareholders agreed, among other things, to exercise their voting rights attaching to the Common Shares to oppose certain proposed action by CanniMed, including any share-issuance or acquisition. Collectively, the Locked-Up Shareholders owned approximately 38% of the Common Shares at the time the Lock-Up Agreements were entered into (now approximately 36%).
23. On November 17, 2017, CanniMed entered into the Arrangement Agreement with Newstrike. Pursuant to the Arrangement Agreement, CanniMed agreed to purchase all of the issued and outstanding shares of Newstrike in exchange for shares of CanniMed, by way of the Arrangement. The terms of the Arrangement Agreement contain mutual non-solicit provisions which preclude CanniMed from, among other things, soliciting, negotiating or encouraging offers relating to a change of control transaction without consent from Newstrike. The Arrangement Agreement provides a mutual “fiduciary out” clause that allows either company to respond to unsolicited offers that meet certain criteria. It also enables either company to enter into a definitive agreement relating to an alternative transaction expected to be more favourable from a financial point of view to their shareholders and that meets certain customary, though fairly stringent, criteria, and also may result in the payment of a break fee by the terminating party. The break fees payable are roughly proportionate to the respective market capitalizations of Newstrike and CanniMed.
24. As the resulting issuance of Common Shares under the Arrangement will be greater than 25% of the issued and outstanding Common Shares, applicable TSX Rules require that CanniMed seek shareholder approval for such issuance of Common Shares.

25. On November 24, 2017, Aurora formally announced and made the Aurora Bid. The terms of the Aurora Bid are consistent with the terms of the Aurora Proposal.

Aurora Should Not Benefit from the Exemption to the Restrictions on Acquisitions

26. Aurora should not be allowed to benefit from the exemption in s. 2.2 of NI-62-104 to the prohibition on offerors purchasing any shares of the offeree issuer. ~~The Locked-Up Shareholders should also be prohibited from purchasing further Common Shares.~~ If Aurora ~~or the Locked-Up Shareholders are~~ is allowed to purchase any more Common Shares than they already collectively hold there will be little possibility for a transaction that would give CanniMed shareholders a better choice to the Aurora Bid.
27. Eleven days before Aurora formally announced and made the Aurora Bid, it announced that it had entered into the Lock-Up Agreements with the Locked-Up Shareholders, which collectively held approximately 38% of the Common Shares at the time the Lock-Up Agreements were entered into (now approximately 36%).
28. If Aurora is permitted to purchase any Common Shares of its own, when considered in combination with the 36% of the Common Shares currently held by the Locked-Up Shareholders, Aurora will very likely be in a *de facto* blocking position in respect of any prospective alternative bid to the Aurora Bid.
29. The Lock-Up Agreements require the Locked-Up Shareholders to vote their Common Shares in concert with Aurora, and in particular against the Arrangement. Among other things, the Lock-Up Agreements require the Locked-Up Shareholders to:

Exercise the voting rights attaching to the Shareholder's Share to oppose any proposed action by CanniMed, its directors, officers and/or shareholders, of any of its subsidiaries or any other person:

- (A) in respect of any amalgamation, merger, sale of CanniMed's or its affiliates' or associates' assets, take-over bid, issuer bid, plan of arrangement, reorganization, recapitalization, issuance of share, equity or voting securities or convertible or exchangeable securities or other business combination, material acquisition or similar transaction involving CanniMed or any of its subsidiaries other than the Offer;

- (B) which would reasonably be regarded as being directed towards or likely to prevent or delay the take-up any payment of the Shareholder's Shares despoited under the Offer or the successful completion of the Offer, including without limitation any amendment to the constating documents of CanniMed, its subsidiaries or its organizational structure;
 - (C) in respect of any new shareholder rights plan or "poison pill" subsequent to the date of this Agreement; or
 - (D) which would reasonably be expected to result in a material adverse effect in respect of CanniMed.
30. It is important to note that the Lock-Up Agreements do not contain the customary termination provision that would enable the locked-up party to terminate the agreement should a superior proposal be made by a third party. As a result of this omission, the acquisition of any further Common Shares by Aurora or a Locked-up Shareholder will mean that it will be even more unlikely that an alternative bid, even one that was clearly superior to the Aurora Bid, would be successful.
31. A special meeting of CanniMed shareholders is scheduled to be held on January 23, 2018 in connection with the approval of the issuance of Common Shares under the Arrangement (the "**Arrangement Resolution**"). Regardless of how CanniMed shareholders vote in relation to the Arrangement Resolution, it is in the best interest of CanniMed shareholders that CanniMed have the opportunity to solicit alternative transactions to the Aurora Bid. If CanniMed shareholders vote against the Arrangement Resolution, the Arrangement Agreement may be terminated and thereafter, CanniMed could freely seek alternative transactions to the Aurora Bid. If CanniMed shareholders vote for the Arrangement Resolution, the Arrangement is likely to close shortly thereafter, subject to satisfaction of certain other conditions. CanniMed should continue to be able to seek alternative transactions to the Aurora Bid, if it determines to do so, and should Aurora choose to waive its condition that the Arrangement not be completed.
32. CanniMed seeks this relief in order to foster a competitive and fair auction for the benefit of its shareholders, and to enable it to seek alternatives that would give CanniMed shareholders more choice than Aurora is currently offering them. It is in the public interest

to permit the Board to mitigate the harmful effects of Aurora's coercive bid and lock-up agreements.

33. CanniMed relies on the following statutes, rules and instruments:
- (a) *Securities Act*, R.S.O. 1990, c. S.5
 - (b) Statutory Powers Procedure Act, S.O. 1990, c. S.22
 - (c) Ontario Securities Commission Rules of Procedure
 - (d) The Securities Act, 1988, S.S. 1988-89, c S-42.2
 - (e) Saskatchewan Policy Statement 12-602, Procedure for Hearings and Reviews
 - (f) National Instrument 62-104, Take-Over Bids and Issuer Bids
 - (g) Multilateral Instrument 61-101, Protection of Minority Security Holders in Special Transactions
34. Such further and other grounds as counsel may advise and the Commission may permit.

C. EVIDENCE:

35. The Cross-Applicant intends to rely on affidavit evidence, to be sworn, and submissions (memorandum of fact and law) to be delivered in advance of the hearing.

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