

THE SECURITIES ACT ) Order No. 3138  
)  
Section 20 ) November 15, 2000

IMMGENICS PHARMACEUTICALS INC.

(A) WHEREAS the Securities Commission (the "Commission") has received an application from ImmGenics Pharmaceuticals Inc. ("ImmGenics"), Abgenix, Inc. ("Abgenix") and Abgenix Canada Corporation ("Abgenix Canada") for a decision under the Act that the requirements of sections 6 and 37 of the Act to be registered to trade in a security and to file a preliminary prospectus and a prospectus and receive receipts therefor prior to distributing a security (the "Registration and Prospectus Requirements") shall not apply to certain trades of securities in connection with the acquisition (the "Acquisition") of ImmGenics by Abgenix which was effected by way of an arrangement (the "Arrangement") involving ImmGenics, Abgenix and Abgenix Canada under section 252 of the *Company Act* (British Columbia) (the "BCCA");

(B) AND WHEREAS ImmGenics, Abgenix and Abgenix Canada have represented to the Commission that:

1. ImmGenics is a biopharmaceutical company incorporated under the laws of the Province of British Columbia;

2. prior to November 3, 2000, ImmGenics' authorized capital consisted of 100,000,000 common shares without par value ("ImmGenics Common Shares"), 100,000,000 Class A preferred shares without par value ("ImmGenics Class A Shares") and 100,000,000 Class B preferred shares with a par value of Cdn\$1.00 per share ("ImmGenics Class B Shares"). As of September 25, 2000, there were issued and outstanding 7,836,537 ImmGenics Common Shares, 1,918,000 ImmGenics Class A Shares and 3,616,353 ImmGenics Class B Shares;

3. as of September 25, 2000, ImmGenics had outstanding US\$500,000 principal amount of a debenture (the "Debenture") convertible at the holder's option into ImmGenics Class A Shares at a conversion price of US\$1.4552 per ImmGenics Class A Share or, at ImmGenics' option, redeemable for cash at any time;

4. as of September 25, 2000, ImmGenics had outstanding options under its stock option plan permitting the holders thereof to purchase 1,612,000 ImmGenics Common Shares in the aggregate and outstanding options outside of the plan permitting the holders thereof to purchase 375,000 ImmGenics Common Shares in the aggregate (collectively, the "ImmGenics Options");

5. none of the ImmGenics Common Shares, ImmGenics Class A Shares or ImmGenics Class B Shares are listed for trading on any stock exchange; until November 3, 2000, ImmGenics was a reporting company under the BCCA, and is

in good standing in British Columbia, but is not a reporting issuer or the equivalent thereof in any jurisdiction in Canada;

6. Abgenix is a biopharmaceutical company incorporated under the laws of the State of Delaware, is subject to the reporting requirements of the United States *Securities Exchange Act of 1934*, as amended, whose common shares ("Abgenix Common Shares") trade on the Nasdaq National Market. Abgenix is not a reporting issuer or the equivalent thereof in any jurisdiction in Canada;

7. the authorized capital of Abgenix consists of 220,000,000 Abgenix Common Shares, of which 81,520,244 were issued and outstanding as at September 20, 2000;

8. Abgenix Canada is a direct wholly-owned subsidiary of Abgenix. It is an unlimited liability corporation formed under the laws of Nova Scotia to hold all of ImmGenics' ordinary shares and to hold the various call rights related to the ImmGenics Special Shares. Abgenix Canada is not a reporting issuer or the equivalent thereof in any jurisdiction in Canada;

9. the authorized capital of Abgenix Canada consists of 100,000,000 common shares. All of the issued and outstanding common shares of Abgenix Canada are held by Abgenix;

10. ImmGenics and Abgenix entered into an acquisition agreement whereby Abgenix acquired ImmGenics; under the terms of the Acquisition, holders of ImmGenics Common Shares, ImmGenics Class A Shares and ImmGenics Class B Shares received ImmGenics Special Shares, and Abgenix Canada subscribed for and owns all of the issued and outstanding ordinary shares without par value in the capital of ImmGenics (the "ImmGenics Ordinary Shares");

11. the Acquisition was effected by way of an arrangement (the "Arrangement") under Section 252 of the BCCA;

12. subject to the terms of an interim order (the "Interim Order") obtained from the Supreme Court of British Columbia (the "Court") on October 4, 2000 in respect of the proposed Arrangement, the required approval of the holders of ImmGenics securities on a class basis (collectively, the "ImmGenics Securityholders") to the Arrangement was 75% of the votes cast at the class meetings of ImmGenics Securityholders held to approve the Arrangement (the "Meetings");

13. the Acquisition required (i) approval of the ImmGenics Securityholders at the Meetings held on October 30, 2000, and (ii) the final approval of the Court. At the meeting of common shareholders, each holder of ImmGenics Common Shares and each holder of ImmGenics Class A Shares and ImmGenics Class B Shares entitled to vote at meetings of holders of ImmGenics Common Shares was

entitled to one vote for each ImmGenics share held, and each holder of ImmGenics Options were entitled to one vote for each ImmGenics Common Share such holder would have received on a valid exercise of ImmGenics Options. Separate meetings were held for holders of ImmGenics Class A Shares, ImmGenics Class B Shares and the Debenture;

14. in connection with the Arrangement, ImmGenics sent to the ImmGenics Securityholders a management information circular (the "Circular") on or about October 6, 2000 containing prospectus-level disclosure of the business and affairs of Abgenix and of the particulars of the Arrangement. On or about October 24, 2000 ImmGenics sent to the ImmGenics Securityholders a supplement (the "Supplement") to the Circular; the Circular and the Supplement have been prepared in conformity with the provisions of the BCCA and the Interim Order; in addition, ImmGenics will send to securityholders a copy of Abgenix's most recent Form 10-K Report, all stub period quarterly financial statements issued since the last fiscal year end and all press releases relating to business and financial matters of Abgenix since the latest quarterly financial statements;

15. on the Arrangement becoming effective, the outstanding ImmGenics Common Shares were redesignated as ImmGenics Special Shares;

16. in connection with the Arrangement, ImmGenics, Abgenix, Abgenix Canada and a trustee (the "Trustee") entered into a voting, exchange and cash put trust agreement (the "Voting, Exchange and Cash Put Trust Agreement") and ImmGenics, Abgenix and Abgenix Canada will enter into a support agreement (the "Support Agreement"); these two agreements, together with the rights, privileges, restrictions and conditions attaching to the ImmGenics Special Shares (the "ImmGenics Special Share Provisions"), result in the economic attributes and the voting attributes of the ImmGenics Special Shares being substantially equivalent in all material respects to the economic and voting attributes of the Abgenix Common Shares;

17. pursuant to the Voting, Exchange and Cash Put Trust Agreement, Abgenix issued a special voting share (the "Special Voting Share") to the Trustee contemporaneously with the closing of the Arrangement which will be held by the Trustee for the benefit of the holders of ImmGenics Special Shares outstanding from time to time (other than those held by Abgenix, and its affiliates); the Special Voting Share will carry a number of voting rights, exercisable at any meeting of the holders of Abgenix Common Shares, equal to the number of ImmGenics Special Shares outstanding from time to time (excluding ImmGenics Special Shares owned by Abgenix and its affiliates) multiplied by an exchange ratio for the Abgenix Common Shares (the "Exchange Ratio") thereby permitting the holders of ImmGenics Special Shares to exercise equivalent voting rights (on a per share basis) as those attaching to the Abgenix Common Shares; the holders of the Abgenix Common Shares and the holder of the Special Voting Share will vote together as a single class on all matters; holders of ImmGenics Special

Shares will exercise the voting rights attached to the Special Shares through the mechanism of the Voting, Exchange and Cash Put Trust Agreement described below; the Special Voting Share will neither be entitled to dividends from Abgenix nor to participate on the dissolution of Abgenix; at such time as the Special Voting Share has no votes attached to it because there are no ImmGenics Special Shares outstanding not owned by Abgenix or any affiliate, the Special Voting Share will be cancelled;

18. each voting right attached to the Special Voting Share must be voted by the Trustee on any matter that may properly come before the shareholders of Abgenix at an Abgenix shareholders' meeting pursuant to the instructions of the holder of the related ImmGenics Special Share; in the absence of any such instructions from a holder, the Trustee will not be entitled to exercise the related voting rights; upon the exchange of an ImmGenics Special Share for an Abgenix Common Share, the holder of the ImmGenics Special Share becomes a holder of an Abgenix Common Share, will no longer be a beneficiary of the trust created by the Voting, Exchange and Cash Put Trust Agreement, and the right of such holder to exercise votes attached to the Special Voting Share terminates;

19. the Voting, Exchange and Cash Put Trust Agreement also provides certain exchange rights to the holders of ImmGenics Special Shares on a liquidation or insolvency of ImmGenics. The Voting, Exchange and Cash Put Trust Agreement also provides that all materials that are distributed by Abgenix to holders of the Abgenix Common Shares will be delivered to the Trustee for delivery to the holders of the ImmGenics Special Shares;

20. the ImmGenics Special Shares, together with the Voting, Exchange and Cash Put Trust Agreement, will provide holders thereof with a security of a Canadian issuer having economic and voting rights which are equivalent, in all material respects, to those of an Abgenix Common Share. ImmGenics Special Shares were received by certain holders of ImmGenics Common Shares on a Canadian tax-deferred rollover basis;

21. the ImmGenics Special Shares rank prior to the ImmGenics Ordinary Shares (all of which will be held by Abgenix Canada) in respect of the payment of dividends and the distribution of assets in the event of the liquidation, dissolution or winding-up of ImmGenics; the ImmGenics Special Share Provisions provide that each ImmGenics Special Share will entitle the holder to dividends at the same time as, and equivalent to, each dividend paid by Abgenix on an Abgenix Common Share; subject to the overriding call right of Abgenix Canada referred to below, on the liquidation, dissolution or winding-up of ImmGenics, a holder of ImmGenics Special Shares will be entitled to receive in priority to the ImmGenics Ordinary Shares an amount equal to the current market price of the number of Abgenix Common Shares determined by the Exchange Ratio held by the holder together with all declared and unpaid dividends on each such ImmGenics Special Share (such aggregate amount, the "Liquidation Price"); upon a proposed

liquidation, dissolution or winding-up of ImmGenics, Abgenix Canada will have an overriding call right (the "Insolvency Call Right") to purchase all of the outstanding ImmGenics Special Shares from the holders thereof (other than Abgenix or its affiliates) for a price per share equal to the Liquidation Price;

22. the ImmGenics Special Shares are non-voting (except as required by the ImmGenics Special Share Provisions or by applicable law) and are retractable at the option of the holder at any time after the date on which the Form S-1 Registration Statement filed by Abgenix with the United States Securities and Exchange Commission (the "SEC") is declared effective. Subject to the overriding call right of Abgenix referred to below, upon retraction the holder will be entitled to receive a redemption price per share at the time of retraction equal to the current market price of such number of Abgenix Common Shares determined by the Exchange Ratio, to be satisfied by the delivery of such number of Abgenix Common Shares, together with all declared and unpaid dividends on each such retracted ImmGenics Special Share (such aggregate amount, the "Retraction Price"); upon being notified by ImmGenics of a proposed retraction of ImmGenics Special Shares, Abgenix Canada will have an overriding call right (the "Retraction Call Right") to purchase from the holder all of the ImmGenics Special Shares that are the subject of the retraction notice for a price per share equal to the Retraction Price;

23. subject to the overriding call right of Abgenix Canada referred to below, on December 31, 2004 or on an earlier date (a) if there are less than 500,000 ImmGenics Special Shares outstanding or (b) if Abgenix is the subject of a take-over bid or merger transaction and the Board of Directors of ImmGenics determines that it is not reasonably practicable to replicate the terms and conditions of the ImmGenics Special Shares in connection with that event or (c) if a transaction is proposed which requires the vote of the ImmGenics Special Shares and the Board of Directors of ImmGenics determines that it is not reasonably practicable to accomplish the business purpose giving rise to the proposed transaction in a commercially reasonable manner that does not result in the vote being triggered or (d) if an amendment to the terms and conditions of the ImmGenics Special Shares necessary to retain their economic equivalence is proposed and not approved by the holders of the ImmGenics Special Shares, all ImmGenics Special Shares outstanding shall be redeemable at the option of ImmGenics for a redemption price per share equal to the current market price of such number of Abgenix Common Shares determined by the Exchange Ratio to be satisfied by the delivery of such number of Abgenix Common Shares plus any declared and unpaid dividends; upon being notified by ImmGenics of a proposed redemption of ImmGenics Special Shares, Abgenix Canada will have an overriding call right (the "Redemption Call Right") to purchase from the holders all of the outstanding ImmGenics Special Shares (for cash, that number of Abgenix Common Shares determined by the Exchange Ratio plus any declared and unpaid dividends) at a price per ImmGenics Special Share equal to the Redemption Price;

24. upon the liquidation, dissolution or winding-up of Abgenix, the ImmGenics Special Shares will be automatically exchanged for Abgenix Common Shares pursuant to the Voting, Exchange and Cash Put Trust Agreement, in order that holders of ImmGenics Special Shares may participate in the dissolution of Abgenix on the same basis as holders of Abgenix Common Shares; upon the insolvency of ImmGenics, holders of ImmGenics Special Shares may put their shares to Abgenix in exchange for Abgenix Common Shares, as described in greater detail below;

25. under the Voting, Exchange and Cash Put Trust Agreement, Abgenix granted to the Trustee for the benefit of the holders of the ImmGenics Special Shares a put right (the "Optional Exchange Right"), exercisable upon the insolvency of ImmGenics, to require Abgenix to purchase from a holder of ImmGenics Special Shares all or any part of its ImmGenics Special Shares; the purchase price for each ImmGenics Special Share purchased by Abgenix will be an amount equal to the current market price of that number of Abgenix Common Shares determined by the Exchange Ratio, to be satisfied by the delivery to the Trustee, on behalf of the holder, of that number of Abgenix Common Shares determined by the Exchange Ratio, together with an additional amount equivalent to the full amount of all declared and unpaid dividends on such ImmGenics Special Share;

26. under the Voting, Exchange and Cash Put Trust Agreement, upon the liquidation, dissolution or winding-up of Abgenix, Abgenix will be required to purchase each outstanding ImmGenics Special Share, and each holder will be required to sell all of its ImmGenics Special Shares (such purchase and sale obligations are hereafter referred to as the "Automatic Exchange Right"), for a purchase price per share equal to the current market price of that number of Abgenix Common Shares determined by the Exchange Ratio, in cash or at the sole option of Abgenix, Abgenix Common Shares determined by the Exchange Ratio, together with all declared and unpaid dividends;

27. under the Voting, Exchange and Cash Put Trust Agreement, Abgenix granted to the Trustee for the benefit of the holders of ImmGenics Special Shares a cash put right (the "Cash Put Right"), exercisable if the Form S-1 Registration Statement filed by Abgenix with the SEC to qualify the delivery of the Abgenix Common Shares to be issued on exchange of the ImmGenics Special Shares is not declared effective within 100 days of the closing of the Acquisition; the Cash Put Right will be for up to 50% of the ImmGenics Special Shares on and following day 100, up to 75% of the ImmGenics Special Shares on and following day 145 and up to 100% of the ImmGenics Special Shares on and following day 190, in each case after the closing of the Acquisition;

28. contemporaneously with the closing of the Arrangement, Abgenix, ImmGenics and Abgenix Canada entered into a Support Agreement which provides that Abgenix will not declare or pay any dividend on the Abgenix Common Shares unless ImmGenics simultaneously declares and pays an

equivalent dividend on the ImmGenics Special Shares, and that Abgenix will ensure that ImmGenics and Abgenix Canada will be able to honour the redemption and retraction rights and dissolution entitlements that are attributes of the ImmGenics Special Shares under the ImmGenics Special Share Provisions and the related redemption, retraction and liquidation call rights described above;

29. the Support Agreement also provides that, without the prior approval of the holders of the ImmGenics Special Shares, actions such as distributions of stock dividends, options, rights and warrants for the purchase of securities or other assets, subdivisions, reclassifications, reorganizations and other changes cannot be taken in respect of the Abgenix Common Shares generally without the same or an economically equivalent action being taken in respect of the ImmGenics Special Shares;

30. under the Support Agreement Abgenix covenants to reserve for issuance and keep outstanding and available such number of Abgenix Common Shares deliverable on the exchange of ImmGenics Special Shares;

31. under the terms of the Arrangement, the following occurred and were deemed to occur on the closing of the Arrangement in the following order without any further act or formality:

(a) the memorandum of ImmGenics was altered by increasing its authorized capital to consist of 500,000,000 shares divided into (i) 100,000,000 common shares without par value; (ii) 100,000,000 Class A preferred shares without par value; (iii) 100,000,000 Class B preferred shares with a par value of CDN\$1.00; (iv) 100,000,000 special shares without par value; and (v) 100,000,000 ordinary shares without par value;

(b) the Articles of ImmGenics were amended by adding Special Rights and Restrictions to the ImmGenics Special Shares and ImmGenics Ordinary Shares;

(c) the Debenture was converted into 343,595 Class A preferred shares in accordance with its terms;

(d) each of ImmGenics' Class A Shares and ImmGenics Class B Shares was converted into one ImmGenics Common Share;

(e) each ImmGenics Common Share was redesignated as an ImmGenics' Special Share;

(f) each ImmGenics Option was exchanged for an option under the Abgenix 1999 Non-statutory Stock Option Plan (a "Replacement Option") to purchase a number of Abgenix's Common Shares

equal to the product of the Exchange Ratio multiplied by the number of ImmGenics' Common Shares subject to such ImmGenics' Option;

(g) the memorandum of ImmGenics was altered to decrease its authorized capital to consist of 200,000,000 shares divided into (i) 100,000,000 ImmGenics Special Shares and (ii) 100,000,000 ImmGenics Ordinary Shares;

(h) the Articles of ImmGenics were amended by deleting the Special Rights and Restrictions attached to the ImmGenics Class A Shares and ImmGenics Class B Shares;

(i) Abgenix then issued to and deposited with the Trustee the Special Voting Share, in consideration of the payment to Abgenix of US\$1.00, to be thereafter held of record by the Trustee as trustee for and on behalf of, and for the use and benefit of, the holders of the ImmGenics' Special Shares in accordance with the Voting, Exchange and Cash Put Trust Agreement; and

(j) ImmGenics issued 20,000,000 Ordinary Shares to Abgenix Canada for an aggregate purchase price of \$20 pursuant to and in accordance with the terms of the Acquisition Agreement;

32. accordingly, upon the completion of the recapitalization, ImmGenics has two classes of shares outstanding:

(a) the ImmGenics Special Shares to be held by ImmGenics securityholders upon the redesignation of all of the ImmGenics Common Shares; and

(b) the ImmGenics Ordinary Shares to be held by Abgenix Canada;

33. the ImmGenics Special Shares will not be directly exchangeable by a holder thereof for Abgenix Common Shares;

34. the steps under the Arrangement and the exercise of certain rights provided for in the ImmGenics Special Share Provisions, the Voting, Exchange and Cash Put Trust Agreement and the Support Agreement involve or may involve a number of trades of securities (the "Arrangement Trades");

35. at the time of the Arrangement, after giving effect to the issuance of the ImmGenics Special Shares and assuming that all the ImmGenics Special Shares were exchanged for Abgenix Common Shares, residents of Canada will not hold of record directly or indirectly more than ten percent of the outstanding Abgenix Common Shares and will not represent in number more than ten percent of the



total number of holders of record directly or indirectly of Abgenix Common Shares;

36. the ImmGenics Special Shares will provide certain Canadian tax benefits to certain Canadian holders but will otherwise be the economic and voting equivalent in all material respects to the Abgenix Common Shares;

37. the Circular contained prospectus-level disclosure of the business and affairs of Abgenix, of the particulars of the Arrangement and on the securities to be issued in connection therewith;

38. Abgenix will concurrently send to all holders of Abgenix Common Shares and ImmGenics Special Shares resident in Manitoba all disclosure furnished to holders of Abgenix Common Shares resident in the United States including, but not limited to, copies of its annual report and all proxy solicitation materials;

39. so long as the ImmGenics Special Shares are outstanding, Abgenix will:

(a) file with the Commission copies of all documents required to be filed by it with the SEC under the United States *Securities Exchange Act of 1934*, as amended, including, without limitation, copies of any Form 10-K, Form 10-Q, Form 8-K and proxy statements prepared in connection with Abgenix's shareholders' meetings; and

(b) comply with the requirements of the Nasdaq National Market in respect of making public disclosure of material information on a timely basis; and

(c) forthwith issue in Canada and file with the Commission any press release that discloses a material change in Abgenix's affairs;

40. the Acquisition was completed on November 3, 2000;

41. there are no registered shareholders of ImmGenics located in Manitoba;

42. the relief is being requested for greater certainty in the event that there are undisclosed beneficial holders of ImmGenics shares located in Manitoba or if a current holder of ImmGenics Special Shares changes their registered address or relocates to Manitoba and exchanges their ImmGenics Special Shares for Abgenix Common Shares;

(C) AND WHEREAS the Commission is satisfied that it is not prejudicial to the public interest to do so;

IT IS ORDERED THAT:

**1. THAT** the Registration and Prospectus Requirements shall not apply to the Arrangement Trades provided that Abgenix, Inc. complies with paragraph 38 and 39 of this Order.

**2. THAT** the fee for this order shall be \$1,000.00.

BY ORDER OF THE COMMISSION

Director – Legal