

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
ALBERTA, MANITOBA, NEW BRUNSWICK AND QUEBEC**

**AND**

**IN THE MATTER OF  
THE MUTUAL RELIANCE REVIEW SYSTEM  
FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

**IN THE MATTER OF  
ADVANCED MEDICAL OPTICS, INC.**

**MRRS DECISION DOCUMENT**

1. WHEREAS the Canadian securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, Manitoba, New Brunswick and Québec (the "Jurisdictions") have received an application from Advanced Medical Optics, Inc. (the "Advanced Medical") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirements contained in the Legislation to be registered to trade in a security (the "Registration Requirement") and to file and obtain a receipt for a preliminary prospectus and a prospectus (the "Prospectus Requirement") (collectively, the "Registration and Prospectus Requirements") shall not apply to certain trades of common shares of Advanced Medical and options to acquire common shares of Advanced Medical in connection with the Advanced Medical Optics, Inc. 2002 Incentive Compensation Plan (the "Plan");

2. AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications ("System"), the Alberta Securities Commission is the principal regulator for this Application;

3. AND WHEREAS Advanced Medical represented to the Decision Makers that:

3.1 Advanced Medical is a company incorporated under the laws of Delaware in the United States of America;

3.2 Advanced Medical became registered with the U. S. Securities and Exchange Commission on May 14, 2002;

3.3 Advanced Medical is current with its reporting obligations under the *Securities Exchange Act* of 1934;

3.4 as at May 16, 2002, the share capital of Advanced Medical consisted of 100 common shares (the "Common Shares"), all of which were owned by Allergan, Inc.;

3.5 on June 28, 2002, Advanced Medical issued approximately 28,723,512 Common Shares a result of the spin-off of Advanced Medical from its parent corporation, Allergan, Inc.;

3.6 the Common Shares were listed on the New York Stock Exchange (the "NYSE") on June 12, 2002 and Advanced Medical is subject to the reporting obligations of the NYSE;

3.7 neither the Common Shares or any other securities of Advanced Medical are, nor is it intended that they will be, quoted or listed and posted for trading on any securities exchange or over-the-counter market in Canada;

3.8 Advanced Medical is not, and has no present intention of becoming, a reporting issuer under the applicable legislation of any of jurisdiction in Canada;

3.9 under the Plan, Advanced Medical may grant awards to certain eligible employees, employee executives, independent directors and consultants of Advanced Medical and Advanced Medical's affiliates (the "Participants") which may include options to purchase Common Shares ("Options"), grants of options in substitution for Allergan, Inc. options, restricted stock awards, stock appreciation rights, stock payments, performance awards or other stock based awards (collectively, "Awards"). Briefly, the attributes of each Award are as follows:

3.9.1 Options; granted to certain eligible employees and certain independent directors to purchase Common Shares;

3.9.2 substitution Options: in the event that immediately prior to the distribution date a transferring employee holds an outstanding option granted under the Allergan, Inc. 1989 Incentive Compensation Plan, that is unvested, such employee shall be granted an Option in substitution for the Allergan, Inc. options;

3.9.3 restricted stock Awards, Common Shares granted to eligible employees and independent directors with considerable restrictions attached including non-transferability and substantial risk of forfeiture until specific conditions are met;

3.9.4 stock appreciation rights, rights entitling a Participant to the excess of the fair market value of one Common Share on the date of exercise over the value of one Common Share on the date of grant. Any such payment by Advanced Medical may be made in Common Shares or in cash, at the discretion of the committee administering the Plan;

3.9.5 stock payment: a payment in Common Shares to replace all or any portion of the compensation (other than base salary) that would otherwise become payable to any employee;

3.9.6 performance Awards: these Awards are payable in Common Shares, and confer upon the holder the right to receive Common Shares upon the achievement of performance goals; and

3.9.7 other stock based Awards: these Awards may be denominated or payable in cash, Common Shares or otherwise and may be granted alone or in tandem or as an alternative to any other Award or grant under the Plan;

3.10 under the Plan, Options and Awards may not be issued to consultants unless:

3.10.1 the consultant provides services to Advanced Medical or an affiliate of Advanced Medical under a written contract; and

3.10.2 the consultant spends or will spend a significant amount of time and attention on the affairs and business of Advanced Medical or an affiliate of Advanced Medical;

3.11 under the Plan, Common Shares may be acquired on the NYSE and held for the benefit of a Participant;

3.12 at the time Participants are granted Awards under the Plan, Advanced Medical will provide each Participant with an agreement ("Award Agreement") evidencing the incentive Award and setting out additional details in respect of the Award;

3.13 any holder of an Award granted under the Plan may be granted, at no additional cost, an amount payable in cash, Common Shares or a combination of cash and Common Shares based on the dividends paid to stockholders with respect to a number of Common Shares equal to the number of Common Shares upon which such Award is based;

3.14 the Awards may not be transferred during the Awardee's lifetime and, upon the Awardee's death, may only be transferred by will or the applicable laws of succession;

3.15 upon Advanced Medical's issuance of Common Shares to Participants under the Plan (with the possible exception of

Restricted Stock Awards, if any, which may or may not place hold restrictions on the Common Shares issued under such Awards), the Participants are able to hold the Common Shares until they decide to sell at a later date or immediately sell the Common Shares on the NYSE through the administrator;

3.16 Advanced Medical will use an administrator (which may include various affiliates and divisions of the administrator) (the "Administrator") to carry out certain administrative and transactional services in connection with the Plan, including the Participants' exercise of Options and sale of Common Shares. The Administrator presently appointed by Advanced Medical to carry out such services is Mellon Shareholder Services of Teaneck, New Jersey;

3.17 the Administrator's sale of the Common Shares on behalf of Participants will be carried out on the NYSE in accordance with the applicable rules and requirements of such exchange,

3.18 currently, the maximum number of Common Shares that may be issued under the Plan is 6.7 million. Additionally, no more than 500,000 Common Shares may be awarded under the Plan to any Participant in any calendar year;

3.19 participation in the Plan is voluntary. Participants have not been, and will not be induced to participate in the Plan or to acquire Common Shares under the Plan by expectation of employment or continued employment or by expectation of engagement or continued engagement;

3.20 as of May 28, 2002, Advanced Medical had, in the aggregate, approximately 11 Participants residing in the Jurisdictions, of which 3 reside in Alberta, 1 resides in Manitoba, 1 resides in New Brunswick and 6 reside in Québec;

3.21 as of July 15, 2002, residents of each of the Jurisdictions, and of Canada, hold less than 10% of the number of issued and outstanding Common Shares and represent less than 10% of the number of holders of Common Shares, as shown on Advanced Medical's books and records;

3.22 Advanced Medical will provide the Participants resident in each of the Jurisdictions with the same level of disclosure in respect of the Plan as provided to all other Participants, On becoming a holder of Common Shares under the Plan, Participants resident in the Jurisdictions will be provided with the same level of

disclosure in respect of Advanced Medical as Advanced Medical provides to all other holders of Common Shares;

4. AND WHEREAS under the System this MRRS decision Document evidences the decision of each Decision Maker;

5. AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

6. THE DECISION of the Decision Makers under the Legislation is that the Registration and Prospectus Requirements will not apply to trades of Options or Common Shares to Participants under the Plan provided that the first trade in Options or Common Shares acquired under this Decision in a Jurisdiction will be deemed to be a distribution or primary distribution to the public under the Legislation of such Jurisdiction unless the conditions in section 2.14(1) of Multilateral Instrument 45-102 *Resale of Securities* ("MI 45-102") are satisfied;

7. THE FURTHER DECISION of the Decision Makers under the Legislation is that the Registration Requirement will not apply to first trades of Common Shares acquired by Participants under the Plan that are executed through the Administrator provided that the conditions in section 2.14(l) of MI 45-102 are satisfied.

DATED this "2<sup>nd</sup>" day of "August", 2002

Glenda A. Campbell, Q.C., Vice-Chair

David W. Betts, Member

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - registration and prospectus relief to allow shares of a U.S. parent company to trade to Canadian-resident employees. Registration relief also granted to allow Canadian employees to execute first trades on a foreign market. First trade registration relief required because plan allows employees to acquire shares that have been purchased on a secondary market.

**Applicable Alberta Statutory Provisions**

*Securities Act*, R.S.A., 2000, c.S-4, s. 75, 110, and 144(1).