

IN THE MATTER OF THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, SASKATCHEWAN, MANITOBA,
ONTARIO, Québec, NEW BRUNSWICK, PRINCE EDWARD ISLAND,
NOVA SCOTIA, NEWFOUNDLAND, NORTHWEST TERRITORIES,
YUKON AND NUNAVUT

AND

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

AND

IN THE MATTER OF FONDS DE SOLIDARITÉ
DES TRAVAILLEURS DU Québec (F.T.Q.)

MRRS DECISION DOCUMENT

WHEREAS the Canadian securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Prince Edward Island, Nova Scotia, Newfoundland, Northwest Territories, Yukon and Nunavut (collectively, the "Jurisdictions") has received an application from Fonds de solidarité des travailleurs du Québec (F.T.Q.) (the "Filer") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the transfer of Mutual Fund Units (as hereinafter defined) from the Filer to the limited partners (the "Limited Partners") of BioCapital Investments Limited Partnership ("BioCapital") as partial payment of the Purchase Price (as hereinafter defined) in connection with the Amendment (as hereinafter defined), be exempt from the prospectus and registration requirements contained in the Legislation.

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System") the Ontario Securities Commission is the principal regulator for this application.

AND WHEREAS the Filer has represented to the Decision Makers that:

1. The Filer is a joint-stock company and a labour-sponsored development capital investment fund created by *An Act to establish the Fonds de solidarité des travailleurs du Québec (F.T.Q.)* (R.S.Q., c. F-3.2.1), enacted by the National Assembly of Québec on June 23, 1983, as amended.
2. The head office of the Filer is located at 8717 Berri Street, Montreal, Quebec, H2M 2T9.
3. By distribution of securities to the public, the Filer invites its members as well as all Quebecers to subscribe for the Filer's shares in order to create, maintain or protect jobs in Quebec, mainly in small and medium-sized companies. It is primarily a "solidarity fund" aimed at collecting the savings of all those who wish to participate in this way in the struggle for full

employment in order to improve labour conditions of Quebec workers and the Quebec economy. In pursuing its objectives, the Filer also seeks to be profitable.

4. As at December 31, 1999, the Filer had 141,761,000 Class A shares outstanding (the "Filer Shares").

5. The Filer Shares are not listed on a stock exchange. There is no market for the Filer Shares, but they may be transferred or redeemed in limited circumstances.

6. The Filer is allowed, pursuant to an exemption granted by the Commission des valeurs mobilières du Québec, to issue the Filer Shares on a continuous basis pursuant to a simplified prospectus that is renewed annually.

7. The Filer is a reporting issuer in the province of Quebec within the meaning of the Legislation.

8. BioCapital is a closed-end investment limited partnership established under the laws of the Province of Quebec pursuant to a limited partnership agreement (the "Limited Partnership Agreement") dated May 8, 1997, as amended.

9. The general partner of BioCapital is BioCapital Management Inc. (the "General Partner").

10. The principal establishment of BioCapital is located at 3690 de la Montagne Street, Montreal, Quebec, H3G 2A8.

11. The limited partnership units of BioCapital (the "BioCapital Units") are listed on The Toronto Stock Exchange.

12. BioCapital is a reporting issuer, within the meaning of the Legislation, in all Jurisdictions (except in the Northwest Territories, Yukon and Nunavut).

13. Pursuant to the Limited Partnership Agreement, BioCapital is allowed to issue a limited number of BioCapital Units. As at December 28, 2000, approximately 10,387,182 BioCapital Units were issued and outstanding.

14. The Filer held, as at December 15, 2000, 8,102,880 BioCapital Units, representing approximately 78% of the outstanding BioCapital Units.

15. The proposed reorganization (the "Proposed Reorganization") of BioCapital consists of:

(i) the transfer (the "Transfer of Investments") by BioCapital to a newly formed mutual fund (the "Mutual Fund") of all securities of public companies that are held by BioCapital (the "Investments") and all of its cash (subject to certain restrictions) in exchange for units of the Mutual Fund (the "Mutual Fund Units"). It is anticipated that the Mutual Fund Units will be issued to BioCapital pursuant to a simplified prospectus;

(ii) a distribution (the "Distribution") by BioCapital to the Limited Partners (on a *pro rata* basis) of all of the Mutual Fund Units it will receive in connection with the Transfer of Investments. The Distribution shall be done pursuant to statutory exemptions from the registration and prospectus requirements of the Legislation at the usual time for year-end distributions to the Limited Partners;

(iii) the removal of the General Partner as general partner of BioCapital in accordance with Section 14.3 of the Limited Partnership Agreement and the appointment of an entity to be determined by the Filer as the new general partner of BioCapital;

(iv) an amendment (the "Amendment") to the Limited Partnership Agreement pursuant to which each Limited Partner (other than the Filer) will be required to sell, assign and transfer to the Filer, and the Filer will be required to purchase from such Limited Partners, all of the BioCapital Units they hold at a purchase price (the "Purchase Price") of \$10.40 per unit, on the date on which the approval of the Limited Partners to amend the Limited Partnership Agreement is obtained and all other closing conditions are satisfied (or waived). Such purchase and sale will be subject to the fulfilment, to the mutual satisfaction of the Filer and the General Partner (or waiver), of the conditions of closing contained in the Support Agreement (as defined below) and will be completed by the General Partner (or its successor) for and on behalf of the Limited Partners without further action on the part of the Limited Partners; and

(v) the payment of the Purchase Price by the Filer half in cash and the other half by the transfer from the Filer to the Limited Partners of Mutual Fund Units (according to the value of such units on the date of transfer) to be received by the Filer pursuant to the Distribution. Such transfer of Mutual Fund Units is subject to the registration requirements of the Legislation and to the prospectus requirements of the Legislation of all the Jurisdictions other than Quebec and Yukon.

16. The Mutual Fund is an open-ended mutual fund trust established under the laws of the Province of Ontario. The manager of the Mutual Fund is BioCapital Mutual Fund Management Inc. (the "Manager"), a wholly-owned subsidiary of BioCapital Management Group Inc.

17. The Mutual Fund Units are redeemable at all times at the option of the holder.

18. The Mutual Fund Units are not transferable except in connection with the Proposed Reorganization.

19. The board of directors of the Manager is composed of five persons, one of whom will be designated by the Filer, as long as the Filer holds at least 2% of the outstanding Mutual Fund Units.

20. The fundamental investment objective of the Mutual Fund is to realize superior capital appreciation primarily through equity investments in public companies with high growth potential acting in the healthcare and biotechnology industries.

21. A preliminary simplified prospectus of the Mutual Fund has been filed on January 19, 2001 with the securities commissions and other regulatory authorities of each provinces of Canada so that the Mutual Fund will be in a position to distribute the Mutual Fund Units in connection with the Transfer of Investments.

22. Because the Filer will own such a large majority of the Mutual Fund Units, it will enter into an agreement with the Mutual Fund which will place limits on redemptions of Mutual Fund Units. Specifically, in any year the Filer will not be permitted to request redemptions of Mutual Fund Units in excess of 25% of the number of Mutual Fund Units held by the Filer on closing of the Proposed Reorganization, and in any event subject to a 6.25% limit per quarter. However, such undertaking will not apply to the Mutual Fund Units to be transferred by the Filer to the Limited Partners in partial payment of the Purchase Price.

23. A special meeting (the "Meeting") of Limited Partners has been scheduled on March 29, 2001 for the purpose of considering, and if deemed advisable, approving the Proposed Reorganization.

24. A proxy circular (the "Circular") prepared in accordance with the requirements contained in the Legislation will be sent to the Limited Partners in connection with the Meeting. The Circular will contain all material information regarding the resolutions to be approved at the Meeting in order for the Proposed Reorganization to be completed.

25. On January 15, 2001, the Filer, BioCapital and the General Partner entered into a support agreement (the "Support Agreement"). Pursuant to the Support Agreement, among other things:

(i) The Filer has undertaken to vote in favour of all resolutions to be approved at the Meeting in order for the Proposed Reorganization to be completed, provided that:

A. the General Partner agrees to be replaced at the closing of the Proposed Reorganization by an entity to be chosen by the Filer;

B. the Filer enters into a consulting agreement with the General Partner for a period of up to six months (with an additional 2 month period at the option of the Filer) following closing of the Proposed Reorganization to facilitate the transition;

C. BioCapital pays to the General Partner a performance bonus on closing of the Proposed Reorganization in accordance with the formula presently included in the Limited Partnership Agreement;

D. Normand Balthazard, Claude Vezeau and Andr頂oulet (all of whom are directors and officers of the General Partner) and the General Partner enter into a non-competition agreement satisfactory to the Filer;

E. the General Partner recommends to the Limited Partners to vote in favour of all of the resolutions to approve the Proposed Reorganization;

F. the General Partner obtains from an independent financial advisor a fairness opinion to the effect that the Proposed Reorganization is fair, from a financial point of view, to the Limited Partners other than the Filer;

G. the General Partner undertakes not to proceed with the Proposed Reorganization if one of the resolutions is not approved at the Meeting or if one of the closing conditions is not met (or waived by the Filer); and

H. all other closing conditions are satisfied.

(ii) The Transfer of Investments is conditional, *inter alia*, on the issuance by the securities commissions and other regulatory authorities in each Jurisdiction where Limited Partners are residents of a receipt for a final simplified prospectus of the Mutual Fund.

26. The Circular will contain, pursuant to the Support Agreement, (i) a fairness opinion from an independent financial advisor confirming that the Proposed Reorganization is fair, from a financial point of view, to the Limited Partners other than the Filer; (ii) a summary of a valuation to be prepared by an independent financial advisor and (iii) a recommendation of the board of directors of the General Partner that the Limited Partners vote in favour of the Proposed Reorganization.

27. The Filer will file with the Decision Makers of the provinces of British Columbia and Ontario on the closing of the Proposed Reorganization the information prescribed by Form 23 of the *Securities Act* (Ontario) which will include the following declaration:

"The Filer, for whose account the securities which this certificate relates are to be transferred pursuant to the Amendment, represents that it has no knowledge of any misrepresentation contained in the prospectus of the Mutual Fund, nor knowledge of any material change which has occurred in the affairs of the Mutual Fund which has not been generally disclosed and reported to the Decision Markers, nor has it any knowledge of any other material adverse information in regard to the current and prospective operations of the Mutual Fund which have not been generally disclosed".

28. The Proposed Reorganization will be in compliance with Rule 61-501 of the Ontario Securities Commission and Policy Statement No. Q-27 of the *Commission des valeurs mobilières du Québec*.

29. None of the costs of the Proposed Reorganization will be charged directly or indirectly against the Mutual Fund.

30. The securities of Qbiogene Inc. and Bridge Capital Investments Limited Partnership will not be transferred to the Mutual Fund pursuant to the Proposed Reorganization.

31. The simplified prospectus of the Mutual Fund will contain all relevant information regarding the Mutual Fund and Mutual Fund Units. A copy of the simplified prospectus of the Mutual Fund will be sent to the Filer and each of the Limited Partners.

32. Pursuant to the Limited Partnership Agreement, the resolutions giving effect to the Transfer of Investments and the Amendment must each be approved by at least 66 2/3% of the votes cast at the Meeting; in addition, the approval of the majority of the "minority" will be required to be obtained at the Meeting.

AND WHEREAS pursuant to the System this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

THE DECISION of the Decision Makers pursuant to the Legislation is that:

(a) the registration requirements contained in the Legislation shall not apply to the transfer of Mutual Fund Units from the Filer to the Limited Partners as partial payment of the Purchase Price in connection with the Amendment; and

(b) the prospectus requirements contained in the Legislation of the Jurisdictions other than Quebec and Yukon shall not apply to the transfer of Mutual Fund Units from the Filer to the Limited Partners as partial payment of the Purchase Price in connection with the Amendment.

Dated this 23rd day of March, 2001.

"J.A. Geller"

"R.W. Davis"

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief from registration and prospectus requirements to permit a certain distribution from a control block holder of otherwise non-transferable mutual fund units pursuant to a reorganization

Ontario Statute Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 53, 72(7), 74(1)

Ontario Form Cited

Form 23

Ontario Rule Cited

Ontario Securities Commission Rule 61-501