

IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
MANITOBA, QUEBEC, NEW BRUNSWICK,  
THE YUKON TERRITORY, THE NORTHWEST TERRITORIES AND NUNAVUT

AND

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

AND

IN THE MATTER OF  
HEMOSOL INC. AND HEMOSOL CORP.

MRRS DECISION DOCUMENT

WHEREAS the securities regulatory authority or regulator (the "Decision Maker") in each of Manitoba, Quebec, New Brunswick, the Yukon Territory, the Northwest Territories and Nunavut (collectively, the "Jurisdictions") has received an application from Hemosol Inc. ("Hemosol") and *Hemosol Corp.* ("New Hemosol") in connection with a restructuring (the "Transaction") of Hemosol to be effected by way of an arrangement (the "Arrangement") under section 182 of the *Business Corporations Act* (Ontario) (the "OBCA") involving Hemosol, the securityholders of Hemosol and MDS Inc. ("MDS") 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 and to file a preliminary prospectus and a prospectus and receive receipts therefore (the "Registration and Prospectus Requirements") shall not apply to certain intended trades in connection with the Arrangement which are not otherwise exempt from such requirements;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Autorite des marches financiers is the principal regulator for this application;

AND WHEREAS, unless otherwise defined, the terms herein have the meanings set out in National Instrument 14-101 - *Definitions* or in the Notice of the Autorite des marches financiers - Amendment to National Instrument 14-101- *Definitions*;

AND WHEREAS Hemosol and New Hemosol have represented to the Decision Makers that:

Hemosol

1. Hemosol is a corporation existing under the OBCA. The registered and principal office of Hemosol is located in Mississauga, Ontario.

2. Hemosol is a biopharmaceutical company focused on the development and manufacturing of biologics, particularly blood-related proteins.

3. The authorized capital of Hemosol consists of an unlimited number of common shares ("Hemosol Common Shares"), an unlimited number of special shares issuable in series and 51,786 Series D special shares. As at March 10, 2004, 56,145,583 Hemosol Common Shares and no special shares were issued and outstanding.

4. Hemosol is a reporting issuer in each of the Jurisdictions in which such concept exists. Hemosol is not on the list of defaulting reporting issuers maintained by the Decision Makers.

5. The Hemosol Common Shares are listed on the Toronto Stock Exchange (the "TSX") and the Nasdaq National Market ("NASDAQ").

6. New Hemosol is a corporation existing under the OBCA. The registered and principal office of New Hemosol is located in Mississauga, Ontario. The only issued and outstanding share in the capital of New Hemosol (the "Initial New Hemosol Common Share") is held by Hemosol.

#### MDS

7. MDS is a corporation existing under the *Canada Business Corporations Act*. The registered and principal office of MDS is located in Toronto, Ontario.

8. MDS is an international health and life sciences company engaged in a broad range of activities including clinical laboratory services in Ontario (the "Ontario Labs Business").

9. As at March 10, 2004:

(a) MDS held 6,549,897 Hemosol Common Shares, either directly or through a wholly-owned subsidiary, representing approximately 11.7% of the outstanding Hemosol Common Shares.

(b) MDS held 6,000,000 warrants to purchase Hemosol Common Shares.

(c) MDS held approximately 47% of the equity interest in MDS Capital Corp. (the balance of the equity interest is owned by institutional investors and management). MDS Capital Corp. and/or its affiliates provide management services to two entities which held an aggregate of 812,246 Hemosol Common Shares. The Hemosol Common Shares held by such funds are voted by such entities through authorized signing officers.

10. MDS is a reporting issuer in each of the Jurisdictions in which such concept exists. MDS is not on the list of defaulting reporting issuers maintained by the Decision Makers.

11. The common shares of MDS are listed on the TSX and the New York Stock Exchange.

## The Transaction

12. On February 11, 2004, Hemosol and MDS executed an arrangement agreement providing for the Transaction.

13. The essence of the Transaction consists of MDS transferring, in effect, the Ontario Labs Business to Hemosol to allow Hemosol to utilize its existing tax losses (the "Tax Losses"), New Hemosol acquiring, in effect, the existing business of Hemosol (the "Blood Products Business") and a cash infusion of \$16 million to the Blood Products Business from the MDS transferred business.

14. In order for Hemosol to utilize the Tax Losses, MDS will in effect transfer its Ontario Labs Business to a new limited partnership to be named MDS Laboratory Services, L.P. (the "Labs Partnership") in which Hemosol will have a 99.99% interest. MDS Laboratory Services Inc. ("MDS Subco"), a wholly-owned subsidiary of MDS, will be the general partner of the Labs Partnership and MDS will have operational control over the Labs Partnership. MDS will own 99.56% of the equity in Hemosol, with the remaining equity interest of 0.44% being held by the shareholders of Hemosol (the "Shareholders") other than MDS or its subsidiaries (the "Public Shareholders"). MDS will hold only 47.5% of the voting shares of Hemosol.

15. The Blood Products Business of Hemosol will be transferred to a new limited partnership to be named Hemosol LP (the "Blood Products Partnership"), which will be owned upon completion of the Arrangement as to 93% by New Hemosol and as to 7% by Hemosol. New Hemosol will be the general partner of the Blood Products Partnership and will control the Blood Products Business. The share ownership of New Hemosol immediately following the Arrangement will be on the same proportionate basis as the share ownership of Hemosol immediately prior to the Arrangement. New Hemosol will also receive the \$16 million cash value attributed to the Tax Losses.

16. The steps involved in completing the Transaction are as follows:

(a) MDS and MDS Subco will form the Labs Partnership under the Limited Partnerships Act (Ontario), with MDS Subco acquiring a 0.01% general partnership interest in consideration for cash and MDS acquiring a 99.99% limited partnership interest in consideration for the transfer by MDS to the Labs Partnership of the Ontario Labs Business. The Labs Partnership will hold the relevant licences required in order to receive substantially all of the revenues from the Ontario Ministry of Health in respect of the Ontario Labs Business.

(b) Hemosol and New Hemosol will form the Blood Products Partnership under the Limited Partnerships Act (Ontario) with New Hemosol as the general partner and Hemosol as the limited partner. New Hemosol will acquire a 0.01% partnership interest in consideration for cash and Hemosol will acquire a 99.99% partnership interest in consideration for the transfer by Hemosol of the Blood Products Business to the Blood Products Partnership. The Blood Products Partnership will assume all liabilities of Hemosol.

(c) The existing stock options of Hemosol held by Hemosol employees will be cancelled. Subject to TSX approval, New Hemosol will adopt a stock option plan and issue options to acquire New Hemosol Common Shares (as defined below) to the holders of certain of such cancelled Hemosol options with vesting and

exercise terms identical to those of the cancelled options and an exercise price equal to the exercise price of such cancelled options less \$0.04.

(d) The articles of Hemosol will be amended to create three new classes of shares:

- (i) Class A voting common shares (the "Hemosol Class A Common Shares");
- (ii) Class B non-voting shares (the "Hemosol Class B Non-Voting Shares"); and
- (iii) Class C redeemable preferred shares (the "Hemosol Class C Preferred Shares").

(e) The articles of Hemosol will be amended to provide that: (i) the business of Hemosol will be restricted to holding the limited partnership interests in the Blood Products Partnership and the Labs Partnership, performing its obligations under the Arrangement and certain incidental corporate powers; and (ii) Hemosol's available cash, after providing for the redemption of Hemosol Class C Preferred Shares, will be distributed to the holders of the Hemosol Class A Common Shares and the Hemosol Class B Non-Voting Shares.

(f) The Initial New Hemosol Common Share will be purchased for cancellation by New Hemosol from Hemosol in consideration for \$1.00.

(g) Shareholders (including MDS and its subsidiaries) will exchange their Hemosol Common Shares with Hemosol on the basis of one Hemosol Class A Common Share and one Hemosol Class C Preferred Share for each Hemosol Common Share. Hemosol will cancel all Hemosol Common Shares acquired as a result of such exchange and the authorized capital of Hemosol will be limited to the three classes of shares described in paragraph (d) above.

(h) Shareholders (including MDS and its subsidiaries) will exchange their Hemosol Class C Preferred Shares with New Hemosol on the basis of one common share of New Hemosol (each, a "New Hemosol Common Share") for each Hemosol Class C Preferred Share.

(i) MDS will surrender an aggregate of 2,500,000 warrants to purchase Hemosol Common Shares that it currently holds or has the right to receive in certain circumstances.

(j) New Hemosol will assume the obligations of Hemosol under the outstanding warrants and broker compensation options to purchase Hemosol Common Shares (collectively, the "Hemosol Convertible Securities") (including warrants held by MDS, subject to the surrender by MDS described in the preceding paragraph) as if such Hemosol Convertible Securities were a right to acquire New Hemosol Common Shares ("New Hemosol Convertible Securities") (other than a reduction of the exercise price by \$0.04) and Hemosol will redeem all of the Hemosol Class C Preferred Shares held by New Hemosol on the effective date (the "Effective Date") of the Arrangement in exchange for the transfer by Hemosol to New Hemosol of a 91.12% partnership interest in the Blood Products Partnership and \$16 million in cash. Hemosol will borrow the \$16 million cash portion of the redemption amount from the Labs Partnership.

(k) New Hemosol will invest \$15 million of the cash proceeds from the redemption of the Hemosol Class C Preferred Shares in the Blood Products Partnership in exchange for additional partnership units of the Blood Products Partnership, such that New Hemosol's former 91.13% partnership interest will increase to approximately 93% and Hemosol's former 8.87% partnership interest will decrease to approximately 7%.

(l) The remaining \$1 million of the cash proceeds from the redemption of Hemosol Class C Preferred Shares will be held in escrow for one year and may be released to Hemosol in respect of losses suffered by Hemosol relating to pre-closing liabilities of Hemosol. At the end of the escrow period, the balance of the escrowed funds will be released to New Hemosol to be invested in the Blood Products Partnership, provided that certain amounts may be retained in escrow pending settlement of any claims made by Hemosol.

(m) MDS will transfer its 99.99% limited partnership interest in the Labs Partnership to Hemosol in consideration for the issuance by Hemosol to MDS of additional Hemosol Class A Common Shares (such that upon completion of the Arrangement, MDS will hold not more than 47.5% of the outstanding Hemosol Class A Common Shares) and such number of Hemosol Class B Non-Voting Shares that will result in MDS holding 99.56% of the equity of Hemosol (through a combination of Hemosol Class A Common Shares and Hemosol Class B Non-Voting Shares) and the Public Shareholders holding 0.44% of the equity of Hemosol (through Hemosol Class A Common Shares).

17. All trades *made* in connection with the Arrangement, including, for greater certainty, the trades described in paragraph 16 above, and the issuance by New Hemosol of New Hemosol Common Shares upon the exercise of New Hemosol Convertible Securities are referred to herein collectively as the "Trades".

18. Hemosol, on behalf of New Hemosol, has applied to list the New Hemosol Common Shares on the TSX and to quote the New Hemosol Common Shares on NASDAQ. The TSX has given conditional approval for the substitutional listing of the New Hemosol *Common Shares*, *subject to its* normal requirements. The Hemosol Class A Common Shares will not be listed on any United States exchange or quoted on an inter-dealer quotation system of a registered national securities association in the United States. The Hemosol Class A Common Shares will not be listed on any stock exchange in Canada, although Hemosol intends to remain a reporting issuer in each of the Jurisdictions in which such concept exists.

19. On March 9, 2004, Hemosol obtained an interim order from the Superior Court of Justice of Ontario (the "Court"):

(a) approving the calling of and providing for certain procedural matters in connection with the Meeting to, among other things, consider and pass a special resolution to approve the Arrangement; and

(b) requiring that the vote to pass the aforesaid resolution at the Meeting be the affirmative vote of at least two-thirds of the votes cast at the Meeting by Shareholders (including MDS) and holders of Hemosol Convertible Securities (excluding MDS) voting together as a class; in addition, such resolution must also be approved by at least a majority of the votes cast at the Meeting by Shareholders excluding the votes cast by MDS and other persons whose votes cannot be included for the purposes of minority approval (as set out in the applicable minority approval provisions of the Legislation).

20. On March 19, 2004, Hemosol mailed to the Shareholders and holders of Hemosol Convertible Securities a notice of annual and special meeting (the "*Meeting*"), forms of proxy and a management information circular (the "*Circular*") describing the Transaction. The Circular contained prospectus-level disclosure in respect of Hemosol and New Hemosol, subject to the exemption granted the Decision Makers in British Columbia, Alberta, Saskatchewan, Ontario, Quebec and Newfoundland on March 12, 2004 ordering that certain audited historical financial information in respect of the Ontario Labs Business was not required to be included in the Circular provided that certain conditions were met

21. Subject to the approval of the Arrangement at the Meeting, Hemosol will apply to the Court for a final order approving the Arrangement.

AND WHEREAS under the System this MRRS Decision Document evidences the decision of the Decision Makers (the "*Decision*");

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;

THE DECISION of the Decision Makers under the Legislation is that the Registration and Prospectus Requirements shall not apply to the Trades provided that the following conditions shall be applicable in Quebec, Manitoba, the Northwest Territories and Nunavut:

(a) the first trade in securities acquired pursuant to the Trades shall be deemed to be a distribution or a primary distribution to the public under the Legislation of Quebec, Manitoba, the Northwest Territories and Nunavut; and

(b) the Prospectus Requirement contained in the Legislation of Quebec, Manitoba, the Northwest Territories and Nunavut shall not apply to the first trade in securities acquired pursuant to the Trades, provided that:

(i) in Quebec, New Hemosol or Hemosol, as applicable, is and has been a reporting issuer in Quebec for the twelve months immediately preceding the trade, including, in the case of New Hemosol, the period of time that Hemosol was a reporting issuer in Quebec immediately before the Effective Date;

(ii) in Manitoba, the Northwest Territories or Nunavut, New Hemosol or Hemosol, as applicable, is and has been a reporting issuer in a jurisdiction of Canada for the four months immediately preceding the trade, including, in the case of New Hemosol, the period of time that Hemosol was a reporting issuer in such jurisdiction immediately before the Effective Date;

(iii) in Manitoba, the Northwest Territories or Nunavut, the trade is not a control distribution;

(iv) no unusual effort is made to prepare the market or create a demand for the security that is the subject of the trade;

(v) no extraordinary commission or consideration is paid to a person or company in respect of the trade; and

(vi) if the selling securityholder is an insider or officer of New Hemosol or Hemosol, as applicable, the selling securityholder has no reasonable grounds to believe New Hemosol or Hemosol, as applicable, is in default of securities legislation.

DATED this 30<sup>th</sup> day of April, 2004.

"Jos ~~Deslauriers~~"

La Directrice du marché des capitaux