



Citation: 2017 BCSECCOM 138

**Headnote**

*Securities Act*, s. 76 – Prospectus Requirements - A reporting issuer with mind and management in BC wants to conduct a US public offering without filing a prospectus in BC - The issuer’s securities are listed only on a market outside of Canada; the distribution will not be made to a purchaser resident in Canada; the issuer will comply with U.S. securities laws and the securities law requirements in the jurisdiction where the purchaser is resident; the issuer will file the U.S. prospectus on SEDAR.

*Securities Act*, s. 169 – Confidentiality – An applicant wants to keep an application and order confidential for a limited amount of time after the order is granted - The record provides intimate financial, personal or other information. The disclosure of the information before a specific transaction would be detrimental to the person affected; the information will be made available after a specific date.

April 10, 2017

**Exemption Order**

**DelMar Pharmaceuticals, Inc.**

**Sections 76 and 169 of the *Securities Act*, R.S.B.C. 1996, c.418**

**Background**

- ¶ 1 DelMar Pharmaceuticals, Inc. (Filer) has applied to the British Columbia Securities Commission for
- (a) an order under section 76 of the *Securities Act* (British Columbia) exempting the Filer from the prospectus requirement in section 61 of the Act for a distribution of securities of the Filer pursuant to a public offering in the United States (U.S. public offering) made in reliance on a U.S. registration statement containing a prospectus dated September 13, 2016 (U.S. registration statement) and a supplement (prospectus supplement) to that prospectus (the prospectus relief), and
  - (b) a decision that this order and accompanying application made by the Filer be kept confidential until the earlier of
    - (i) the date on which the prospectus supplement is filed, and

(ii) the date that is 90 days after the date of this order (the confidentiality relief).

### **Interpretation**

¶ 2 Terms defined or interpreted in the Act have the same meaning if used in this order, unless otherwise defined.

### **Representations**

¶ 3 This decision is based on the following facts represented by the Filer:

1. the Filer was established under the laws of the state of Nevada on June 24, 2009 and its principal executive offices are located at Suite 720-999 West Broadway, Vancouver, British Columbia;
2. the Filer is the parent corporation of DelMar Pharmaceuticals (BC) Ltd., which is a clinical and commercial stage drug development company with a focus on the treatment of cancer;
3. the Filer is a reporting issuer in the province of British Columbia;
4. the Filer's chief executive officer and chief financial officer reside in the province of British Columbia;
5. the common shares of the Filer are listed and posted for trading on the NASDAQ Capital Market (NASDAQ) under the symbol "DMPI";
6. none of the Filer's securities are listed, traded or quoted on a marketplace in Canada as defined in National Instrument 21-101 *Marketplace Operation* and the Filer does not intend to have its securities listed, traded or quoted on a marketplace in Canada;
7. the Filer files continuous disclosure reports under Canadian and U.S. securities laws and follows the exchange requirements of the NASDAQ; all public documents of the Filer are available on the Filer's SEDAR and EDGAR profiles;
8. the Filer is not in default of any its obligations under the securities legislation of British Columbia, U.S. securities laws or the NASDAQ;
9. the Filer intends to register and sell securities in the U.S., which will be made under U.S. public offering procedures that include:
  - (a) a requirement to complete the U.S. registration statement following prescribed content requirements that require the issuer to present all relevant information about the issuer and the offering at a level of detail equivalent to full, true and plain disclosure of all material facts;
  - (b) due diligence on the Filer conducted by one or more qualified underwriters in the U.S. (U.S. underwriters), who are subject to liability and sanction from U.S. regulatory authorities if the U.S. underwriters fail to suitably conduct the offering in the capacity of underwriters;

- (c) a review and comment process on the U.S. registration statement imposed by the SEC;
  - (d) a requirement to distribute the US registration statement and prospectus supplement to investors in connection with their subscription for shares; and
  - (e) a verification process regarding the disclosure in the U.S. registration statement and prospectus supplement by U.S. underwriters;
10. because the Filer will be distributing shares from British Columbia, it must comply with the prospectus requirement or rely upon an exemption from the prospectus requirement available under the Act;
11. the Filer is unable to rely on any available exemptions from the prospectus requirement because the filing requirements and resale restrictions under those exemptions are impractical and incompatible with the nature of the U.S. public offering;
12. the prospectus supplement will contain disclosure to the effect that the Filer is relying on an exemption from the prospectus requirement under the Act and, as a consequence, certain protections, rights and remedies provided by the Act, including statutory rights of rescission or damages, will not be available to the purchaser in British Columbia; and
13. the filer seeks the confidentiality relief to avoid selective disclosure concerns as the filer will not publicly announce the U.S. public offering prior to the filing of the prospectus supplement.

**Order**

¶ 4 Considering that to do so would not be prejudicial to the public interest, the Commission orders

- (a) under section 76 of the Act, that the prospectus relief be granted, provided that:
  - (i) the distribution is not made to any resident of Canada, except under exemptions from the prospectus requirement available under the Act;
  - (ii) the distribution complies with the securities laws in any jurisdiction in which a purchaser of the securities resides;
  - (iii) the distribution is made under the U.S. registration statement and prospectus supplement in accordance with U.S. securities laws; and
  - (iv) the U.S. registration statement and the prospectus supplement are filed on SEDAR prior to the distribution, and
- (b) that the confidentiality relief be granted.

Nigel P. Cave  
Vice Chair  
British Columbia Securities Commission