

ALBERTA SECURITIES COMMISSION

DECISION

Citation: Afexa Life Sciences Inc., Re, 2011 ABASC 485

Date: 20110919

**Afexa Life Sciences Inc.
Application for Standing by
Valeant Pharmaceuticals International, Inc. and 1625907 Alberta Ltd.**

Panel:

Stephen Murison
Kenneth Potter, QC
Richard Shaw, QC

Appearing:

Peter Howard
for Valeant Pharmaceuticals
International, Inc.

Brian Foster, QC
for Afexa Life Sciences Inc.

Daniel McDonald, QC
Andrew Sunter
for Paladin Labs Inc.

Alex Poole
Tracy Clark
for Commission Staff

Date of Hearing:

19 September 2011

Date of Decision:

19 September 2011

I. INTRODUCTION

[1] Valeant Pharmaceuticals International, Inc. and 1625907 Alberta Ltd. (together, "Valeant") have made application (the "Valeant Application") to be given standing before the Alberta Securities Commission (the "Commission") in a hearing by the Commission into an application (the "Paladin Application") made by Paladin Labs Inc. ("Paladin"). The Paladin Application, to be heard 23 September 2011 (the "Paladin Hearing"), asks the Commission to cease-trade two shareholder rights plans which Afexa Life Sciences Inc. ("Afexa") currently has in place: a 25 January 2010 shareholder rights plan (the "First Rights Plan") and a 12 August 2011 shareholder rights plan (the "Second Rights Plan"; together with the First Rights Plan, the "Rights Plans").

[2] Paladin on 10 August 2011 made an offer (the "Paladin Offer") to acquire the common shares in Afexa (the "Afexa Common Shares") for \$0.55 or 0.013 Paladin shares per Afexa Common Share.

[3] Valeant on 9 September 2011 made an offer (the "Valeant Offer") to acquire the Afexa Common Shares for \$0.71 per Afexa Common Share.

[4] Afexa's board of directors, on the recommendation of a special committee, has recommended that Afexa shareholders tender to the Valeant Offer. Valeant and Afexa are parties to a support agreement (the "Valeant Support Agreement") under which Afexa has apparently agreed to waive the application of the Rights Plans to the Valeant Offer.

[5] In the Valeant Application, Valeant seeks standing as a party, under section 6.1 of Commission Rule 15-501 *Rules of Practice and Procedure for Commission Hearings* (the "Rule"), primarily (but not exclusively) to make submissions in the Paladin Hearing. Valeant states that, if granted such standing, it "would not be making duplicative submissions or adducing repetitive evidence". Valeant asserts that it does not have a present intention to cross-examine or adduce evidence, but (depending on what reply submissions or further evidence are presented by Paladin) does not rule out adducing evidence of its own or cross-examining (or both).

[6] Paladin did not oppose the Valeant Application in its entirety (although contending that Valeant's claim to party status in the Paladin Hearing is not as clear as suggested by Valeant). However, Paladin argued that a grant of standing to Valeant (if made) should be limited to what was sometimes referred to as "Torstar status" – in essence, permitting Valeant to make submissions but not to adduce evidence or cross-examine – and that any time taken by Valeant in the Paladin Hearing should be deducted from the time otherwise available to Afexa.

[7] Afexa supports the Valeant Application, and it objects to Paladin's mentioned suggestion that Valeant and Afexa share hearing time.

[8] Commission staff do not object to the Valeant Application, and they do not concur that limited Torstar status is clearly indicated in these circumstances.

II. ANALYSIS

[9] The submissions were consistent in their emphasis on the considerations for standing under section 6.1 of the Rule, although they differed as to how or to what extent the considerations are present and as to whether that warrants full or only conditional or restricted standing.

[10] Valeant has made an offer – currently the offer with the highest cash consideration – for the Afexa Common Shares. Afexa has apparently waived the application of the Rights Plans to the Valeant Offer and its directors have recommended the Valeant Offer. Paladin may increase the Paladin Offer if the Commission cease-trades the Rights Plans. Given this, and given the terms of the Valeant Support Agreement, the outcome of the Paladin Application might not instantly and automatically affect Valeant or the Valeant Offer.

[11] However, the status of the Rights Plans is of potential but real significance to Valeant. Were they to remain in place against the Paladin Offer (unwaived, and absent the orders sought in the Paladin Application), the Valeant Offer would remain, as it is today, the only Afexa-board-recommended offer – and, in terms of cash consideration at least, the economically more attractive offer – for the holders of Afexa Common Shares. On the other hand, were the Paladin Application to succeed and the Paladin Offer then be increased, the Valeant Offer would no longer be the sole available alternative, nor necessarily the more economically attractive. The prospects of the Valeant Offer – and the options and economic cost to Valeant of succeeding in its offer – could thus change dramatically.

[12] In sum, Valeant will reasonably be affected – significantly – by the Paladin Hearing. We find on this ground a strong basis for granting it party standing.

[13] We also anticipate that Valeant will be in a position to make a useful contribution to the Paladin Hearing, in its capacity as an interested party (as found), and as one whose interests are not necessarily identical with those of any other party, including Afexa (the Valeant Support Agreement notwithstanding).

[14] We accept and rely also on Valeant's expressed willingness and ability to abide by the already-set timetable for the Paladin Hearing, and its mentioned representations not to engage in the Paladin Hearing in a manner duplicative of others.

[15] In the circumstances, we find it appropriate to grant Valeant standing. We are not persuaded that it is necessary to constrain or limit that standing (beyond what Valeant has already represented to be its intention).

III. CONCLUSION

[16] Accordingly, the Valeant Application is granted. Valeant is designated a party to the Paladin Hearing.

[17] We are confident of the ability of the parties, in advance of the date of the Paladin Hearing, to come to a mutual understanding as to the allocation of time for their respective participation in the Paladin Hearing. If, however, such an understanding appears not to be reachable, any party may so inform the Commission Registrar and appropriate direction will be given.

19 September 2011

For the Commission:

"original signed by"
Stephen Murison

"original signed by"
Kenneth Potter, QC

"original signed by"
Richard Shaw, QC