

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* - exemption granted from the requirement to include prospectus level disclosure for an issuer for which securities are being distributed in connection with a restructuring transaction – the business, directors and management of the resulting entity immediately following the completion of the business combination will be exactly the same as the reporting issuer’s business, directors and management immediately before the completion of the business combination.

Applicable Legislative Provisions

National Instrument 51-102 *Continuous Disclosure Obligations*, 13.1, Form 51-102F5 *Information Circular*, Item 14.2

Citation: Gamehost Income Fund, Re, 2010 ABASC 104

Date: 20100310

In the Matter of
the Securities Legislation of
Alberta and Ontario
(the **Jurisdictions**)

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
Gamehost Income Fund (**Gamehost**) and
0811769 B.C. ULC (**Onco BC**, and
together with Gamehost, the **Filers**)

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the **Legislation**) exempting the Filers from the requirement under the Legislation to provide prospectus-level disclosure with respect to Onco BC, a direct and indirect wholly-owned subsidiary of Oncothyreon Inc. (**Onco US**), including the financial statements of Onco BC required by Section 14.2 of Form 51-102F5 *Information Circular* (the **Circular Form**) under National Instrument 51-102 *Continuous Disclosure Obligations* (the **Financial Statements**), in the management information circular (the **Circular**) to be prepared by Gamehost and delivered to the holders (**Gamehost Unitholders**) of trust units (**Gamehost Units**) and the holders of Gamehost Subsidiary LP Exchangeable LP Units (**Gamehost Subsidiary LP Exchangeable LP Unitholders**) and together with Gamehost Unitholders, **Gamehost Security Holders**) in

connection with an annual and special meeting of Gamehost Security Holders expected to be held on or about April 9, 2010 (the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (a) the Alberta Securities Commission is the principal regulator for the application;
- (b) the Filers have provided notice that Subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia; and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filers:

Gamehost

1. Gamehost is an unincorporated open-ended limited purpose trust established under the laws of the Province of Alberta pursuant to a Declaration of Trust dated April 9, 2003. The principal office of Gamehost is located in Red Deer, Alberta.
2. Gamehost was created to hold, indirectly, securities and assets of its affiliates conducting business in the ownership and operations of casinos, hotels and multi-tenant commercial complexes.
3. Gamehost is a reporting issuer or the equivalent under the securities legislation of British Columbia, Alberta and Ontario. To its knowledge, Gamehost is not in default of securities legislation in any jurisdiction of Canada.
4. The Gamehost Units are listed on the Toronto Stock Exchange (**TSX**) under the symbol "**GH.UN**".
5. Gamehost has filed an "AIF" and has "current annual financial statements" (as such terms are defined in National Instrument 44-101 *Short Form Prospectus Distributions* (**NI 44-101**)) for the financial year ended December 31, 2008.

Onco BC

6. Onco BC is an unlimited liability corporation amalgamated under the *Business Corporations Act* (British Columbia) (**BCBCA**). The principal office of Onco BC is located in Vancouver, British Columbia.
7. Onco BC has not carried on active business during the last three completed financial years and does not hold any assets other than the issued and outstanding shares of Oncothyreon Canada Inc. (**Onco Alberta**).
8. Onco BC is a direct and indirect wholly-owned subsidiary of Onco US and is not a reporting issuer in any jurisdiction. To its knowledge, Onco BC is not in default of applicable securities legislation in any jurisdiction of Canada.
9. No Onco BC securities are listed or posted for trading on any exchange or quotation and trade reporting system.
10. Pursuant to the Arrangement Agreement (as hereinafter defined), and prior to implementing the restructuring transaction contemplated thereunder (the **Restructuring Transaction**), Onco BC will be continued under the ABCA as a limited corporation and any further references herein to Onco BC will be deemed to refer to that successor corporation as continued under the ABCA.

Onco Alberta

11. Onco Alberta is a corporation amalgamated under the *Canada Business Corporations Act* (the **CBCA**). The principal office of Onco Alberta is located in Edmonton, Alberta.
12. Onco Alberta has not carried on active business since December 18, 2008. Further, Onco Alberta does not hold any assets, other than those that will be distributed to Onco Alberta Subco pursuant to the Restructuring Transaction or that will otherwise be disposed of prior to the effective time of the Restructuring Transaction, and does not have any employees.
13. Onco Alberta is an indirect wholly-owned subsidiary of Onco US and a direct wholly-owned subsidiary of Onco BC and is not a reporting issuer in any jurisdiction. To its knowledge, Onco Alberta is not in default of applicable securities legislation in any jurisdiction of Canada.
14. No Onco Alberta securities are listed or posted for trading on any exchange or quotation and trade reporting system.
15. Pursuant to the Arrangement Agreement (as hereinafter defined), and prior to implementing the Restructuring Transaction, Onco Alberta will be continued as an unlimited liability corporation under the ABCA and any further references herein to Onco

Alberta will be deemed to refer to that successor corporation as continued as an unlimited liability corporation under the ABCA.

Onco US

16. Onco US is a corporation incorporated in the State of Delaware. The principal office of Onco US is located in Seattle, Washington.
17. Onco US is a biotechnology company specializing in the development of innovative therapeutic products for the treatment of cancer.
18. Onco US is a reporting issuer in each of the provinces in Canada. In the United States its common shares trade on the NASDAQ Stock Market under the symbol "**ONTY**". No Onco US securities are listed or posted for trading on any exchange or quotation and trading reporting system in Canada.
19. To its knowledge, Onco US is not in default of applicable securities legislation in any jurisdiction of Canada.

Restructuring Transaction

20. On February 17, 2010, Gamehost entered into a definitive arrangement agreement with Onco US, Onco BC and Onco Alberta (the **Arrangement Agreement**), which provides that the Restructuring Transaction be completed by way of a plan of arrangement under section 193(4) of the ABCA, pursuant to which:
 - (a) Onco BC and Onco Alberta will transfer substantially all of their assets, with the exception of the shares of Onco Alberta held by Onco BC and with the exception of the benefit of certain of Onco Alberta's tax pools, and all of their liabilities to a new wholly-owned subsidiary of Onco US, (**Onco Alberta Subco**);
 - (b) the existing shareholders (the **Onco BC Shareholders**) of Onco BC will indirectly exchange all of their common shares of Onco BC for common shares of a new wholly-owned subsidiary of Onco US (**New Onco**);
 - (c) Gamehost will provide \$8.425 million in non-dilutive capital to Onco BC which will in turn be provided to Onco Alberta Subco;
 - (d) Onco BC will subscribe for \$600,000 worth of Gamehost Units;
 - (e) the existing Gamehost Unitholders will transfer all of their Gamehost Units to Onco BC in exchange for new common shares (**Gamehost Inc. New Common Shares**) of Onco BC on the basis of one such Gamehost Inc. New Common Share for each one Gamehost Unit held;
 - (f) the existing Gamehost Subsidiary LP Exchangeable LP Unitholders will transfer all of their Gamehost Subsidiary LP Exchangeable LP Units to Onco BC in

exchange for Gamehost Inc. New Common Shares on the basis of one such Gamehost Inc. New Common Share for each one Gamehost Subsidiary LP Exchangeable LP Unit held;

- (g) Onco BC shall be renamed Gamehost Inc.;
 - (h) the shares of Onco Alberta Subco will be distributed by Onco BC to New Onco, New Onco will assume all of the assets and liabilities of Onco Alberta Subco and Onco Alberta Subco will be dissolved; and
 - (i) Onco BC (now named Gamehost Inc.) and Onco Alberta shall be amalgamated and, as such, shall continue in existence as one and the same company, being a limited corporation under the ABCA named Gamehost Inc.
21. Pursuant to the Arrangement Agreement, Gamehost, Onco US, Onco BC, Onco Alberta Subco and New Onco will enter into a divestiture agreement (the **Divestiture Agreement**) whereby Onco Alberta Subco will (a) acquire all of the assets of Onco BC and Onco Alberta, with the exception of the shares of Onco Alberta held by Onco BC and with the exception of the benefit of certain of Onco Alberta's tax pools; and (b) assume all of the liabilities and obligations of Onco BC and Onco Alberta accrued prior to the effective time of the Restructuring Transaction. Further, pursuant to the Plan of Arrangement giving effect to the Restructuring Transaction, New Onco will acquire all of the assets of Onco Alberta Subco, including the foregoing acquired assets, and assume all of the obligations of Onco Alberta Subco, including the foregoing assumed liabilities and obligations.
 22. Pursuant to the Arrangement Agreement, Gamehost Inc. will enter into an indemnity agreement with Onco US and New Onco. The Indemnity Agreement is designed to provide Gamehost Inc. with indemnification from Onco US and New Onco, the resulting entity that will carry on the business previously carried on by Onco Alberta and Onco BC, for claims relating to the business of Onco BC and Onco Alberta carried on prior to the effective date of the Restructuring Transaction and relating to New Onco's business that are brought against Gamehost Inc. in the future, subject to certain limitations and conditions.
 23. Following the completion of the Restructuring Transaction: (i) the sole business of Gamehost Inc. will be the current business of Gamehost; (ii) Gamehost Inc. will be a reporting issuer or the equivalent under the securities legislation of British Columbia, Alberta and Ontario; and (iii) the common shares of Gamehost Inc. will, subject to approval by the TSX, be listed on the TSX.
 24. Pursuant to Gamehost's constating documents and applicable securities laws, the Gamehost Security Holders are required to approve the Restructuring Transaction at the Gamehost Meeting. The Gamehost Meeting is anticipated to take place on April 23, 2010 and the Circular is expected to be mailed on March 26, 2010 subject to receipt of the Circular Relief.

Prospectus-Level Disclosure in the Circular

25. Section 14.2 of the Circular Form requires, among other items, that the Circular contain the disclosure (including financial statements) prescribed under securities legislation and described in the form of prospectus that Onco BC would be eligible to use immediately prior to the sending and filing of the Circular for a distribution of its securities. Therefore, the Circular must contain the disclosure in respect of Onco BC prescribed by Form 41-101F1 *Information Required in a Prospectus* (the **Prospectus Form**).
26. In addition, Subsection 4.2(1) of NI 41-101 requires that the financial statements (other than interim financial statements) required to be included in the Circular must be audited in accordance with National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (**NI 52-107**).
27. Other than prospectus-level disclosure in respect of Onco BC required by the Prospectus Form, including the Financial Statements, the Circular will contain disclosure in accordance with the Circular Form. Such disclosure will include or incorporate by reference, among other things, financial statement disclosure in respect of Gamehost in compliance with NI 44-101.
28. Gamehost will include in the Circular, in lieu of the historical and pro forma financial statements of Onco BC required pursuant to section 14.2 of the Circular Form, the unaudited pro forma consolidated balance sheet of Gamehost Inc. as at the date of the most recent balance sheet to be incorporated by reference in the Circular which will give effect to the Restructuring Transaction as if it had taken place as at such date. The Circular will otherwise comply with applicable securities laws and will contain disclosure regarding the tax pools of Onco BC and Onco Alberta and how the tax position of Gamehost Inc. following the completion of the Restructuring Transaction will differ from the tax position of Gamehost prior to the completion of the Restructuring Transaction. The Circular will also contain disclosure regarding the Divestiture Agreement referred to in paragraph 21 and the indemnity agreement referred to in paragraph 22, as well as the risks related to such agreements.
29. Including the disclosure detailed in paragraph 28 above, the Circular will provide Gamehost Security Holders with all the material information they need to assess the Restructuring Transaction and will ensure that Gamehost Security Holders understand that following the completion of the Restructuring Transaction Gamehost Inc. will not have any assets or liabilities of either of Onco BC or Onco Alberta other than its tax pools nor will it carry on any of the business previously carried on by Onco BC or Onco Alberta.

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted.

“original signed by”

Blaine Young
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