

ALBERTA SECURITIES COMMISSION

Citation: Re Processa Pharmaceuticals Inc., 2019 ABASC 97

Docket: ENF-011994

Date: 20190614

COMPLIANCE SETTLEMENT AGREEMENT AND UNDERTAKING

PROCESSA PHARMACEUTICALS INC.
previously known as
HEATWURX INC.

Introduction

1. Staff of the Alberta Securities Commission (**Staff**) conducted a review into Heatwux Inc. (**Heatwux** or **Issuer**) to determine if Alberta securities laws had been breached.
2. The review confirmed, and Heatwux admits that it breached s.93.1 under the *Securities Act*, R.S.A. 2000, c. S-4, as amended, (**Act**), referred to in this Settlement Agreement and Undertaking (**Agreement**), and that it acted contrary to the public interest.
3. Terms used in this Agreement have the same meaning as provided in the Alberta securities laws, a defined term in the *Act*.

Parties

4. Heatwux was incorporated under the laws of the State of Delaware in the United States of America in March 2011.

Law

5. Cease trade orders are one of the Alberta Securities Commission's (**ASC**) most important tools in protecting the capital markets. Failure to comply with a cease trade order undermines the Alberta Securities Commission's ability to effectively regulate the capital markets. Breach of a cease trade order therefore is considered serious misconduct.
6. Requirements for timely, accurate and efficient disclosure of information, be it forward looking or about historical events, are a primary means for achieving the purposes of the *Act*.

7. On July 31, 2012 a new OTC issuer rule called: Multilateral Instrument 51-105 – Issuers Quoted in the US Over-the-Counter Market (**MI 51-105**), became effective in most provinces, including Alberta. It can cause an issuer that makes private placements into Canada to become subject to ongoing Canadian public company reporting obligations.

OTC Issuer Continuous Disclosure Requirements

8. Over The Counter (**OTC**) Issuers in participating jurisdictions in Canada are deemed OTC reporting issuers in the jurisdictions they have a presence. OTC reporting issuers are subject to the same disclosure obligations as “venture issuers” as defined by the National Instrument 51-102 – Continuous Disclosure Obligations with one additional requirement: CD OTC Issuers are required to file annual information forms.

Ceasing to be an OTC Reporting Issuer in Canada

9. After the close of an acquisition or reverse merger transaction with a party outside of Canada, an OTC Issuer does not immediately cease to be a Canadian OTC reporting issuer. In order to cease to be an OTC reporting issuer in Canada, several requirements must be met:
 - (a) One year must have passed since the:
 - i. Issuer’s business was directed or administered from Canada;
 - ii. Last date that the Issuer carried on promotional activities from or into Canada;
 - iii. Issuer received its first symbol for OTC trading from FINRA.
 - (b) The Issuer must file the required notice form or the Issuer must have become listed on a recognized exchange and filed the required form.

Circumstances

10. In November 2014, the ASC sent correspondence informing the Issuer that they met the requirements of MI 51-105 as one of the Company's directors, Reginald Greenslade, was an Alberta resident after the effective date of MI 51-105.
11. In December 2014, the Issuer conducted promotional activities in Alberta by issuing shares to nine Alberta residents. On December 8, 2015, the ASC issued a cease trade order (**CTO**) for failure to file the financial statements, MD&A and certifications for the period ended September 30, 2015 in accordance with section 33.1 of the *Act*. This CTO was announced on the OTC Market’s website on December 8, 2015.
12. Reginald Greenslade resigned as a Director on August 1, 2015.
13. Effective October 4, 2017, Heatwurx entered into an Asset Purchase Agreement, whereby Heatwurx acquired the assets and assumed the liabilities of Promet Therapeutics, LLC in

exchange for Heatwurx common shares. Promet was a Limited Liability Company formed in the state of Delaware in the United States of America. Given the jurisdiction of the predecessor companies, Promet did not focus its due diligence efforts outside of the United States of America.

14. Following the closing, Heatwurx changed its name to Processa Pharmaceuticals Inc. (**Processa**). As part of the Reverse Takeover, nine Alberta shareholders received shares of Processa in exchange for their Heatwurx shares. The nine Alberta shareholders held an aggregate of 96,053 shares of Processa after the Reverse Takeover (a value of USD \$278,554 based on the share price of \$2.90).
15. All of the Heatwurx shareholders (beneficial or otherwise) became shareholders of Processa by virtue of their ownership of shares in Heatwurx and not as a result of any promotional activities conducted by Processa.
16. Shortly after the merger, Processa completed a bridge financing wherein Processa issued two Alberta investors convertible notes eligible for conversion to shares as of July 11, 2018. The bridge financing that the Alberta investors participated in closed on November 21, 2017 for the amounts listed in Appendix A.
17. On January 18, 2018, the ASC issued a variation order for the CTO to reflect the name change to Processa. The ASC sent the varied CTO to Heather Kearns, former Chief Financial Officer of Heatwurx (**Kearns**).
18. Kearns represented that Processa was unaware of the CTO until they received the variation order. On May 18, 2018, Processa filed an application to revoke the CTO on May 18, 2018. In its application, Processa represented that it does not intend to participate in the Alberta capital markets and would like to apply to cease being a reporting issuer in Alberta.
19. Processa confirmed and represented to Corporate Finance Staff on November 28, 2017 that no promotional activities occurred after November 21, 2017, and filed a form 51-105F1 as of that date. Pursuant to section 4 of MI 51-105, Processa has ceased its connection with Alberta.

Admissions

20. Solely for securities regulatory purposes in Alberta and elsewhere and as the basis for the terms of settlement and undertaking referred to in this Agreement and for no other use or purpose, Processa admits it breached the provision of Alberta securities laws referred to in paragraph two of this Agreement, and acted in contrary to the public interest.

Circumstances Relevant to Settlement

21. Processa has acted in good faith and cooperated with the ASC during the review and with respect to this Agreement without the need for further investigation or a contested hearing.
22. Processa did not turn its attention to the fact that its activities might be construed as a breach of Alberta securities laws.

23. Processa's two breaches did not result in any known investor losses.
24. Processa has never established a physical presence in Alberta.
25. Processa has not directly solicited business or retained employees, agents, consultants, or other representatives in Alberta.
26. Processa remedied the deficient Heatwurx filings by filing financial statements, MD&A and certifications on SEDAR for the period between September 20, 2015 and September 30, 2018. The financial statements filed by Processa were prepared using U.S. GAAP and were audited and reviewed by an auditor registered with PCAOB.
27. The Commission has not previously sanctioned Processa.
28. Processa engaged Canadian counsel to bring disclosure information to date and has completed the required filings.
29. Processa cooperated with Staff during the investigation.

Settlement

30. Based on the admissions, Processa agrees and undertakes to the Executive Director of the Commission to pay to the Commission a monetary settlement of \$10,000.

Administration

31. Processa acknowledges that it received independent legal advice and has voluntarily made the admissions in this Agreement.
32. Processa waives any right existing under the *Act*, or otherwise, to a hearing, review, judicial review or appeal of this matter.
33. Processa acknowledges and agrees that the Commission may enforce this Agreement in the Court of Queen's Bench or in any other court of competent jurisdiction.
34. Execution and fulfillment of the terms of this Agreement resolves all issues involving Processa relating to the conduct described above, and Staff will take no further steps against him arising from these facts.

35. This Agreement may be executed in counterpart.

Signed by the duly authorized signatory of
PROCESSA PHARMACEUTICALS
INC. at 7380 Coca Cola Dr, Hanover, MD
 this 6 day of June 2019, in the presence of:

PROCESSA PHARMACEUTICALS INC.

<u>"witness name"</u>)	<u>Per: "Original signed by"</u>
WITNESS NAME)	Wendy Guy
)	
)	
<u>"Original signed by"</u>)	
SIGNATURE)	
)	ALBERTA SECURITIES COMMISSION
)	
Calgary, Alberta, 14 June 2019)	
)	<u>"Original signed by"</u>
)	David C. Linder, Q.C.
)	Executive Director