

Headnote

MRRS - Relief from the registration requirements and prospectus requirements for issuance of securities by foreign issuer to Canadian employees and former employees pursuant to an employee ADS purchase plan - Issuer with *de minimis* Canadian presence.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c.S.5, as am., ss.25(1), 53(1), and 74(1).

Applicable Ontario Rules

Rule 45-503 - Trades to Employees, Executives and Consultants - ss.2.2, 2.4, 3.3 and 3.5.

Applicable Instrument

Multilateral Instrument 45-501 - Resale of Securities - s.2.14(1).

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA,
ONTARIO, QUEBEC, NEW BRUNSWICK, NOVA SCOTIA,
PRINCE EDWARD ISLAND AND NEWFOUNDLAND AND LABRADOR**

AND

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

AND

**IN THE MATTER OF
SERONO S.A.
MRRS DECISION DOCUMENT**

WHEREAS the Canadian securities regulatory authority or regulator (a “Decision Maker”) in each of the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (the “Jurisdictions”) has received an application from Serono S.A. (“Serono” or the “Filer”) for a decision pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that certain trades in bearer shares (“Shares”) of Serono represented by American Depositary Shares (such Shares represented by American Depositary Shares being referred to herein as “ADSs”) to be made in connection with, or as a consequence of, an employee ADS purchase plan (the “Plan”) of Serono, shall not be subject to the requirement contained in the Legislation to be registered to trade in a security (the “Registration Requirement”) or the requirement to file and obtain a receipt for a preliminary prospectus and a prospectus (the “Prospectus Requirements”) (collectively, the “Registration and Prospectus Requirements”);

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications, the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS the Filer has represented to the Decision Makers that:

1. Serono is a multinational developer and marketer of prescription pharmaceuticals with operations around the world, including in Canada. The head office of Serono is in Geneva, Switzerland.
2. Serono Canada Inc. (“Serono Canada”) is a wholly owned subsidiary of Serono.
3. Serono is incorporated under the laws of Switzerland, is not a reporting issuer under the Legislation and has no present intention of becoming a reporting issuer under the

Legislation.

4. As of May 31, 2002, approximately 11,673,235 Shares were issued and outstanding, of which 831,257 were held in the form of ADSs.
5. The Shares are listed and traded on the SWX Swiss Exchange (“SWX”).
6. The Shares trade in the United States of America (the “U.S.A.”) in the form of ADSs that are issued by The Bank of New York (the “Agent”), on the basis of forty ADSs for each Share, pursuant to an agreement with Serono. The ADSs are traded on the New York Stock Exchange (“NYSE”) in the U.S.A.
7. Serono is registered with the Securities and Exchange Commission (the “SEC”) in the U.S.A. under the Securities Exchange Act of 1934 and is not exempt from the reporting requirements thereunder pursuant to Rule 12g3-2 thereunder.
8. The Plan has been established to provide participating North American employees (“Employees”) of Serono and affiliated entities with a convenient means of purchasing ADSs annually, financed by payroll deductions, and to thereby permit them to share in the growth and financial success of Serono.
9. Participation in the Plan is voluntary and Employees will not be induced to participate in the Plan or to acquire ADSs pursuant to the Plan by expectation of employment of continued employment.
10. Under the Plan, the Agent acts as the depository and custodian on behalf of and for the benefit of the Employees. The Agent is a corporation incorporated pursuant to the laws of the U.S.A. and is licensed in the State of New York as a banking corporation but is not registered as a dealer or adviser under the Legislation. Any sales of ADSs under the Plan are made through the Agent’s brokerage subsidiary, BNY ESI & Co., Inc., which is duly registered under applicable securities legislation in the United States.
11. Under the Plan, Employees make payroll deductions (“Payroll Deductions”) in the course of a particular year in an amount specified by the Employee up to a maximum of 15% of the Employee’s pay. The Payroll Deductions are accumulated over that year by the Employee’s Serono employer until the issue date (the “Issue Date”), namely December 31st of that year. An Employee can request a refund of Payroll Deductions and termination of his or her participation in the Plan at any time up until 10 business days before the Issue Date.

12. As of the Issue Date, the market value ("Market Value") of the Shares underlying the ADSs is calculated based on the lower of: (i) the average closing price of the Shares on the SWX during the ten business days preceding the Issue Date or (ii) the average closing price of the Shares on the SWX during the ten business days preceding January 1st of the same calendar year. Alternatively, if so decided by the board of directors of Serono or a duly appointed committee of directors, the Market Value of the Shares underlying the ADSs will be calculated as forty times the lower of: (i) the average closing price of the ADSs on the NYSE during the ten business days preceding the Issue Date or (ii) the average closing price of the ADSs on the NYSE during the ten business days preceding January 1st of the same calendar year. The number of underlying Shares to which the Employee is entitled (the "Entitlement") is the sum of the Employee's Payroll Deductions divided by 85% of the Market Value.
13. The number of Shares corresponding to the total contributions of the Employees are then issued by Serono to the Agent. The Agent subsequently issues and allocates ADSs to each Employee according to his or her Entitlement. Such ADSs are held by the Agent as custodian. Employees can sell some or all of their ADSs at any time on the NYSE through the Agent or through their own broker.
14. Dividends on the ADSs will be automatically reinvested in additional ADSs. The Company will use dividends paid in cash on such Shares to purchase, at a time determined by the Company, in its discretion, additional ADSs on the NYSE. Such ADSs will be deposited with the Agent who will allocate them to Employees proportionately according to their ownership of the ADSs representing the underlying Shares on the record date for the dividend.
15. If a Employee holds his or her ADSs for at least one year from the Issue Date, the Employee will, at no extra cost, receive an additional ADS for every three ADSs held for at least one year (hereinafter referred to as "Matching"). Such additional ADSs will be paid for by the Employee's Serono employer. Matching will occur only once for a particular ADS. The ADSs allocated pursuant to the Matching program will be purchased on the NYSE by Serono and promptly deposited with the Agent. The Agent will then allocate the appropriate number of ADSs to each Employee.
16. Administrative costs relating to the issuance or purchase of Shares, allocation of ADSs and account maintenance in connection with the Plan will be paid for by the Serono employer of the Employee. The sales commission for one sale of ADSs per year will also be paid for by the Serono employer of the Employee while any additional sales commissions will be paid for by the Employee.
17. An Employee's participation in the Plan automatically terminates upon termination of the employment of the Employee. The Employee is entitled to a refund of accumulated Payroll Deductions or, where the Employee leaves within three months before the end of the year and is classified as a "Good Leaver" under the Plan, may request to have such Payroll Deductions used to subscribe for ADSs on the Issue Date for that calendar year. A "Good Leaver" is generally an Employee who leaves because of retirement,

injury, disability or death. However, the board of directors of Serono has the discretion to deny the “Good Leaver” status to the foregoing categories of terminated Employees or to grant “Good Leaver” status to other Employees who leave within three months before the end of the year.

18. As of May 31, 2002, the following employees of Serono Canada were eligible to participate in the Plan:
 - (a) 45 employees resident in Ontario;
 - (b) 3 employees resident in British Columbia;
 - (c) 1 employee resident in Manitoba;
 - (d) 7 employees resident in Quebec;
 - (e) 1 employee resident in Nova Scotia; and

Serono Canada expects to have employees in each province of Canada, including Alberta and Saskatchewan, from time to time.

19. An employee resident in Canada (“Canadian Employee”) who chooses to participate in the Plan and acquire ADSs under the Plan will, before he or she acquires such ADSs, be provided with a description of the Plan and the ADSs and the most recent Form 20F of Serono, and the Canadian Employee, while he or she holds such ADSs, be provided with all disclosure material prepared by Serono which it is required to file with the SEC, according to securities legislation of the U.S.A., including annual reports and proxy materials, at the same time and in the same manner as the documents are provided to employees participating in the Plan that are resident in the U.S.A.
20. An exemption from the Registration and Prospectus Requirements is not available in all the Jurisdictions in connection with the distribution of Shares evidenced by ADSs by Serono and Serono Canada through the Agent to a Canadian Employee or to a former Canadian Employee who is a Good Leaver under the Plan or in connection with the resale of ADSs that are held by the Agent on behalf of a Canadian Employee or a former Canadian Employee under the Plan.
21. As the Shares underlying the ADSs are bearer shares, Serono does not have a record of registered holders. However, all the outstanding ADSs represent only 7.1% of the Shares. Serono believes that residents of Canada would probably prefer to hold ADSs which trade on the NYSE rather than bearer shares which trade on the SWX. Accordingly, Serono believes that it is unlikely that more than 10 percent of its outstanding Shares are held by residents of Canada or that more than 10 percent of holders of its Shares are resident of Canada.
22. Because there is currently no market for the Shares or ADSs in Canada, and none is expected to develop, it is anticipated that any sale of ADSs that were acquired by a Canadian Employee under the Plan will be effected through the facilities of the NYSE in the U.S.A.

23. Canadian Employees are not able to rely on the exemption from the Registration Requirement provided in the Legislation of each of the Jurisdictions for trades made solely through a registered dealer in order to sell ADSs or Shares acquired by the Canadian Employee under the Plan if the sale is made on behalf of the Canadian Employee by the Agent or another market intermediary duly registered in the jurisdiction where the trade is executed and the Agent or other market intermediary is not registered as a “dealer” under the Legislation.

AND WHEREAS this MRRS Decision Document evidences the decision of each Decision Maker (collectively, 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;

IT IS THE DECISION of the Decision Makers, pursuant to the Legislation, that:

- A. the Registration and Prospectus Requirements of the Legislation shall not apply to trades in ADSs made by Serono and Serono Canada through the Agent to Canadian Employees and former Canadian Employees who are Good Leavers under the Plan provided that, except in Quebec, the first trade in ADSs acquired pursuant to this Decision will be a distribution or primary distribution to the public unless the conditions in subsection (1) of section 2.14 of Multilateral Instrument 45-102 are satisfied and provided that, in Quebec, the alienation of ADSs acquired pursuant to this Decision is deemed to be distribution unless the alienation is executed between Canadian Employees or former Canadian Employees who are Good Leavers or is executed outside of Quebec; and
- B. the Registration Requirements of the Legislation shall not apply to the first trade in any ADSs or Shares that were represented by ADSs that were acquired under the Plan by a person who was, at the time of acquisition of the ADSs, a Canadian Employee or a former Canadian Employee who was a Good Leaver (a “Vendor”), or by another person or company that is the legal representative of a Vendor, where the first trade is:
- (i) made through the Agent and its brokerage subsidiary; or
 - (ii) made through a person or company that is appropriately licensed to carry on business as a broker/dealer (or the equivalent) under the applicable securities legislation in the jurisdiction where the trade is executed.

DATED August 30th, 2002.

“R. W. Davis”

“H. Lorne Morphy”