

Headnote

MRRS - registration and prospectus relief for issuance of securities by foreign issuer to Canadian employees and related trades under option and incentive plans - issuer bid relief for foreign issuer in connection with acquisition of shares under option and incentive plans.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 25(1), 35(1)(12)(iii), 35(1)(17), 53(1), 72(1)(f)(iii), 72(1)(k), 74(1), 89(1), 93(3)(d) and 104(2).

Applicable Ontario Regulation

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am., ss. 183(1) and 203.1(1).

Applicable Ontario Rule

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

Applicable Instrument

Multilateral Instrument 45-102 -6 Resale of Securities - s. 2.14(1).

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

AND

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

AND

**IN THE MATTER OF
NOVARTIS CORPORATION**

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Makers”) in each of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia, New Brunswick and Newfoundland and Labrador (the “Jurisdictions”) has received an application from Novartis Corporation (“Novartis US”) for a decision pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that: (i) the requirement contained in the Legislation to be registered to trade in a security (the “Registration Requirement”) and to file and obtain a receipt for a preliminary prospectus and a prospectus (the “Prospectus Requirements”) shall not apply to certain trades to be made in stock options (“Stock Options”), stock appreciation rights (“SARs”) and American Depositary Shares of Novartis AG (or such other authorized shares of stock of Novartis AG as may from time to time be authorized for use under the Plan (defined below)) (“ADSs”) made in connection with the Novartis US 2001 Stock Incentive Plan for North American Employees (the “Plan”), including first trades and (ii) the requirements contained in the Legislation relating to the delivery of an offer and issuer bid circular and any notices of change or variation thereto, minimum deposit periods and withdrawal rights, taking up and paying for securities tendered to an issuer bid, disclosure, restrictions upon purchases of securities, bid financing, identical consideration and collateral benefits together with the requirement to file a reporting form within 10 days of an exempt issuer bid and payment of a related fee (the “Issuer Bid Requirements”) shall not apply to certain acquisitions of ADSs by Novartis US pursuant to the Plan;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”) the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS Novartis US has represented to the Decision Makers that:

1. Novartis US is a wholly-owned subsidiary of Novartis AG. Novartis US is incorporated under the laws of New York and is not a “reporting issuer” or its equivalent under the Legislation in any of the Jurisdictions.
2. Novartis AG is a public company incorporated under the laws of Switzerland. Novartis AG is subject to the requirements of Swiss law and is not a “reporting issuer” or its equivalent under the Legislation in any of the Jurisdictions.
3. Novartis AG’s authorized capital consists of 2,885,204,680 ordinary shares (the “Shares”). As at January 1, 2002, there were 2,885,204,680 Shares issued and outstanding, excluding the Novartis AG ADSs. The Shares are traded on the SWX Swiss Exchange. The ADSs of Novartis AG are listed on the New York Stock Exchange (“NYSE”). As at March 11, 2002 there were 105,161,125 ADSs issued and outstanding. One ADS represents one Share.
4. As at July 31, 2002, persons or companies whose last address as shown on the books on Novartis AG was in the Jurisdictions and who held ADSs represented less than one percent of the total number of holders of ADSs, and such persons held ADSs representing less than one percent of the total number of outstanding ADSs.
5. Novartis AG carries on business in Canada through subsidiaries including Novartis Pharmaceuticals Canada Inc., and may carry on business through additional Canadian subsidiaries (collectively, the “Canadian Subsidiaries”).
6. There are approximately 284 employees of the Canadian Subsidiaries eligible or expected to participate in the Plan, of which 103 employees are resident in Ontario, 18 are resident in Alberta, 18 are resident in British Columbia, 8 are resident in Manitoba, 2 are resident in Newfoundland and Labrador, 3 are resident in New Brunswick, 9 are resident in Nova Scotia, 119 are resident in Québec, and 4 are resident in Saskatchewan. A separate application has been filed with the Commission des valeurs mobilières du Québec (“CVMQ”) seeking discretionary relief from certain requirements of the *Securities Act* (Québec) and CVMQ Policy Statement Q-3 with respect to the Plan, as these requirements are materially different from the requirements of the Jurisdictions.
7. The Board of Directors of Novartis US (the “Board”) has established the Plan, which will include participation by employees, directors and Consultants (as defined below) of the Canadian Subsidiaries.
8. The purpose of the Plan is to attract able persons to enter and remain in the employ or in a consulting relationship with Novartis US and its Canadian affiliates and U.S. subsidiaries, and to provide a means whereby they can acquire and own ADSs, or be paid incentive compensation based on the value of the ADSs.

9. The Plan will be administered by the Policy Committee of the Board, or such other committee that the Board may appoint to administer the Plan (the "Plan Committee"), which will determine all issues relating to eligibility and the terms and provisions of any right to receive awards under the Plan. The Plan Committee will designate individuals eligible to participate in the Plan. Participants must be either regularly employed by Novartis US or a subsidiary of Novartis AG and must make a significant contribution to the financial results of such person's employer, a director of Novartis US or a subsidiary of Novartis AG, or a consultant to Novartis US or a subsidiary of Novartis AG (a "Consultant"), who, in each case, is employed or in the service of Novartis US or a subsidiary of Novartis AG in the United States or Canada (an "Eligible Participant").
10. The Plan authorizes the following type of awards: (i) Incentive Stock Options; (ii) Non-qualified Stock Options; (iii) SARs and (iv) Restricted Stock Awards, or any combination of the foregoing. It is currently anticipated that Eligible Participants in Canada will only be granted Non-qualified Stock Options and/or SARs independent of Stock Options. It is not anticipated that more than 1% of the outstanding ADSs may be granted to any one person under the Plan.
11. The maximum number of ADSs that may be issued under the Plan is fixed at 20,000,000, including those available to Eligible Participants. The ADSs to be issued under the Plan will be registered with the Securities and Exchange Commission under the Securities Act of 1933.
12. Participation in the Plan by employees and directors is voluntary and participants will not be induced to participate in the Plan by expectation of employment or appointment or continued employment or appointment with Novartis US, a Canadian Subsidiary or any of their affiliates. Participation in the Plan by Consultants is also voluntary, and Consultants will not be induced to participate in the Plan by expectation of the Consultant, the Consultant's consulting company or partnership being engaged or continuing to be engaged with Novartis US, a Canadian Subsidiary or any of their affiliates as a consultant.
13. Consultants to a Canadian Subsidiary who are eligible to participate in the Plan will be persons or companies engaged to provide bona fide consulting, technical, management or other services to a Canadian Subsidiary under a written contract with a Canadian Subsidiary and who are required to spend a significant amount of time and attention on the affairs and business of the Canadian Subsidiary.
14. Under the Plan, the Stock Options and SARs will vest and become exercisable in accordance with the schedule established by the Plan Committee and as set forth in an award agreement between a Canadian Subsidiary and an Eligible Participant (an "Award Agreement"). The Plan Committee also fixes the period at which Stock Options and SARs will expire. The maximum option period after which Stock Options or SARs expire is 10 years. Except as stated otherwise in an Award Agreement or in the exercise of the Plan Committee's discretion, all

outstanding Stock Options and SARs will become exercisable upon a change of control as defined in the Plan.

15. The exercise price of a Stock Option will be set by the Plan Committee at the time of grant and is expected to be equal to or greater than the “fair market value” of the underlying ADSs on the date of grant of the Stock Option. As long as ADSs are listed for trading on the NYSE, “fair market value” will be the mean between the high and low sales prices reported on the NYSE for the previous date on which a sale was reported (the “Fair Market Value”).
16. The exercise price of a SAR (the “Strike Price”) will be set by the Plan Committee at the time of the grant. If a SAR is granted in tandem with a Stock Option, only one of the Stock Option or the SAR may be exercised. If a SAR is granted together with a Stock Option, the exercise price will be the same as that of the related Stock Option. If a SAR is granted independently of a Stock Option, the exercise price will be at least the Fair Market Value of an ADS at the grant date.
17. When a SAR is exercised, the Canadian Subsidiary will pay the holder an amount equal to the number of ADSs subject to the SAR multiplied by the excess, if any, of the Fair Market Value of the ADS on the exercise date over the Strike Price. It is expected the Canadian Subsidiary would pay this amount in cash, although the Plan also permits payment in ADSs or a combination of cash and ADSs.
18. ADSs delivered upon the exercise of Stock Options may be paid for in (i) cash, (ii) by tendering previously issued ADSs (the “Payment-in-Kind Program”) valued at Fair Market Value, or, in the discretion of the Plan Committee, either (i) in other property having a Fair Market Value equal to the exercise price, or (ii) through a cash-less exercise program (“Cash-less Program”) whereby the exercise price of a Stock Option is satisfied upon the sale of ADSs underlying the Stock Option, by delivering a copy of irrevocable instructions to a stock broker to deliver promptly an amount of sale or loan proceeds sufficient to pay the exercise price.
19. A Plan Agent (defined below) can deliver ADSs to Eligible Participants exercising awards under the Plan. ADSs may be authorized and unissued ADSs or ADSs held in treasury of Novartis AG, or held by a member of the Novartis AG group or may be purchased on the open market or by private purchase.
20. The Canadian Subsidiaries have the right to deduct from all awards cash and/or ADSs, valued at Fair Market Value on the date of payment, in an amount necessary to satisfy any tax withholding obligation, and may permit the Eligible Participants to satisfy any tax withholding obligation on the exercise of Plan awards by tendering ADSs having a Fair Market Value equal to the tax obligation.

21. The Plan Committee may permit the voluntary surrender of Stock Options and corresponding SARs, if any, conditioned upon the granting to the Eligible Participant of a new Stock Option, or require such voluntary surrender as a condition precedent to the grant of a new Stock Option.
22. Awards and Award Agreements are subject to equitable adjustment or substitution as determined by the Plan Committee as to the number, price or kind of share subject to the award in the event of changes in the outstanding ADSs or capital structure of Novartis AG, changes in applicable law or circumstances resulting in substantial dilution or enlargement of rights under the Plan, or other events which warrant adjustment. In certain circumstances specified in the Plan relating to mergers, reorganizations or similar events, awards may be cancelled and Eligible Participants will be paid, in cash, the value of such awards based upon the price per ADS received or to be received by shareholders of Novartis AG in the events.
23. Novartis US uses the services of an agent in connection with the administration and operation of the Plan (the "Plan Agent"). The role of the Plan Agent may include: (a) assisting with the general administration of the Plan and providing certain record keeping services; (b) facilitating option exercises (including the Cash-less Program and the Payment-in-Kind Program) under the Plan; (c) maintaining accounts on behalf of participants under the Plan; (d) holding ADSs on behalf of participants; and (e) facilitating the resale of ADSs acquired under the Plan through the NYSE. Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") has been appointed by Novartis US to act as an agent for the Plan. Merrill Lynch is, and any additional or replacement agent will be, a corporation registered under applicable U.S. securities or banking legislation to provide services under the Plan. The Plan Agent is not, and no additional or replacement agent is expected to be, registered to conduct retail trades in any of the Jurisdictions.
24. In certain circumstances, former employees, directors or Consultants of a Canadian Subsidiary (a "Former Participant") may exercise Stock Options or SARs for a limited time following the termination of employment by reason of disability, retirement, termination without cause or with the written approval of the Plan Committee.
25. Under the Plan, the Stock Options and SARs may be assigned or transferred to a designated beneficiary upon the death of an Eligible Participant, or, in the absence of a designated beneficiary by will or the laws of descent and distribution, or, in the discretion of the Plan Committee, to other persons or entities as set out in an Award Agreement (all such persons collectively, the "Permitted Transferees").

26. In connection with the implementation of the Plan, the Eligible Participants will receive a document specifying the main terms and conditions of the Plan as well as the Award Agreement. All disclosure material relating to Novartis AG furnished to participants in the Plan resident in the United States will be furnished contemporaneously and in the same manner to Eligible Participants in the Jurisdictions who receive ADSs under the Plan, including through electronic communications.
27. The Legislation of all the Jurisdictions does not contain exemptions from the Prospectus and Registration Requirements for all the intended trades under the Plan, including trades made through the Plan Agent.
28. The exemptions in the Legislation from the Issuer Bid Requirements may not be available for all acquisitions of ADSs under the Plan, since such acquisitions of ADSs may be made from persons other than employees or former employees, such as a Permitted Transferee, and acquisitions may occur at a price that is not calculated in accordance with the "market price," as that term is defined in the Legislation.
29. There is presently no market in any of the Jurisdictions for the ADSs and no such market is expected to develop in any of the Jurisdictions. Any resale of the ADSs by an Eligible Participant will be effected through the facilities of, and in accordance with the rules applicable to, a stock exchange or market outside of Canada on which the ADSs may be listed or quoted for trading.

AND WHEREAS under the System this 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;

THE DECISION of the Decision Makers pursuant to the Legislation is that:

- (a) the Registration Requirements and Prospectus Requirements shall not apply to any trade or distribution of Stock Options, SARs or ADSs made in connection with the Plan, including trades and distributions involving Novartis US, Novartis AG, the Canadian Subsidiaries and their affiliates, Eligible Participants, Former Participants, or Permitted Transferees, including trades carried out with or through the Plan Agent, provided that the first trade in ADSs acquired through the Plan pursuant to this Decision will be deemed a distribution or primary distribution to the public under the Legislation unless the conditions in subsection 2.14(1) of Multilateral Instrument 45-102 Resale of Securities are satisfied;

- (b) the first trade in ADSs acquired under the Plan by an Eligible Participant, a Former Participant, or a Permitted Transferee or a Plan Agent acting on behalf or for the benefit of any of the foregoing persons shall not be subject to the Registration Requirements, provided that such trade is executed on a stock exchange or market outside of Canada; and
- (c) The Issuer Bid Requirements do not apply to the acquisition by Novartis US of ADSs from an Eligible Participant, a Former Participant, or a Permitted Transferee, or a Plan Agent acting on behalf or for the benefit of any of the foregoing persons in accordance with the provisions of the Plan.

DATED October 1st, 2002.

“Howard I. Wetston”

“H. Lorne Morphy”