

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

**AND**

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

**AND**

**IN THE MATTER OF  
BIOCHEM PHARMA INC.  
AND  
CLINICHEM DEVELOPMENT INC.**

**MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the “**Decision Makers**”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, Newfoundland, Prince Edward Island and New Brunswick (the “**Jurisdictions**”) have received an application from BioChem Pharma Inc. (“**BioChem**”) and CliniChem Development Inc. (“**CliniChem**”) (BioChem and CliniChem hereinafter collectively referred to as the “**Filers**”) for a decision pursuant to the securities legislation of the Jurisdictions (the “**Legislation**”) that :

1. exempts BioChem and CliniChem from the provisions in the Legislation regulating the take-over bid provisions in connection with the exercise by BioChem, as the holder of all the issued and outstanding Class B Common Shares in the share capital of CliniChem (the “**Class B Shares**”), of the right (the “**Purchase Option**”) to acquire all but not less than all of the issued and outstanding Class A Common Shares in the share capital of CliniChem (the “**CliniChem Common Shares**”); and
2. exempts BioChem and CliniChem from the general application of Policy Statement Q-27 – *Requirements for Minority Security Holders Protection in Certain Transactions* of the Commission des valeurs mobilières du Québec.

**AND WHEREAS** pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “**System**”), the *Commission des valeurs mobilières du Québec* is the principal regulator for this application;

**AND WHEREAS** BioChem has represented to the Decision Makers that:

**CliniChem**

1. CliniChem was incorporated by articles of incorporation under the *Canada Business Corporations Act* (the “**CBCA**”) by BioChem in January 1998 to conduct research and development.
2. The articles of CliniChem were amended on May 11, 1998 to provide for the creation of the CliniChem Common Shares and of the Class B Shares (the “**Articles of Incorporation**”).
3. CliniChem’s registered office is in the province of Québec.
4. CliniChem is a reporting issuer, or the equivalent, in each province of Canada and is not in default of any requirements of the Legislation.
5. BioChem and CliniChem entered into a distribution agreement (the “**Distribution Agreement**”) providing for the terms and conditions of the distribution by BioChem of all the outstanding CliniChem Common Shares to the holders of common shares of BioChem (the “**BioChem Common Shares**”).
6. Pursuant to the Distribution Agreement, BioChem contributed, on June 8, 1998, \$150 million in cash to CliniChem as a capital contribution.
7. Subsequently to this capital contribution, the then issued and outstanding 1,000 common shares in the share capital of CliniChem held by BioChem were exchanged for 2,713,260 CliniChem Common Shares and for 1,000 Class B Shares.
8. On June 22, 1998 (the “**Distribution Date**”), BioChem distributed the CliniChem Common Shares to the then holders of BioChem Common Shares (the “**Distribution**”) by way of a dividend-in-kind, the whole pursuant to a prospectus dated June 10, 1998 and receipted by each Jurisdiction.
9. CliniChem’s authorized capital consists of an unlimited number of CliniChem Common Shares and 1,000 Class B Shares. As of September 11, 2000, there were 2,713,260 CliniChem Common Shares issued and outstanding and 1,000 Class B Shares issued and outstanding.
10. As at September 11, 2000, BioChem held all the issued and outstanding Class B Shares and 559,674 CliniChem Common Shares representing approximately 21% of the outstanding CliniChem Common Shares.
11. The CliniChem Common Shares have been authorized for quotation in the United States on the Nasdaq National Market and are traded in Canada on The Toronto Stock Exchange.

## **BioChem**

12. BioChem was constituted by Certificate of Amalgamation issued pursuant to the provisions of the CBCA. The entity resulting from this amalgamation effectively continued the operations of its predecessor which had been incorporated under Part I of the *Companies Act* of the Province of Québec and continued under Part IA of the *Companies Act* (Québec) by Certificate of Continuance dated January 27, 1982.
13. BioChem is a biopharmaceutical company.
14. BioChem is a Corporation governed by the CBCA and its registered office is in the Province of Québec. It is a reporting issuer, or the equivalent, in each province of Canada, and is not in default of any requirements of Legislation.
15. BioChem's authorized capital consists of an unlimited number of common shares. As of September 11, 2000, there were 101,285,010 common shares of BioChem issued and outstanding.
16. The BioChem Common Shares have been authorized for quotation in the United States in the Nasdaq National Market and are traded in Canada on The Toronto Stock Exchange.

## **Relationship Between CliniChem and BioChem**

In connection with the Distribution Agreement, BioChem and CliniChem entered into a number of agreements, including a research and development agreement (the "**Research and Development Agreement**"), a technology license agreement (the "**Technology License Agreement**"), a product option agreement (the "**Product Option Agreement**") and a services agreement (the "**Services Agreement**").

## **Purchase Option**

17. The Purchase Option is provided in the Articles of Incorporation of CliniChem. In accordance with the Purchase Option, BioChem, as the holder of the majority of the outstanding Class B Shares, has the right to acquire all, but not less than all, of the issued and outstanding CliniChem Common Shares.
18. The Purchase Option is exercisable by written notice given at any time from and after the Distribution Date and ending on the earlier of (i) March 31, 2003 or (ii) the 90th day after the date CliniChem provides BioChem (as the holder of the majority of the outstanding Class B Shares) with quarterly financial statements of CliniChem showing cash or cash equivalents of less than \$5.0 million, although BioChem may, at its election, extend such period by providing additional funding, including through loans, for the continued conduct of any or all of the CliniChem programs conducted under the Research and Development Agreement (but in no event beyond March 31, 2003).

19. The amount payable upon the exercise of the Purchase Option (the “**Purchase Option Exercise Price**”) is the greatest of:
- (a) 25 times the aggregate of:
    - (i) all worldwide payments made by and all worldwide payments due to be made by BioChem with respect to all products acquired pursuant to the Product Option Agreement for the four calendar quarters immediately preceding the quarter in which the Purchase Option is exercised (the “**Base Period**”); and
    - (ii) all payments that would have been made and all payments due to be made by BioChem to CliniChem during the Base Period if the option to buy-out CliniChem's right to receive payments with respect to acquired products had not previously been exercised pursuant to the Product Option Agreement with respect to any product;less any amounts previously paid to exercise any payment buy-out option for any CliniChem product;
  - (b) the fair market value of 420,000 BioChem Common Shares as of the date of the exercise of the Purchase Option;
  - (c) \$175 million plus any additional funds contributed to CliniChem by BioChem less the aggregate amount of all payments provided for in the Technology License Agreement, research and development costs and Services Agreement payments paid or incurred by CliniChem as of the Purchase Option Exercise Date; and
  - (d) \$50 million.
20. In each case, the amount payable as the Purchase Option Exercise Price will be reduced (but not to less than \$1.00) to the extent, if any, that CliniChem's liabilities at the time of exercise (other than liabilities under the Research and Development Agreement, the Services Agreement and the Technology License Agreement and any debt owed to BioChem) exceed CliniChem's cash and cash equivalents and short-term and long-term investments (excluding the amount of available funds remaining under the Research and Development Agreement at such time). For this purpose, liabilities will include, in addition to liabilities required to be reflected on CliniChem's financial statements under generally accepted accounting principles, certain contingent liabilities relating to guarantees and similar arrangements.
21. BioChem may pay the Purchase Option Exercise Price in cash, in common shares of BioChem, or in any combination of cash and common shares of BioChem (the “**Payment Method**”).

22. The notice of exercise of the Purchase Option shall set forth the Purchase Option Exercise Price, the Payment Method and the date on which the CliniChem Common Shares will be purchased (the “**Closing Date**”).
23. The closing of the acquisition of the CliniChem Common Shares pursuant to the exercise of the Purchase Option will take place on a date selected by BioChem, but no later than 60 days after the exercise of the Purchase Option unless, in the judgment of BioChem, a later date is required to satisfy any applicable legal requirements or to obtain required consents.
24. CliniChem shall mail or deliver to each registered shareholder notice of the intention of BioChem to acquire the CliniChem Common Shares on the Closing Date (the “**Notice to Shareholders**”).
25. The Notice to Shareholders shall describe the Purchase Option and the tax consequences of its exercise and set out the Purchase Option Exercise Price, the Closing Date and the Payment Method.
26. Transfer of title of all the issued and outstanding CliniChem Common Shares shall be deemed to occur automatically on the Closing Date and thereafter CliniChem shall treat BioChem as the sole holder of CliniChem Common Shares.
27. BioChem exercised the Purchase Option on October 26, 2000. The Purchase Option Exercise Price will be payable in cash.
28. The Legislation does not provide for an exemption from the provisions regulating take-over bids where the securities are purchased by a person other than the issuer of the securities in accordance with conditions in writing at the time of issue.

**WHEREAS** pursuant to the System 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;

**THE DECISION** of the Decision Makers pursuant to the Legislation is that BioChem and CliniChem are exempted from the provisions in the Legislation regulating take-over bids in connection with the exercise by BioChem of the Purchase Option.

**DATED** at Montréal, Québec, this 24<sup>th</sup> day of November, 2000.

Guy Lemoine

Viateur Gagnon

**AND THE DECISION** of the Decision Maker pursuant to the Legislation applicable in Québec is that BioChem and CliniChem are exempted from the application of Policy Statement Q-27 - *Requirements for Minority Security Holders Protection in Certain Transactions* of the Commission des valeurs mobilières du Québec.

**DATED** at Montréal, Québec, this 24<sup>th</sup> day of November, 2000.

Guy Lemoine

Viateur Gagnon