

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the "Jurisdiction")**

AND

**IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS IN MULTIPLE JURISDICTIONS**

AND

**IN THE MATTER OF
PORTAGE BIOTECH INC.
(the "Filer")**

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the "**Legislation**") for an exemption (the "**Exemption Sought**") from the prospectus requirement of section 53 of the *Securities Act* (Ontario) in connection with the proposed distribution (the "**Dividend**") by the Filer of the shares of common stock of Biohaven ("**Biohaven Shares**") of Biohaven Pharmaceutical Holding Company Ltd. ("**Biohaven**") by way of a dividend in specie to holders ("**Filer Shareholders**") of shares of common stock of the Filer ("**Filer Shares**") resident in Canada ("**Filer Canadian Shareholders**").

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

- (a) the Ontario Securities Commission is the principal regulator for this application; and
- (b) the Filer has provided notice that sub-section 4.7(1) of Multilateral Instrument 11-102 Passport System ("**MI 11-102**") is intended to be relied upon in each of the other provinces and territories of Canada.

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 Filer:

1. The Filer is a corporation continued under the laws of the British Virgin Islands. The Filer's Canadian subsidiary, Portage Services Ltd., which acts as its Canadian agent, is located in Toronto, Ontario. The Filer is a pharmaceutical company that identifies, finances, and develops best-in-class or first-in-class early-to-mid stage products.
2. The Filer is a reporting issuer in Ontario. Its common shares are listed for trading on the Canadian Securities Exchange under the symbol "PBT.U". It is not a reporting issuer in any other jurisdiction in Canada.
3. The Filer's common shares also trade on the OTC Bulletin Board market in the United States under the symbol "PTBEF". The Filer is a "foreign private issuer" under the rules of the Securities Exchange Commission (the "SEC") and is subject to regular filing and reporting requirements in the United States.
4. The authorized capital stock of the Filer consists of an unlimited number of Filer Shares with no par value per share. As of January 5, 2018, there were 280,719,920 Filer Shares issued and outstanding.
5. Biohaven was incorporated on September 25, 2013 under the laws of the British Virgin Islands with principal executive offices in New Haven, Connecticut. It is a clinical-stage biopharmaceutical company with a portfolio of innovative, late-stage product candidates targeting neurological diseases, including rare disorders. Biohaven has licensed intellectual property from numerous companies and institutions such as Bristol-Myers Squibb Company and Yale University.
6. On April 7, 2017, Biohaven filed a registration statement on form S-1, and subsequently filed amendments to the registration statement on April 24, 2017 and May 1, 2017 (the registration statement, as so amended, is referred to as the **Registration Statement**). The Registration Statement was declared effective by the SEC on May 3, 2017. Biohaven is subject to the United States *Securities Exchange Act of 1934*, as amended from time to time (the "**1934 Act**") and the rules, regulations and orders promulgated thereunder.
7. The authorized capital stock of Biohaven consists of a maximum of 200,000,000 common shares of a single class with no par value per share of which 35,931,000 are issued and outstanding as of December 12, 2017 that are held by 3,578 beneficial shareholders ("**Biohaven Shareholders**"), and a maximum of 10,000,000 preferred shares of a single class with no par value per share of which none are issued and outstanding. No other securities of Biohaven are issued and outstanding.
8. The common shares of Biohaven are listed on the New York Stock Exchange (the "NYSE") under the symbol "BHVN". Other than the foregoing listing on the NYSE, no securities of Biohaven are listed or posted for trading on any exchange or market in Canada or outside of Canada.
9. Biohaven is not a reporting issuer in any province or territory in Canada and has no present intention to become a reporting issuer in any province or territory of Canada or to list its securities on any stock exchange in Canada following the Dividend.
10. As at the date hereof, the Filer owns 6,216,619 Biohaven Shares representing 17.30% of the issued and outstanding common shares of Biohaven.

11. Based on a geographic analysis of beneficial shareholders prepared for the Filer by Broadridge Financial Solutions, Inc., as of January 4, 2018, (i) there were 419 beneficial Filer Canadian Shareholders holding approximately 35,004,796 Filer Shares, representing approximately 12.47% of the outstanding Filer Shares.
12. On December 4, 2017, the Filer issued a news release announcing that it intended to distribute the bulk of its Biohaven Shares to its shareholders by way of a dividend in specie. The record date for the distribution was announced as January 5, 2018 with the distribution to be effected on January 15, 2018. The Filer subsequently deferred the distribution date to January 16, 2018 as January 15 is a statutory holiday in the United States.
13. The Filer is proposing to distribute 6,102,104 Biohaven Shares to its shareholders by way of a dividend in specie on the basis of one (1) Biohaven Share for each forty-six (46) Filer shares held (the “**Dividend**”) including to the Filer Canadian Shareholders. Based on the above geographical analysis of Filer beneficial shareholders, the number of Biohaven Shares that will be distributed in Canada pursuant to the Dividend will be approximately 760,932 common shares representing 2.18% of the issued and outstanding Biohaven Shares.
14. Based on a geographic analysis of beneficial holders prepared for the Filer by Biohaven’s transfer agent, American Stock Transfer (“**AST**”), as of December 12, 2017 (i) there are five (5) beneficial Canadian shareholders holding approximately 1,264,935 Biohaven Shares, representing approximately 3.52% of the outstanding Biohaven Shares.
15. After the Dividend, approximately 2,025,867 Biohaven Shares representing 5.63% of the issued and outstanding Biohaven Shares will be held beneficially by Canadian residents, representing 7.90% of the total number of beneficial holders of Biohaven Shares.
16. In connection with the Dividend, the distribution agent will distribute to each Filer Shareholder entitled to Biohaven Shares, the number of whole Biohaven Shares to which the Filer Shareholder is entitled in the form of a book-entry authorization. No fractional Biohaven Shares will be issued. Instead, one Biohaven Share will be issued where there are 23 or more Filer Shares held on the record date. The Biohaven Share allotment for those holding under 23 Filer Shares will be rounded down to zero. There will be no cash distribution.
17. Filer Shareholders will not be required to pay any consideration for the Biohaven Shares, or to surrender or exchange Filer Shares or take any other action to receive their Biohaven Shares. The Dividend will occur automatically and without any investment decision on the part of Filer Shareholders.
18. Subject to the satisfaction of certain conditions, the Dividend will be distributed on January 16, 2018. The Dividend will be effected under the laws of the British Virgin Islands.
19. Because the Dividend will be effected by way of a dividend of Biohaven Shares to Filer Shareholders, no shareholder approval of the Dividend is required (or being sought) under British Virgin Islands law.
20. On January 5, 2018, the Filer filed an Information Statement with respect to the Dividend (the “**Information Statement**”) detailing the terms and conditions of the Dividend. The Information Statement contains prospectus-level disclosure regarding the Filer and Biohaven.

21. Filer Shareholders (including Filer Canadian Shareholders) will receive a notice of internet availability or, where required, a hard copy of the Information Statement. Filer Canadian Shareholders who receive Biohaven Shares pursuant to the Dividend will have the benefit of the same rights and remedies in respect of the disclosure documentation received in connection with the Dividend that are available to Filer Shareholders resident in the United States.
22. Following the completion of the Dividend, Biohaven will continue to be subject to the requirements of the 1934 Act and the rules and regulations of the NYSE. Biohaven will send concurrently to holders of Biohaven Shares resident in Canada, the same disclosure materials required to be sent under applicable United States securities laws to holders of Biohaven Shares resident in the United States.
23. There will be no active trading market for the Biohaven Shares in Canada following the Dividend and none is expected to develop. Biohaven has no present intention of listing its securities on any Canadian stock exchange or obtaining reporting issuer status in Canada. Consequently, it is expected that any resale of Biohaven Shares distributed in connection with the Dividend will occur through the facilities of the NYSE or any other exchange or market outside of Canada on which Biohaven Shares may be quoted or listed at the time that the trade occurs, or to a person or company outside of Canada.
24. The Dividend to Filer Canadian Shareholders would be exempt from the prospectus requirement pursuant to subsection 2.31(2) of National Instrument 45-106 *Prospectus Exemptions* but for the fact that Biohaven is not a reporting issuer under the securities legislation of any jurisdiction in Canada.
25. Neither the Filer nor Biohaven is in default of any securities legislation in any jurisdiction of Canada.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that the first trade in the Biohaven Shares acquired pursuant to the Dividend will be deemed to be a distribution unless the conditions in section 2.6 or subsection 2.14(1) of National Instrument 45-102 *Resale of Securities* are satisfied.



Commissioner
Ontario Securities Commission



Commissioner
Ontario Securities Commission
T. MOSELEY

January 16, 2018