

THE SECURITIES ACT

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Order No. 3302

)

Section 20

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April 11, 2001

## BIOCAPITAL INVESTMENTS LIMITED PARTNERSHIP

### WHEREAS:

(A) Application (the "Application") has been made on behalf of BioCapital Investments Limited Partnership (the "Partnership") and its general partner BioCapital Management Inc. (the "General Partner") to The Manitoba Securities Commission (the "Commission") for an order pursuant to section 20 of *The Securities Act*, R.S.M. 1988, c. S50 (as amended) (the "Act") that trades made by the Partnership of units ("Mutual Fund Units") of BioCapital Biotechnology and Healthcare Fund (the "Mutual Fund") to holders of units of the Partnership (the "Limited Partners") as a distribution *in specie* shall be exempt from sections 6 and 37 of the Act.

(B) It has been represented to the Commission by the Partnership and the General Partner that:

1. The Partnership is a publicly traded closed-end investment fund established under the laws of the Province of Quebec pursuant to a Limited Partnership Agreement (the "Partnership Agreement") entered into on May 8, 1997 and amended on February 23, 1999 and on April 14, 2000. The Partnership's units (the "Partnership Units") are listed and posted for trading on The Toronto Stock Exchange. The General Partner is a corporation incorporated under the laws of Quebec. The registered and principal office of the Partnership and the General Partner is 3690 rue de la Montagne, Montreal, Quebec, H3G 2A8.
2. The Partnership is a reporting issuer or the equivalent in each of the provinces in Canada.
3. The Partnership's principal investment objectives are to provide Limited Partners with a diversified portfolio of investments both in public and private companies involved in the biotechnology and healthcare industries, to realize an appreciation of capital on such investments and to achieve a certain liquidity by taking such companies public or by arranging for the acquisition of such companies by other biotechnological or pharmaceutical companies within three to seven years of the initial investment. The Partnership's investments consist of equity securities of companies at various development stages and interests in venture capital funds which invest in the biotechnology and healthcare sectors.
4. Each Partnership Unit entitles the holder thereof to one vote. As at March 30, 2001 there were approximately 9,956,508 Partnership Units issued and outstanding. Fonds de solidarité des travailleurs du Québec (F.T.Q.) (the "Fonds de solidarité") currently holds approximately 8,102,880 Partnership Units

representing approximately 81% of the total number issued and outstanding Partnership Units.

5. The Mutual Fund will be an open-end mutual fund trust with redeemable units. The trust was established by BioCapital Mutual Fund Management Inc. (the "Manager") under the laws of Ontario by way of declaration of trust. The Manager is the trustee of the Mutual Fund and as such will hold legal title to the assets of the Mutual Fund. A preliminary annual information form and preliminary simplified prospectus in respect of the Mutual Fund and the continuous offering of Mutual Fund Units to the public has been filed with the securities regulatory authorities in each province and territory in Canada.

6. The investment objectives and strategy of the Mutual Fund will be consistent with those of the Partnership with the portfolio of the Mutual Fund consisting primarily of securities of public companies in the biotechnology and health care industries, with some of its assets being invested in liquid money market and debt instruments.

7. The General Partner has been exploring different strategies for enhancing Partnership Unit value. Consequently, the General Partner has proposed a reorganization of the Partnership (the "Reorganization") which would allow the Partnership to create liquidity and make a distribution on account of net income in respect of its 2000 fiscal year by distributing Mutual Fund Units to the Limited Partners.

8. The first two steps in the Reorganization involve the following:

(a) the transfer by the Partnership to the Mutual Fund of all securities of public companies and all cash (after payment of a performance bonus to the General Partner and certain expenses by the Partnership) presently held by the Partnership in exchange for Mutual Fund Units (the "Exchange");

(b) the distribution (the "Distribution") by the Partnership to its limited partners (except certain Limited Partners who are non-residents of Canada), on a pro-rata basis, of the Mutual Fund Units the Partnership will receive in connection with the Exchange.

9. On the date of the Distribution, the Partnership will own all of the issued and outstanding Mutual Fund Units and accordingly the Distribution will be a "primary distribution to the public" as such term is defined in the Act, for which a preliminary prospectus and a (final) prospectus must be filed with the Commission and for which receipts must be received from the Commission (the "Prospectus Requirement"), absent statutory exemption or exemptive relief.

10. Securities legislation in British Columbia, Alberta, Saskatchewan, Ontario, Quebec, Nova Scotia and Newfoundland provides an exemption from the Prospectus Requirements of such applicable securities legislation for a trade by an issuer in a security of a reporting issuer held by the issuer that is distributed by it to its securities holders as a dividend *in specie* or a dividend in kind. The Prospectus Requirement in Quebec does not apply to such a trade. The Distribution will be made in New Brunswick in accordance with the good-faith reorganization exemption from the Prospectus Requirement.

11. The Distribution also constitutes trades in securities for which the Partnership must be registered under the Act (the "Registration Requirement"), absent statutory exemption or exemptive relief.

12. Securities legislation in British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia, Quebec and Newfoundland either provides an exemption from the Registration Requirement of such applicable securities legislation for a trade by an issuer in a security of a reporting issuer held by the issuer that is distributed by it to its securities holders as a dividend *in specie* or a dividend in kind or the Registration Requirement does not apply to such trades. The Distribution will be made in New Brunswick in accordance with the good-faith reorganization exemption from the Registration Requirement

(C) The Commission is of the opinion that it would not be prejudicial to the public interest to grant the order requested.

**IT IS ORDERED:**

**1. THAT**, pursuant to subsection 20(1) of the Act, trades made pursuant to the Distribution shall be exempt from sections 6 and 37 of the Act.

**2. THAT** the fee for this order shall be \$1,000.00.

**BY ORDER OF THE COMMISSION**

**Director**