



THE MANITOBA
SECURITIES
COMMISSION

THE SECURITIES ACT

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Order No. 7635

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Section 20(1)

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August 16, 2023

SCIMAR LTD.

WHEREAS:

- (A) The Manitoba Securities Commission (the "**Commission**"), as principal regulator in the Province of Manitoba (the "**Province**"), has received an application from SciMar Ltd. (the "**Issuer**") for an order pursuant to Section 20(1) of *The Securities Act* (Manitoba) (the "**Act**") exempting the Issuer from the application certain of the requirements under Section 2.9 of National Instrument 45-106 – *Prospectus Exemptions* ("**NI 45-106**") in the Province of Manitoba ("**Manitoba**") in connection with the offering, issuance and distribution by the Issuer of securities of the Issuer to certain non-resident investors who meet certain applicable investment eligibility requirements, as described below (the "**Exemption Sought**");
- (B) The Issuer has represented to the Commission as follows:
1. The Issuer is a private company, incorporated pursuant to the laws of the Province of Manitoba by Articles of Incorporation dated December 8, 2009, as subsequently amended by Articles of Amendment dated January 24, 2018 and March 25, 2021 (collectively, the "**Articles**"). The Issuer is a biotechnology research and development company which is developing diagnostic, preventative and therapeutic products for the treatment of Type 2 Diabetes.
 2. The Issuer is not a "reporting issuer" for the purposes of securities legislation in any jurisdiction in Canada, and there is no published market in respect of any of its securities.
 3. The authorized capital of the Issuer consists of an unlimited number of Class A Common Voting Shares (issuable in series), Class B Common Non-Voting Shares, Class A, B, C and F Preferred Voting Shares, and Class D, E and G Preferred Non-Voting Shares and there are currently issued and outstanding 73,603,273 Class A Voting Shares, Series 1; 1,471,554 Class A Voting Shares, Series 2; 201,251 Class A Common Voting Shares, Series 4; 654,065.75 Class A Preferred Voting Shares; 42,986 Class B Preferred Voting Shares; 900,000 Class C Preferred Voting Shares; 71,826 Class F Preferred Voting Shares and 4,350,000 Class G Preferred Non-Voting Shares. In addition, there are also issued and outstanding warrants, which if fully exercised, would result in the issuance of a further 5,150,965 Class A Common Voting Shares and 36,112 Class B Preferred Voting Shares.

Securities Division

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A DIVISION OF THE MANITOBA FINANCIAL SERVICES AGENCY

4. All of the issued and outstanding securities of the Issuer were issued over the duration of the Issuer's existence as part of the Issuer's capital raising efforts pursuant to private placement exemptions provided in NI 45-106.
5. The Issuer intends to complete a private placement offering of Class A Common Voting Shares, Series 3 (the "**Offered Shares**") to investors in Canada and the United States in accordance with the provisions of Section 2.9 of NI 45-106 (the "**Offering Memorandum Exemption**") and the Tier 2 provisions of Regulation A – *Conditional Small Issues Exemption* ("**Reg A**") enacted by the Securities and Exchange Commission (the "SEC") under the *Securities Act of 1933* Rules and Regulations, which is available to issuers in Canada and the United States.
6. The Issuer intends to complete the Offering in compliance with Reg A by completing a disclosure document, being a Form 1-A (the "**Form 1-A Circular**"), which contains, among other things, detailed disclosure regarding the Issuer (including audited financial statements which comply with both U.S. accounting standards as well as those required in Canada under the Offering Memorandum Exemption), and descriptions of the securities being offered, the terms of the offering and risk factors, all of which is similar to prospectus-level disclosure.
7. The Form 1-A Circular prepared by the Issuer was submitted to the United States Securities and Exchange Commission (the "SEC") for review, and the SEC confirmed that it has no comments and would not be further reviewing the Form 1-A Circular. In order to proceed with a Reg A Offering, approval from the U.S. Financial Industry Regulatory Authority ("**FINRA**") is also required. Once obtained, the Form 1-A Circular may be electronically filed with the SEC (at which time it will become publicly available).
8. A Reg A Offering will also be subject to U.S. state securities law enforcement, and issuers may be required to file with states where investors reside any materials that an issuer has filed with the SEC as part of a Reg A offering.
9. Under Reg A, an investor must comply with certain prescribed investor suitability standards, which required investor certification and are subject to verification. Investors must be "Qualified Purchasers" as defined in Reg A (the "**Qualified Purchaser Criteria**"), which includes (a) "accredited investors" (as defined under Rule 501(a) of Regulation D; and (b) investors whose investment does not represent more than 10% of the greater of such investor's annual income or net worth alone or together with a spouse (for individuals) and 10% of the greater of annual revenue or net assets at fiscal yearend (for non-individuals). The accredited investor definition contains income and net worth thresholds that are similar to those in NI 45-106. An individual will be an accredited investor if they (i) have earned income in excess of (U.S.)\$200,000 or (U.S.)\$300,000 together with a spouse in each of the prior two years with a reasonable expectation of the same for the current year, (ii) have a net worth over (U.S.)\$1 million either alone or with their spouse, excluding the value of any primary residence, or (iii) holds

in good standing a Series 7, 65 or 82 license. Accredited non-individuals include: (a) banks or savings and loan associations, registered brokers or dealers, insurance and investment companies, private business development companies, certain registered benefit plans with assets over (U.S.)\$5 million or self-directed plans where all investment decisions are made by individual accredited investors; (b) any entity including a trust not formed for the specific purpose of acquiring the securities offered, with total assets in excess of (U.S.)\$5 million; (c) any director or executive officer of the issuer; and (d) any entity, all of whose owners are accredited investors.

10. Reg A offerings must be completed within 12 months but may be extended.
11. As part of the requirements of Reg A, the Issuer must have a US transfer agent and a FINRA-registered broker to complete sales to qualified investors under Reg A. The Issuer represents that it has engaged I-Bankers Direct LLC as its registered agent in the United States.
12. Under Reg A requirements, the Issuer must complete and file online with the SEC a publicly available annual report within 120 days following the Issuer's fiscal year end, which includes any updates to information previously filed, as well as disclosure relating to the issuer's business operations for the preceding three fiscal years, related party transactions, beneficial ownership of the issuer's securities, executive officers and directors, including certain executive compensation information, management's discussion and analysis of the issuer's liquidity, capital resources, and results of operations, and two years of audited financial statements. Issuers are also required to electronically file semi-annual reports with the SEC that includes interim financial statements and management discussion and analysis.
13. In order to comply with the applicable disclosure requirements of the Offering Memorandum Exemption, the Reg A Circular will include a Canadian wrapper (the "**OM Wrapper**") to ensure the disclosure complies with and includes all disclosure requirements prescribed under Form 45-106F2 - *Offering Memorandum for Non-qualifying Issuer* pursuant to Section 2.9 of NI 45-106.
14. The disclosure set out in a Form I-A Circular is robust and detailed and will be subject to SEC and FINRA review and scrutiny, along with public disclosure and ongoing reporting requirements.
15. The Issuer has represented that it will provide all investors who are non-residents of Canada with the contractual rights of action against the Issuer for rescission or damages that are required under Offering Memorandum Exemption. In addition, non-resident investors will also be provided with a contractual right to cancel their subscription within two business days, as required under the Offering Memorandum Exemption.

16. All investors will be required to complete either a U.S. Purchaser Questionnaire or a Canadian Purchaser Questionnaire, along with a Form 45106-F4 - *Risk Acknowledgement* as part of any subscription for shares.
 17. While not a requirement under either Reg A or the Offering Memorandum Exemption, the Issuer has represented and undertaken to ensure that the Offering will provide that U.S. investors will not be permitted to resell securities to Canadian investors unless the Canadian purchase or purchaser is exempt from the prospectus requirement under the applicable provisions of NI 45-106, which will ensure that Offered Shares will not be issued to or acquired by Canadian residents except in compliance with NI 45-106.
 18. The Exemption Sought will only apply in respect of the distribution and sale of Offered Shares to subscribers who are non-residents of Canada who have complied with the Qualified Purchaser Requirements of Reg A.
- (C) Commission is of the opinion that it would not be prejudicial to the public interest to grant the order requested.

IT IS ORDERED:

THAT, pursuant to section 20(1) of the Act, the offer, issuance and distribution of Offered Shares in reliance on the Offering Memorandum Exemption to subscribers who are non-residents of Canada be exempted from the requirement of Sub-section 2.9(2)(b) of NI 45-106, provided that:

- (a) any such non-resident subscriber shall meet the Qualified Purchaser Criteria prescribed under Reg A;
- (b) the distribution of Offered Shares be otherwise completed in accordance with the requirements of both the Offering Memorandum Exemption and Reg A; and
- (c) non-resident subscribers shall not be permitted to sell or transfer any such Offered Shares to a resident of Canada unless such sale or transfer is made in reliance upon a prospectus exemption set out under NI 45-106.

BY ORDER OF THE COMMISSION



Chris Besko, Director