Ontario Securities Commission | Commission des valeurs mobilières de l'Ontario | 22nd Floor, 20 Queen Street West, Toronto ON M5H 3S8 | 22e étage, 20, rue Queen Ouest, Toronto ON M5H 3S8

Citation: Theralase Technologies Inc. (Re), 2018 ONSEC 8
Date: 2018-02-26
File No.: 2018-3

IN THE MATTER OF
THERALASE TECHNOLOGIES INC.
and ROGER DUMOULIN-WHITE

ORAL REASONS FOR APPROVAL OF SETTLEMENT
(Subsection 127(1) of the *Securities Act*, RSO 1990, c S.5)

Hearing: February 26, 2018

Decision: February 26, 2018

Panel:	Janet Leiper	Commissioner, Chair of the Panel
	D. Grant Vingoe	Vice-Chair
	Deborah Leckman	Commissioner
Appearances:	Anna Huculak	For Staff of the Commission
	Greg Temelini	For Roger Dumoulin-White
	Melissa MacKewn	For Theralase Technologies Inc.

ORAL REASONS FOR APPROVAL OF SETTLEMENT

The following reasons have been prepared for publication in the Ontario Securities Commission Bulletin, based on the reasons delivered orally in the hearing as edited and approved by the panel, to provide a public record of the oral reasons.

[1] The respondents have entered into a settlement agreement with Staff of the Commission. In this hearing, the parties submit jointly that it would be in the public interest for us to approve the settlement agreement and to issue the requested order. That order imposes sanctions, including but not limited to an administrative penalty against the individual respondent, Roger Dumoulin-White. Mr. Dumoulin-White is the President and Chief Executive Officer of Theralase Technologies Inc. ("**Theralase**"), which is also a respondent and a party to the settlement. After considering the evidence and the submissions presented to us, including precedent settlement approval decisions, we agree that the requested order is in the public interest. These are our reasons.

[2] The facts are fully set out in the settlement agreement, which is publicly available. Accordingly, it is unnecessary to set out in detail the relevant conduct. In essence, the respondents admit that Theralase did not provide accurate and complete disclosure about the development of one of Theralase's lead products. The disclosure issues concern:

a. forward-looking information about anticipated milestones and expected revenues;

b. the absence of updates to that information, including why targets were not achieved; and

c. historical information about the status of the product's regulatory approvals.

[3] It is admitted that Theralase's non-compliance was authorized, permitted or acquiesced in by Mr. Dumoulin-White, who is deemed under section 129.2 of the *Securities Act*, RSO 1990, c S.5 (the "**Act**") to have also not complied with Ontario securities law.

[4] As mitigating factors, the settlement agreement notes that Mr. Dumoulin-White has never sold a common share of Theralase and he believed that the revenue projections and growth targets at issue were reasonable and achievable when they were made. Theralase has since introduced policies and procedures relating to disclosure and sought to reach an early resolution of this matter. These measures are designed to enhance corporate governance and disclosure practices going forward.

[5] Nonetheless, it is important that public companies comply with their disclosure requirements and ensure, through adequate and ongoing processes, that those requirements are fulfilled in a timely way. Continuous disclosure by reporting issuers is a cornerstone of our securities regulatory regime. It provides, on an ongoing basis, the full and accurate information about material facts and events that is necessary for investors to have confidence in the fair and efficient operation of the markets. Disclosures made by reporting issuers must be current, balanced and accurate. That did not occur here. We are mindful of the

fact that the disclosure issues were not momentary, but extended over a period of time longer than 10 years.

[6] Our jurisprudence establishes that parties should be encouraged to reach settlements. Settlements save valuable resources, including but not limited to hearing time, and promote timely resolutions. Accordingly, a hearing panel should not reject a settlement agreement lightly. A settlement will ordinarily be approved if the sanctions agreed to by the parties are within a reasonable range of appropriateness. It is important to note, however, that the agreed sanctions need not be the sanctions that the panel might have imposed after a hearing on the merits. A settlement is based on the facts admitted by the respondents and agreed to by Staff, which may or may not be the facts that a panel would have found after a contested hearing.

[7] In our view, the proposed agreed-upon outcome takes into consideration the appropriate aggravating and mitigating factors. The settlement is reasonable and approval is in the public interest, based on the facts and sanctions agreed to by the parties, in light of applicable regulatory principles, prior Commission sanctions and the regulatory settlement process. For these reasons, we approve the settlement agreement, including substantially the same terms contained in the proposed order. These terms are as follows:

a. Pursuant to paragraph 4 of subsection 127(1) of the Act, Theralase shall submit to a consultant's review of:

   i. Theralase's corporate governance framework, including the composition of its Board of Directors and Disclosure Committee;

   ii. Theralase's disclosure policies; and

   iii. the policies, processes, reports and systems related to Theralase's disclosure controls and procedures.

   Theralase will retain Peterson McVicar LLP to conduct the review, using the Terms of Consultant Review that will be appended to our Order. Theralase will institute such changes as may be recommended by the consultant and accepted by Staff in accordance with the process set forth in the Terms of Consultant Review;

b. Pursuant to paragraph 6 of subsection 127(1) of the Act, the Respondents shall be reprimanded;

c. Pursuant to paragraph 7 of subsection 127(1) of the Act, Mr. Dumoulin-White shall immediately resign any position that he holds as a director or officer of an issuer;

d. Pursuant to paragraph 8 of subsection 127(1) of the Act:

   i. for a period of five years commencing on the date of our Order, Mr. Dumoulin-White shall be prohibited from becoming or acting as a director or officer of a reporting issuer or any related entity; and

   ii. for a period of three years commencing on the date of our Order, Mr. Dumoulin-White shall be prohibited from becoming or acting as a director or officer of any non-reporting issuer, other than a related entity of a reporting issuer; and

e. Pursuant to paragraph 9 of subsection 127(1) of the Act, Mr. Dumoulin-White shall pay an administrative penalty in an amount equal to $250,000 less the costs of the consultant paid by Mr. Dumoulin-White (which will not exceed $150,000 and will be confirmed by the consultant as set out in the Terms of Consultant Review). The administrative penalty shall be paid in full within two months of the first Management Discussion & Analysis specified in the Terms of Consultant Review is required to be filed.

[8] Both respondents have also provided undertakings that will be appended to our Order, once issued. These undertakings form an essential part of the settlement that we are approving.

[9] The reprimands shall be issued following these Reasons.

[10] We thank all counsel for their assistance in this matter.

Dated at Toronto this 26th day of February, 2018.

"*Janet Leiper*"

Janet Leiper

"*D. Grant Vingoe*"

D. Grant Vingoe

"*Deborah Leckman*"

Deborah Leckman