Navigating against head winds in the life sciences capital markets

June 02, 2023

Following two years of significant COVID-19 fueled capital investment in the life sciences space, the sector is now seeing an overall reduction of deal flow. In the first two months of 2023, only $30M in equity capital was raised in the life sciences sector on the TSX and TSXV, down from $195M, $1.2B, and $430M over the same period over the past three years, respectively. While these figures may on the surface suggest that the age of limitless capital investment in life sciences has fallen off, it may in fact be better classified as a normalization of investment in the industry. Comparatively, equity capital raised in the life sciences space in 2023 is in the same order of magnitude as that of pre-COVID years, specifically $60M in the first two months of 2017, $1.1B in the first two months of 2018,[1] and $95M in the first two months of 2019.

In this article, we outline some emerging and creative ways that life sciences companies may raise capital in the current financial climate. We start with two recently introduced prospectus exemptions in Canadian securities laws that we've seen as effective means through which companies have secured financing. We then explore options available to drug and medical device companies that do not involve issuing equity, and thereby avoid diluting existing investors.

Part 1 – New prospectus exemptions in 2022

The prospectus-exempt market for securities in Canada is expanding, with new options for prospectus-exempt offerings that came into effect in late 2022. In the last two quarters, we have advised several clients of varying sizes and in various industries to raise capital in reliance upon the new exemptions.

LIFE distributions

In November 2022, the Listed Issuer Financing Exemption, known as the "LIFE" exemption, came into effect, as securities regulators recognized that smaller issuers would benefit from a less expensive and more efficient method of raising capital, rather than having to file and clear a prospectus for modest sized offerings. Issuers using the LIFE exemption are limited to raising the greater of $5 million or 10 per cent of the issuer's market capitalization to a maximum of $10 million annually. Notably, the LIFE exemption permits the issuance of freely tradable securities to any type of investor, including the public retail, without filing a prospectus. To complete a distribution under the LIFE exemption, issuers must prepare and file a short offering document, which in conjunction with the issuer's public disclosure, must disclose all material facts related to the securities to be distributed, and must disseminate and file a news release. We have advised several issuers and dealers with regard to successful financings in reliance upon the LIFE exemption.

Self-certified investor exemption

The temporary Self-Certified Investor Exemption also came into effect in Ontario in late 2022, running for 18 months. This exemption from prospectus requirements allows non-investment fund issuers with a head office in Ontario to distribute securities to investors who have self-certified as meeting at least one qualifying criterion based on education and work experience. Investors are limited to an annual investment of $30,000 under the Exemption. They must certify that they meet at least one of 16 criteria and compete a risk acknowledgement form. With this exemption, Ontario is following the lead of regulators in Saskatchewan and Alberta, who adopted a similar exemption on March 31, 2021.

Part 2 – Non-equity, non-dilutive options

When issuing equity isn't an option due to limited market appetite or lower valuations in the market, life sciences companies may consider other options to raise money based on their unique assets. At the same time, this presents opportunities for large companies to take on strategic transactions and relationships. This section outlines three potential options to raise capital in these circumstances which do no not dilute existing shareholders' equity positions.

Licensing agreements

One increasingly common approach to securing non-equity financing is licensing of intellectual property to a larger strategic partner, but different types of licensing agreements can be applied in the current climate. Licensing agreements involve the transfer of the rights to develop, use and exploit intellectual property in a medical device technology or drug candidate and can operate on an exclusive or non-exclusive basis. This option may be attractive for a company that is in the product development stage and which requires capital to continue to advance its progress. A strategic partner may become a non-exclusive licensee to co-develop the product with the rights holder. The agreement may require one or a combination of upfront payments or a series of payments linked to development milestones to be made by the licensee for its use of the licensed intellectual property.

Asset carve-outs

For many players in the life sciences industry, their portfolio of assets, particularly intellectual property assets, are integral to their valuation. Understanding this, one option to efficiently raise capital is to reshape the company's asset portfolio and divest of non-core IP to strategic buyers. These are more complex deals in the life sciences space, but they may generate upfront cash which may be used to enable selling-companies to sharpen their focus on core products that form a vital part of the business.

This option should be explored by life sciences companies that hold non-core IP assets that are commercialized but with sub-optimum sales or that are in advanced stages of development, where another buyer could achieve greater profitability, whether or not in combination with the buyer's products. The seller may use the funds for its core products with higher potential.

Drug royalties financing

A creative option that has had an uptick in the life sciences space in recent years is the use of drug royalties to fund asset development and bring products to market. This involves a financial investor providing an up-front sum (and potentially additional payments, based on the agreement) to a manufacturer in exchange for a percentage of future revenue on certain assets. These agreements are popular with academic institutions as well as in the energy and mining industries, and they are becoming more compelling for investors in the life sciences space.

This is an attractive option to certain biotech and pharmaceutical companies, particularly small to mid-size companies that are in the capital-intensive product development phase. With this type of capital raising, the existing equity ownership can maintain control while still having the issuer receive substantial cash investment required to fund continued development and other operational expansion. Companies considering this option will have to weigh the benefits of receiving up-front cash with the long-term impact on the margins of their products.

For more information on any of these financing options, please reach out to any of the authors or anyone on the Capital Markets team at BLG.

[1] Note that 2018 saw significant investment in life sciences in the cannabis industry, as legalization of cannabis came into effect in October 2018.

Additional LifeSigns Articles

Accounting of profits remedy for patent infringement in Canada

Canada's new excess claims fees vs double patenting

Funding for IP strategy and protection for Canadian companies

Precision medicine in an AI world

Quantum computing in the life sciences

Québec adopts its first comprehensive health privacy legislation

Stopping counterfeit goods at the Canadian Border

The Canadian legal landscape on AI enabled medical devices

[Virtual care article update - April 2023]

By

Manoj Pundit, Ben Keen, Sydney Dennis-Birnbaum

Expertise

Capital Markets, Health Care & Life Sciences

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2025 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.